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**SUBMISSION**

**TO**

**THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

**REGARDING THE REFERENCE FROM**

**THE MINISTER FOR TRANSPORT AND REGIONAL SERVICES**

**CONCERNING AN INVESTIGATION AND REPORT ON THE OPERATION OF  
THE AUSTRALIA/SOUTH EAST ASIA TRADE FACILITATION AGREEMENT**

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## EXECUTIVE SUMMARY

The Federal Minister for Transport and Regional Services has requested the ACCC investigate whether the parties to the Australia/South East Asia Trade Facilitation Agreement have provided services under that Agreement without due regard to the need for such services to be:

- (a) efficient and economical, and
- (b) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services.

The Minister has also referred the Commission to the objects of Part X:

- (a) to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;  
and
- (b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories.

This submission is made on behalf of, and authorised by, the following Member Lines:

- ANL Container Line Pty Limited
- APL Lines (Australia)
- \* CMA CGM S.A.
- \* Evergreen Marine Corporation
- Hanjin Shipping
- Hyundai Merchant Marine Co. Ltd
- Kawasaki Kisen Kaisha Ltd
- Lloyd Triestino Di Navigazione SPA
- Maersk Sealand
- Malaysia International Shipping Corporation Berhad
- Mitsui O.S.K. Lines Ltd
- Nippon Yusen Kabushiki Kaisha
- Orient Overseas Container Line Ltd
- P&O Nedlloyd B.V.
- P&O Nedlloyd Limited
- Pacific International Lines (Pte) Ltd
- PT Djakarta Lloyd
- RCL (Australia) Pty Ltd
- ZIM Israel Navigation Co Ltd

- \* CMA CGM and Evergreen have recently given notice of their withdrawal from the Agreement.

Service levels have increased since the TFG came into existence, primarily because of new entrants into the trade and as a result of growth in markets beyond S-E Asia. The S-E Asian market alone could not have sustained the increased levels of service.

At the same time, rates continued to decline in the trade to S-E Asia with an extremely low level of rates being available in the marketplace in 1998/99. The Australian Peak Shippers Association (APSA) has been comparing the average low market rates of 1998/99 with the new minimum levels of tariff rates agreed on a non-binding consensus within the TFG forum from 1 January 2000. This has the effect of exaggerating the increase and is not comparing "apples with apples". Member Lines have been conscious of the impact of increasing rates and have sought a phased increase rather than applying a very large increase in one go.

**In any event, the proposed 1 April 2000 increase did not eventuate because of competition within the marketplace.**

In effect, the minimum rate guidelines agreed within the TFG on a non-binding consensus basis tend to act as a benchmark for the calculation of market rates. Indeed, the rates charged to clients by Member Lines have been reduced below this benchmark from time to time, in recognition of the benefits of attracting and retaining high volume and loyal clients. Rates have also, on occasion, been reduced below the benchmark in response to competition from operators using this trade as a way-port trade through to other destinations.

**A high level of competition prevails in this trade, both from non-TFG members operating in this trade area, as well as the pricing practices of those involved in the direct services from Australia to areas served by TFG Members beyond S-E Asia.**

This submission provides clear evidence that the Member Lines of the Trade Facilitation Agreement in the S-E Asian trade have had due regard to the need for their services to be efficient and economical and provided at the capacity and frequency required by existing and potential shippers to S-E Asia. As such, Member Lines operating within the TFG Agreement have also complied with the objects of Part X, specifically, and the Trade Practices Act generally.

□

## 1. Introduction

On 16 March 2000, the Minister signed the following terms of reference for this inquiry:

"Pursuant to Section 10.47 of Part X of the Trade Practices Act 1974, I John Duncan Anderson, Minister for Transport and Regional Services, hereby refer for investigation and report the question of whether grounds exist in relation to the Australia/South East Asia Trade Facilitation Agreement for me to be satisfied of the matters referred to in Section 10.45(a)(iv)(A) and (B).

In undertaking the work required by this reference, the Commission should give special consideration to the following matters:

- does the operation of the TFA [*Australia/South East Asia Trade Facilitation Agreement*]<sup>1</sup> contribute to the provision of adequate outward liner shipping services at internationally competitive freight rates in accordance with the objects of Part X?  
and
- does the conduct of shipping lines operating under the TFA provide grounds for deregistering the agreement or for seeking undertakings that would make deregistration unnecessary?"

Section 10.45(a)(iv)(A) and (B) say, "that parties to the agreement have given effect to or applied, or propose to give effect to or apply, the agreement **without due regard to the need** for outwards liner cargo shipping services provided under the agreement to be: (A) efficient and economical... and (B) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services".

In addition, the Minister referred the Commission to the objects of Part X, with the relevant ones being:

S.10.01(a) "to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;"

and

S. 10.01(b) "to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories."

In Part X, the grounds for deregistration of Conference Agreements, other than the requirement to have "due regard to the need for outwards liner cargo shipping services to be efficient and economical [etc.]" include:

- the Agreement does not provide for:
  - application of Australian law
  - minimum service levels
  - only certain restrictive trade practice provisions

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<sup>1</sup> There are two TFAs covering South East Asia and, separately North-East Asia. To differentiate, Member Lines of the Australia/South East Asia Trade Facilitation Agreement refer to that Agreement as the TFG and this is the reference used in this submission.

- parties to the Agreement propose not to:
  - negotiate with certain designated shipper bodies
  - notify happening of affecting events
  - prevent or hinder an Australian flag operator from engaging efficiently in the outwards trades to a reasonable extent
- varying Conference Agreements have not been registered
- registration of Agreement granted on the basis of false or misleading information in a material particular
- breached an undertaking given to the Minister.

This submission will clearly prove that the Member Lines have met their obligations under Part X in full.

Efficiency and economy are difficult issues to address in the context of international liner shipping, and the only real examination of these terms occurred in the Trade Practices Tribunal investigation of the Australian/Eastern USA Shipping Conference in 1975 (ATPR40-011), and we rely on their observations regarding efficiency and economy in the Part X context as being instructive.

The Trade Practices Tribunal, in its 1975 report, noted that efficiency was not easy to interpret and in their view it followed that if the service was economical it was likely to be efficient in a narrower sense. "Because of the great difficulty in any inquiry in establishing whether individual conference lines are operating efficiently we [*the Tribunal*] did not pursue the matter of efficiency further." Reference was also made by the Tribunal to technical efficiency, but none of the complaints received by the Minister and/or the ACCC have questioned the technical efficiency of the Member Lines, but any information required in this respect by the Commission would certainly be forthcoming.

Section 10.45(a)(iv)(A) states, as noted above, "that parties to the agreement have given effect to ... the agreement **without due regard to the need** for outwards liner cargo shipping services ... to be ...efficient and economical." For the reasons stated above, this submission examines whether such services under the TFG Agreement are both economical and adequate.

The Member Lines of the Australia/South East Asia Trade Facilitation Agreement (TFG) do, indeed, contend that they have due regard for their services to be both economical and adequate.

## 2. Background

The first outward Conferences to serve the Australia to South-East Asia trade were the Australia/Malay Shipping Conference and the Australia/Indonesia Shipping Conference, where Members first met in December 1948.

These two Conferences served the Trade until 1967 when they both adopted new Constitutions to concur with the introduction of the Trade Practices Act in 1966. As part of the new Constitution, the Conferences changed their names to the Australia–Singapore & West Malaysia Outward Shipping Conference and the Australia–Indonesia Outward Shipping Conference.

These two Conferences continued to provide Australian exporters with shipping services until 1989 when they were merged to establish the Australia-South-East Asia Outward Shipping Conference, and then in 1994 this Conference was superseded by the Australia/South East Asia Shipping Forum.

The Australia/South East Asia Shipping Forum in 1994 comprised of eight Lines:

- ANL, ASCL (P&O Containers), NOL, DJL - forming the ANRO Consortium
- MISC, Nedlloyd, MOL - forming the M/N/M Consortium
- "K" Line - ex West Australia only utilising ANRO space

In 1995 the Australia/South East Asia Shipping Forum was dissolved and in 1997 a number of Lines entered into a Discussion Agreement entitled the Australia/South East Asia Trade Facilitation Agreement (TFG), initially comprising of twelve Lines:

- ANL, ASCL (P&O Containers), MISC, MOL, Nedlloyd, NOL, NYK, OOCL, PIL, DJL, Wilhelmsen, Zim.

The current TFG Membership has increased to seventeen Lines:

- MISC, MOL, OOCL, PIL, Hyundai, Zim - forming the AAA Consortium
- ANLCL/CMA CGM, P&O Nedlloyd, APL, NYK, DJL - forming the AAX Consortium
- RCL, Lloyd Triestino, Evergreen,<sup>2</sup> Hanjin - forming the ASA Consortium
- Maersk and K Line are not Members of a Consortium but manage a joint service between Fremantle and Singapore.

In addition to, and separate from, the TFG service, PIL/MISC and P&O Nedlloyd/NYK run two separate services between New Zealand and Singapore which call Brisbane direct Northbound en route to Singapore. APL also run a one-vessel shuttle service between Western Australia and Singapore.

The above details highlight the increasing number of Lines that have entered the trade between Australia and South East Asia during the latter half of the 1990s. Not only has the number of services available to shippers increased, but the average capacity of vessels has also increased.

Alongside these developments, the original characteristic of the services offered has changed from purely end-to-end trade services, i.e. from Australia to South East Asia countries only, to services that form part of individual Member Lines' 'globalisation' of their services by accepting cargo in Australia for all parts of the world with transshipment in Singapore and Port Kelang to their other North/South and East/West services.

The effect of these developments can be clearly demonstrated by reviewing the minimum levels of service (MLS) during this period:

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<sup>2</sup> Evergreen has recently given notice of withdrawal from the TFG.

| Date                            | Group                               | No. Members | Total TEUs PA | (incl. Reefer TEUs) | No Sailings PA |
|---------------------------------|-------------------------------------|-------------|---------------|---------------------|----------------|
| Nov. 1989                       | Aust/S E Asia Outward Ship. Conf.   | 8           | 45,000        | 8,000               | 93             |
| Oct. 1991                       | Aust/S E Asia Outward Ship. Conf    | 7           | 45,000        | 8,000               | 93             |
| July 1993                       | Aust/S E Asia Outward Ship. Conf    | 8           | 80,145        | 12,155              | 106            |
| June 1994                       | Aust/S E Asia Shipping Forum        | 8           | 61,500        | 10,900              | 105            |
| Dec. 1996                       | Aust/S E Asia Trade Facilitation Ag | 12          | 94,484        | 14,512              | 134            |
| Dec. 1999                       | Aust/S E Asia Trade Facilitation Ag | 17          | 147,072       | 40,259              | 205            |
| July 2000                       | Aust/S E Asia Trade Facilitation Ag | 16          | 149,995       | 41,635              | 226            |
| Variation between 1994 and 1999 |                                     |             |               |                     |                |
|                                 |                                     | +8          | +88,495       | +30,735             | +121           |
|                                 |                                     | +100%       | +144%         | +282%               | +115%          |

table 1

From 1995 onwards, the tariffed or agreed minimum Ocean Freight Rates from Melbourne to Singapore/Pt Kelang for various major commodities have been as follows:

| Date  | Fruit & Veg<br>A\$/20ft | Meat in<br>Cartons<br>A\$/20ft | Cotton<br>A\$/40ft | Waste<br>Paper<br>A\$ | Milk<br>Powder<br>A\$/20ft | General<br>NOE<br>A\$/20ft |
|---|-------------------------|--------------------------------|--------------------|-----------------------|----------------------------|----------------------------|
| August 1995                                   | 3950                    | 3775                           | 1900               | 1750                  | 1200                       | 1525                       |
| January 1996                                  | 3700 – Citrus           | 3775                           | 2075               | 2585                  | 1335                       | 1525                       |
|   | 3975 – other fruit      |                                |                    |                       |                            |                            |
| July 1997                                     | 3350                    | 3100                           | 1800<br>(Jakarta)  | 1400/40ft             | 900                        | 1000                       |
| June 1998                                     | 2700                    | 2600                           | 1200               | 700/20ft              | 650                        | 750                        |
| May 1999                                      | 2350                    | 2350                           | 950                | 950/40ft              | 900                        | 600                        |
| July 1999                                     | 2550                    | 2550                           | 1300               | 1300/40ft             | 800                        | 800                        |
| August 1999                                   | 2350                    | 2350                           | 950                | 950/40ft              | 550                        | 600                        |
| January 2000                                  | 2600                    | 2600                           | 950                | 1270/40ft             | 800                        | 800                        |
| April 2000                                    | 2600                    | 2800                           | 1520               | 1270/40ft             | 800                        | 950                        |
| Variation between January 1995 and April 2000 |                         |                                |                    |                       |                            |                            |
| A\$   | -1350                   | -975                           | -380               | -480                  | -400                       | -575                       |
| %   | -34%                    | -26%                           | -20%               | -27%                  | -33%                       | -38%                       |

table 2

The above tables clearly demonstrate that over a five year period, between 1994–1999, the Conference/Discussion Agreement Member Lines increased their level of service to an unprecedented degree – overall space increased by 144% and the number of sailings increased by 115%, with the associated increase of vessel frequencies.

At almost the same time, between 1995–2000, the tariffed or agreed minimum rates of some major commodities plummeted by between 20%-38% (refer to the above table). Market rates fell below these levels.

The period under review saw the introduction of services in this trade by large global carriers, e.g. Evergreen, Hanjin, Hyundai, Maersk, PIL and OOCL. The entrance of these carriers into this trade increased the degree of competition amongst all Lines in a trade that has always demonstrated a high degree of competition and rate volatility.



### 3. Competition – Direct Services and Transshipment Services

The current TFG Minimum Levels of Service (MLS) provide an indication of the amount of space that the Member Lines can place on the Northbound berth. However, the total amount of space available is not dedicated to the Australia to South East Asian trade only, but to other markets, e.g. Europe, North America, North East Asia, et al.

The Minimum Service Levels as at July 2000 are:

| Vessel               | Total Dry Teus @ 18T/W | Total Reefer Teus | Total Teu Capacities | Av. Voyages per year | Aggregate Teus |
|----------------------|------------------------|-------------------|----------------------|----------------------|----------------|
| <b>AAX</b>           |                        |                   |                      |                      |                |
| APL Ivory            | 1950                   | 200               | 2,150                | 13                   | 27,950         |
| APL Emerald          | 1950                   | 200               | 2,150                | 13                   | 27,950         |
| Kasuga 1             | 1800                   | 200               | 2,000                | 13                   | 26,000         |
| P&ONL Brisbane       | 1850                   | 250               | 2,100                | 13                   | 27,300         |
|                      |                        |                   |                      |                      | <b>109,200</b> |
| <b>Maersk/K Line</b> |                        |                   |                      |                      |                |
| Maersk Aberdeen      | 476                    | 206               | 682                  | 26                   | 17,732         |
| Swan River Bridge    | 476                    | 206               | 682                  | 26                   | 17,732         |
|                      |                        |                   |                      |                      | <b>35,464</b>  |
| <b>ASA</b>           |                        |                   |                      |                      |                |
| Patsy N              | 759                    | 101               | 860                  | 12                   | 10,320         |
| Jitra Bhum           | 630                    | 190               | 830                  | 12                   | 9,840          |
| Itha Bhum            | 630                    | 190               | 830                  | 12                   | 9,840          |
| Kama Bhum            | 630                    | 190               | 830                  | 12                   | 9,840          |
|                      |                        |                   |                      |                      | <b>39,840</b>  |
| <b>AAA</b>           |                        |                   |                      |                      |                |
| Bunga Teratai Satu   | 1,020                  | 200               | 1,220                | 13                   | 15,860         |
| Bunga Teratai Dua    | 1,020                  | 200               | 1,220                | 13                   | 15,860         |
| Bunga Teratai 3      | 1,020                  | 200               | 1,220                | 13                   | 15,860         |
| Libra Australia      | 960                    | 150               | 1,110                | 13                   | 14,430         |
| Kota Perabu          | 855                    | 200               | 1,055                | 13                   | 13,715         |
| Kota Sempena         | 1,020                  | 200               | 1,220                | 13                   | 15,860         |
| OOCL Great Wall      | 800                    | 200               | 1,000                | 13                   | 13,000         |
| OOCL Affinity        | 800                    | 200               | 1,000                | 13                   | 13,000         |
|                      |                        |                   |                      |                      | <b>117,585</b> |
| <b>APL</b>           |                        |                   |                      |                      |                |
| Cape Coldbeck        | 320                    | 80                | 400                  | 26                   | 10,400         |
| <b>Totals</b>        |                        |                   |                      | <b>282</b>           | <b>312,489</b> |

table 3

With previous MLS reviews, the Lines have agreed with APSA's view that of the total amount of space placed on the Northbound berth by Member Lines, it would be assumed that 60% of this space would be set aside for Australia/South East Asia cargo (primary trade cargo), and then this result would be further adjusted by the 'MLS factor'. In other words, a margin of 20% below the total amount of space for trade cargo was allowed to cater for deadweight restrictions Northbound, disruptions to the sailing schedule, etc.

Taking these factors into account for the above amount of space:

|  |   |                       |
|--|---|-----------------------|
| Primary Trade cargo (@ 60% x 312,489 teus    | = | 187,493 teus          |
| Minimum @ 80% x 187,493 teus                 | = | 149,995 teus          |
| Including minimum reefer = 80% x 52,044 teus | = | 41,635 teus           |
| Sailings per year = 282 @ 80%                | = | 226 sailings per year |

The above details represent the core services dedicated to serving the Australia to South East Asia Trade. In addition, some Member Lines are able to ship a limited amount of cargo from Australia to South East Asia on ancillary services that are not dedicated to this trade, but call at South East Asian ports as part of their regular schedule pattern en route to destinations in other parts of the world. Freight rates for the S-E Asian section of these services can be discussed within the TFG.

Details as follows:

1. P&O Nedlloyd/NYK joint service from Brisbane to Singapore. This service primarily caters for the New Zealand trade from/to South East Asia but the vessels make a call at Brisbane en route to Singapore after loading in New Zealand. The majority of the space on the vessels, below, employed on this service is dedicated to New Zealand cargo and, on average, approximately 120 slots per sailing are allocated ex Brisbane for trade and non-trade cargo.

|                 |     |     |      |    |               |
|-----------------|-----|-----|------|----|---------------|
| Haruna Maru     | 800 | 200 | 1000 | 11 | 11,000        |
| P&ONL Taranaki  | 800 | 200 | 1000 | 11 | 11,000        |
| P&ONL Tauranga  | 800 | 200 | 1000 | 11 | 11,000        |
| P&ONL Lyttelton | 800 | 200 | 1000 | 11 | 11,000        |
| P&ONL Napier    | 800 | 200 | 1000 | 11 | 11,000        |
|                 |     |     |      |    | <b>66,000</b> |

table 4

2. MISC/PIL joint service from Brisbane to Singapore. This service is similar to the above P&O Nedlloyd/NYK joint service, which primarily caters for the New Zealand trade from/to South East Asia, but the vessels make a call at Brisbane en route to Singapore after loading in New Zealand. The majority of the space on the vessels, below, employed on this service is dedicated to New Zealand cargo and, on average, approximately 215 slots per sailing are allocated ex Brisbane for trade and non-trade cargo.

|               |      |     |      |    |               |
|---------------|------|-----|------|----|---------------|
| Kota Permas   | 1091 | 120 | 1211 | 11 | 13,321        |
| Kota Wijaya   | 1050 | 150 | 1200 | 11 | 13,200        |
| Kota Wirawan  | 1050 | 150 | 1200 | 11 | 13,200        |
| Bunga Kenari  | 1010 | 100 | 1110 | 11 | 12,210        |
| Bunga Terasek | 1010 | 100 | 1110 | 11 | 12,210        |
| Bunga Delima  | 1010 | 100 | 1110 | 11 | 12,210        |
|               |      |     |      |    | <b>85,000</b> |

table 5

3. ANLCL/CGM CMA round the world service. This service primarily serves the trade from Australia and New Zealand to Europe with the vessels calling at South East Asian ports en route to Europe. The majority of the space on the vessels, below, is allocated to European cargo from Australia and New Zealand. However, on average, around 140 slots per sailing are allocated to Australia for South East Asian cargo.

|                     |      |     |      |   |               |
|---------------------|------|-----|------|---|---------------|
| Contship London     | 1900 | 300 | 2200 | 4 | 8800          |
| Contship Washington | 1900 | 300 | 2200 | 4 | 8800          |
| Contship Rome       | 1900 | 300 | 2200 | 4 | 8800          |
| Contship Auckland   | 1900 | 300 | 2200 | 4 | 8800          |
| Marfret Provence    | 1900 | 300 | 2200 | 4 | 8800          |
| CMA CGM Matisse     | 1940 | 320 | 2260 | 4 | 9040          |
| CGM Renoir          | 1900 | 300 | 2200 | 4 | 8800          |
| CMA CGM Utrillo     | 1814 | 446 | 2260 | 4 | 9040          |
|                     |      |     |      |   | <b>70,880</b> |

table 6

The following direct services between Australia and South East Asia are provided by non-TFG Lines. The amount of space indicated is not dedicated to this trade and covers the loading of Australian and New Zealand cargo to other markets, i.e. Europe, North East Asia, North America, et al.

| Line<br>(Consortium)              | Ship                                 | Capacities |        |       | Av. Voy./<br>year | Aggregate<br>Teus |
|-----------------------------------|--------------------------------------|------------|--------|-------|-------------------|-------------------|
|                                   |                                      | Dry        | Reefer | Total |                   |                   |
| Contship                          | Contship Romance                     | 2458       | 300    | 2758  | 4                 | 11,032            |
|                                   | Contship Ambition                    | 2390       | 500    | 2890  | 4                 | 11,560            |
|                                   | Contship Vision                      | 2458       | 300    | 2758  | 4                 | 11,032            |
|                                   | Contship Action                      | 2390       | 500    | 2890  | 4                 | 11,560            |
|                                   | Contship Nobility                    | 2458       | 300    | 2758  | 4                 | 11,032            |
|                                   | Contship Optimism                    | 2458       | 300    | 2758  | 4                 | 11,032            |
|                                   |                                      |            |        |       |                   | <b>67,248</b>     |
| Wallenius<br>Wilhelmsen           | Tampa                                | 2251       | 200    | 2451  | 3                 | 7353              |
|                                   | Talabot                              | 1686       | 120    | 1806  | 3                 | 5,418             |
|                                   | Tampere                              | 1694       | 120    | 1814  | 3                 | 5,442             |
|                                   | Texas                                | 2251       | 200    | 2451  | 3                 | 7,353             |
|                                   | Taiko                                | 2251       | 200    | 2451  | 3                 | 7,353             |
|                                   | Tourcoing                            | 1747       | 120    | 1867  | 3                 | 5,601             |
|                                   | Tapiola                              | 1747       | 120    | 1867  | 3                 | 5,601             |
|                                   | Toba                                 | 1686       | 120    | 1806  | 3                 | 7,353             |
|                                   | Taronga                              | 2700       | 200    | 2900  | 3                 | 8,700             |
|                                   |                                      |            |        |       |                   | <b>60,174</b>     |
| Contship/Marfret                  | Contship London                      | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | Contship Washington                  | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | Contship Rome                        | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | Contship Auckland                    | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | Marfret Provence                     | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | CMA CGM Matisse                      | 1940       | 320    | 2260  | 4                 | 9,040             |
|                                   | CGM Renoir                           | 1900       | 300    | 2200  | 4                 | 8,800             |
|                                   | CMA CGM Utrillo                      | 1814       | 446    | 2260  | 4                 | 9,040             |
|                                   |                                      |            |        |       |                   | <b>70,880</b>     |
| Mediterranean<br>Shipping Service | Not available                        |            |        | 500   | 17                | <b>8,500</b>      |
| Swire Shipping<br>Services        | Chenan/Chengtu/<br>Changsha/Chekiang |            |        | 750   | 24                | <b>18,000</b>     |
|                                   |                                      |            |        |       | <b>Total</b>      | <b>224,802</b>    |

table 7

Indirect competition to the TFG Member Lines can emanate from the direct services from Australia to the various global markets that can be serviced via transshipment in South East Asia. For instance, the Member Lines of the Australia to Europe Liner Association (AELA) may take competitive rate action in their direct Australia to Europe service which may cause a redirection in shippers' support, increasing AELA's cargo volumes with a corresponding reduction in the volume of European cargo shipped with a TFG Member Line and transhipped in South East Asia.

#### 4. Comments on the Complaints Received

As far as the Lines can ascertain, the Minister has received four written complaints in addition to the complaint from the Australian Peak Shippers Association, of which three are directed specifically to the TFG, or the Australia-S.E. Asia trade, and another letter from Browntree Trading Company Pty Ltd of Adelaide refers to the Pakistan, India and Bangladesh trade, which is outside the geographic scope of the TFG. The geographical scope of the TFG covers the trade from ports and points in Australia, on the one hand, to ports and points in Singapore, Malaysia, Thailand, Indonesia, Brunei, Vietnam and Cambodia.

**Premium Grain Handlers Pty Ltd** of Fremantle refer to the TFG activities as effectively enabling the shipping companies to engage in price collaboration, creating a massive (50-100%) increase in the Australian export freight rate. This shipper goes on to refer to a reduction in export volume and price competitiveness, along with an increase in the risk involved in quoting on forward export enquiries. The responses to this complaint are set out in a number of areas in this submission.

**Summit Storage Products** of Western Australia refer to being advised by his freight forwarder of a 39.3% increase in their ocean freight rates to Singapore. Lines advised this shipper that they could not verify the size of this increase.

**Pechiney Pacific** of Sydney questions that a rate restoration programme, with increased freight costs, will facilitate trade and that shipping rates for some reason or another have a right to be restored? This comment ignores the value that nearly all shippers to S-E Asia place on service levels and the relationship between freight rate levels and the ability of Lines to maintain or increase service levels.

In addition, **Aspex Paper Australia Pty Ltd**, a major exporter of wastepaper to Indonesia, complained to the TFG and copied in the Minister for Trade (the Hon. Mark Vaile). Aspex complained at the size of the freight rate increases in the latter half of 1999/early 2000 on the basis that when rates were previously high in 1994/96, the price of wastepaper was treble the price it is in today's market, which has been driven downward by market demand. It was noted that whilst the price of wastepaper fell dramatically over the past two years, the company continued to compete with the US/European market because of the very low freight rates from Australia and a reduction in the volume of wastepaper exported will result in a greater than necessary shipment of empty 40 ft. containers out of Australia. In addition, in previous years, the company pointed out that it was permitted to use their own containers (via leasing companies) to compensate for some of the extra costs in freight rates. Aspex also complained that the doubling of freight rates was virtually overnight. A particular rate for wastepaper was sought as a classification for low price/high volume users.

Some of these issues are addressed later in this submission, but the question of notice is an important one, and Member Lines not only gave the required, obligatory 30 days notice under Part X of freight rate increases to APSA, but sought to gradually increase the rates to more viable levels, in their view, to let the trade adjust. Certainly, rates decreased dramatically (refer above) without such notice, particularly in 1998 and the first half of 1999.

Market rates were, of course, below these levels. To these above rates, the various Additionals should have been applied, viz.

- Australian Port Service Charge
- Currency Adjustment and Bunker Adjustment Factors
- Lift On/Lift Off Charge
- Documentation Fee
- Terminal Handling Charge at destination.

The Terminal Handling Charge at Destination was not uniformly applied by Members until the first half of 1999, by which time the freight rate for wastepaper had already started to fall. In addition, it is worth noting that Aspex Paper could well have negotiated rates with individual Member Lines which were below these tariff levels. In relation to the acceptance of shipper-owned containers (SOCs) there had been an enormous increase in imports entering Australia in 40 ft. containers over the last few years, and for this reason TFG Lines were no longer in a position to accept SOCs. For every 40 ft. SOC shipped it was utilising space on the vessel that could be used by the individual Lines to repatriate their own containers, and to do otherwise would negatively impact upon Member Lines' individual global container control programmes in Australia and other parts of the world, as well as having an adverse impact on the financial returns from the trade.

Lines are also aware that the **Australian Horticultural Exporters' Association (AHEA)** complained about the notice periods and size of the proposed increases and approached the ACCC to confirm the ability of Lines to collectively reach a non-binding consensus on such matters, and, as a result, were registered as the first Designated Secondary Shipper Body to conduct negotiations under Section 10.41(1) of the Trade Practices Act (TPA). It should be noted that negotiations were subsequently held with the members of AHEA and it is understood that outstanding matters were subsequently resolved in the commercial manner encouraged by Part X. This does not mean that both parties to the negotiations were entirely satisfied with the outcome, but rather that there was a commercial resolution.

The **Australian Peak Shippers Association (APSA)** claim that Members of the TFG Agreement have not had due regard to the need for outwards liner cargo shipping services to be efficient and economical, namely by increasing freight rates to a level and at a frequency which is commercially unacceptable to exporters. An example is given of rates having more than doubled in less than a year.

Secondly, APSA claim that the TFG under Section 10.45(a)(iv) of the TPA was granted final registration on the basis of information which was misleading.

APSA comment that they do not believe an Agreement such as the TFG Agreement should be registerable, and do not believe that it is consistent with the objects of Part X to provide exemptions from the Trade Practices Act for agreements that are not directed towards cooperation by shipping Lines in order to provide a joint service of adequate frequency and reliability for Australian shippers. The view was expressed that any joint services offered by groups of Lines covered by the TFG Agreement are provided under other registered

Agreements (e.g. Consortium Agreements or Slot Exchange Agreements), and Discussion Agreements are simply directed to colluding to raise freight rates without compensating benefits to Australian shippers.

A number of these latter concerns were explored in detail by the Productivity Commission during its 1999 inquiry into Part X of the Trade Practices Act.

APSA appear to equate increasing freight rates to a level and at a frequency which is commercially unacceptable to exporters as the Member Lines not having due regard to the need for outwards liner cargo shipping services to be efficient and economical. There are a number of important issues raised in that statement as follows:

- (a) Is any increase in freight rates commercially acceptable to shippers?
- (b) Do all (or even a majority of) exporters utilising the services of TFG believe that freight rates are at a level and frequency of application that is commercially unacceptable?
- (c) What is the impact on Lines of not being able to provide adequate shipping services for the exporters concerned?
- (d) Does 'commercially unacceptable' mean that exporters can no longer trade which, in turn, would have a serious impact on the viability of the Lines in the trade?
- (e) As noted above, the words 'efficient and economical' in the international liner shipping sense have proven difficult to define.

**The proposed increases by the TFG on 1 April 2000 were not successfully implemented in the marketplace. Details can be confidentially provided to the Commission. There is no clearer example of the level of competition that prevails between the Members of these types of Agreements and, importantly, the decision not to finally increase the rates on 1 April emphasises the paramount influence of the market on Member Lines' decisions.**

APSA presents no evidence whatsoever to substantiate their claim that the Australia/South East Asia Trade Facilitation Agreement was granted final registration on the basis of information which was misleading. This is not true and member Lines look forward to the production of evidence by APSA to support this claim.

APSA's arguments that these types of Agreements should not be registered are covered below.

## **5. The Trade Facilitation Agreement and Discussion Agreements Generally**

The case for Discussion Agreements in terms of providing trade stability and facilitating international liner trade is very similar to the case for Conferences generally. In general terms, this was the conclusion reached by the Productivity Commission.

It could be argued that Discussion Agreements are more competitive in their impact than the more traditional Conference Agreements, with their provisions relating to the compulsory application of agreed rates. The Australia/South East Asia Trade Facilitation Agreement, for example, authorises the parties to discuss and exchange information with regard to matters of interest and concern in the trade and to reach a non-binding consensus upon rates, surcharges, rules and other terms and conditions of service in the trade; the

pooling or apportionment of earnings, losses or traffic; the restriction or other regulation of the quantity or kind of cargo to be carried by parties to the agreement: and the restriction or other regulation of the entry of new parties to the agreement.

Importantly, with the exception of amending or terminating the Agreement, there is provision in clause 6.2 that any consensus under the Agreement should be adopted as far as possible by general agreement without any vote being taken. but, if no agreement can be achieved, the consensus may be adopted by a majority vote of the parties. Under clause 6.3, unless a party voting against a consensus under clause 6.2 notifies the other parties, directly or through the Agreement Chairman, to the contrary, it will be assumed that party does not adhere to the consensus. Furthermore, clause 6.4 states the party which adheres to the consensus but which decides no longer to adhere or give effect to that decision shall use its best endeavours to promptly notify the other parties, directly or through the Agreement Chairman, of its intention until further notice to discontinue that adherence.

It should also be noted that any party to the TFG Agreement may withdraw at any time, without penalty, upon 30 days written notice to the Agreement Chairman or to all the other parties.

The Agreement does include minimum service levels to be adhered to by all the Members of the TFG. This is an important obligation which appears to be summarily dismissed by APSA. The minimum capacity and service to be provided is well beyond any other individual Agreement registered under Part X in this trade.

As pointed out to the Productivity Commission (PC) during its review of Part X, Discussion Agreements are normally more embracing than Conference Agreements in terms of the number of Member Lines in any particular geographical trade, but they are not all-embracing. In almost all cases their objective is the same as the TFG, i.e. to reach a non-binding consensus regarding rates, surcharges, rules and other terms and conditions of service in the trade and Members can withdraw on very short notice. They are a widespread phenomenon within the international liner shipping industry worldwide. It is interesting to note that in the case of the TFG all the Member Lines are also Members of Consortia/Joint Service Agreements that are registered under Part X.

These Agreements are, in the Member Lines' views, to be encouraged as providing the necessary umbrella, not only for stability of the trade but also to be the foundation for many of the large investments inherent in some of the organisational arrangements, such as Consortia Agreements. As noted above, the minimum service levels in these Agreements also provide strong commitments to service exporters' requirements and contribute to trade stability.

The Productivity Commission concluded, as a result of their investigations in 1999, that whilst, at first glance, Discussion Agreements appear to reduce the competitive forces that curb potentially detrimental effects of Conferences, the impact of Discussion Agreements on the strength of competition is quite complex. To the extent that they involve carriers that otherwise remain completely independent, Discussion Agreements would tend, at least initially, to lessen competitive forces on the trade. However, as they are non-binding, they may not have lasting or profound effects. On the other hand, if Discussion Agreements represent an alternative to an independent operator joining a full Conference, then they are likely to provide a relatively more competitive framework but would offer less opportunity for generating efficiency and service benefits provided by Conferences. At present, in most shipping trades, even where such arrangements occur, the market remains reasonably contestable.

This latter point is very important as there is clear evidence since the formation of the TFG of a failure to provide stable freight rates, which was one of the original objectives. A high degree of competitiveness has prevailed in the marketplace.

The PC also noted that if Discussion Agreements were to be regulated differently, there would be a need to define them.

**The PC found that Discussion Agreements should not be treated differently from other forms of cooperation among carriers.** The PC has not been able to identify benefits that would arise from denying Discussion Agreements the exemptions currently provided under Part X. Safeguards exist under the Trade Practices Act to protect shippers against any exploitive practices, even if only a remote possibility, as a result of Discussion Agreements.

The Federal Government did not accept this recommendation and referred to the 1993 independent review of Part X, which came to the conclusion that additional powers were needed to protect shipper interests in respect of Agreements of that type. The Government also noted that exporter representatives that participated in the PC review considered that Discussion Agreements should be subject to greater scrutiny and controls. Accordingly, the Government decided that the Minister for Transport and Regional Services and the ACCC should have increased powers to deal with concerns that may arise from the operation of certain Agreements that are not likely to result in a public benefit. The Minister and the ACCC are only able to exercise these increased powers in 'exceptional circumstances', such as:

- the Agreement covers a substantial majority of shipping Lines and capacity in a trade;
- the conduct of the parties to the Agreement has led to, or is likely to lead to, an unreasonable increase in freight rates or an unreasonable reduction in services;
- the public benefit flowing from the Agreement is outweighed by the anti-competitive detriment.

The Minister will have the power under the proposed Amendments to Part X to suspend the operation of such an Agreement (in whole or in part) if, after consultation with affected parties Member Lines do not give a court-enforceable undertaking that would make suspension unnecessary.

It is understood that the Government proposes to introduce those amendments to Part X prior to the end of 2000.

## **6. Background Reasons for the Current Round of Freight Rate Increases**

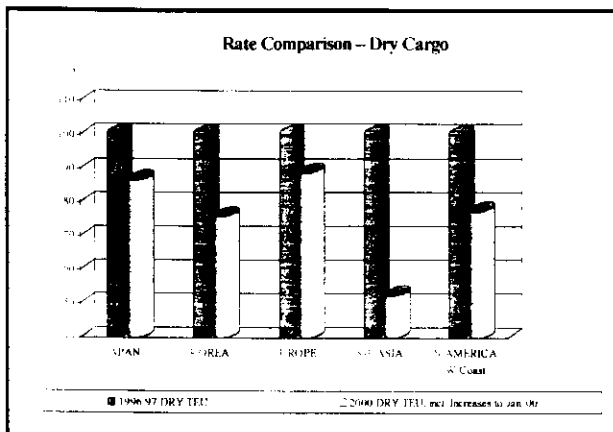
The international liner shipping industry, including those trades to and from Australia, have experienced a down-cycle for almost 10 years, but the depth of the trough deepened considerably in 1998/99.

In the 1980s there was a considerable increase in capacity, with new buildings and relatively low scrapping rates. There was rapid growth in developing country fleets and names such as Evergreen, Cosco, Hanjin and Hyundai joined rapidly growing companies, such as the Mediterranean Shipping Company and Maersk, which resulted in supply significantly outstripping demand. In the second half of the 1990s, the financial crisis in

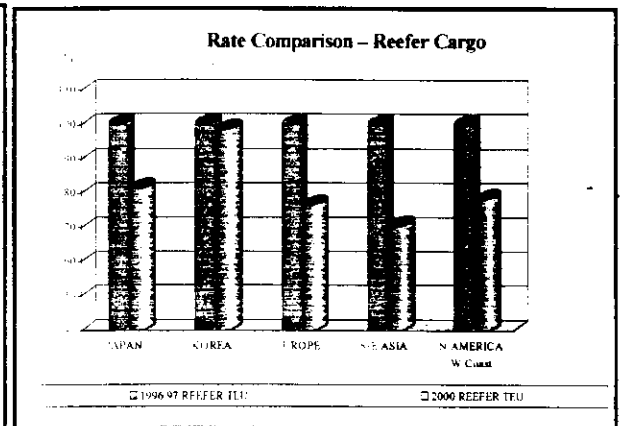


Asia resulted in further reduced demand. The major reductions in freight rates, often falling 30-50% in a very short period of time, occurred in the Australia/South-East Asian, East and North Asian trades. However, they also impacted on other trades, such as Europe and North America, as a result of the declining rates to Asian transshipment ports as well as competition from non-conference carriers in the direct trades.

The market forced rates to unsustainable levels as will be seen in the graphs below. Even after the January 2000 freight increases, levels of rates are still below those that applied in 1996/97. It should be noted that these are base rates excluding all add-ons/surcharges.



graph 1



graph 2

In 1999 there was a rationalisation of tonnage in a number of trades serving Australia which reduced the gap between capacity and demand, coupled with an increase in cargo flow which allowed a degree of rate restoration.

In many ways the situation in Australia mirrored what was happening globally. In the major East/West trades, for example, after a slow-down in new container ship deliveries in 1999, the second half of 2000 and beyond will once again witness increased levels of activity (in terms of rate increases). In other words, the downward cycle has turned the corner.

In the February 2000 edition of *Containerisation International (CI)*, there is an article which includes an estimate by Lloyds Maritime Information Services that in the next 2 years there will be an 18.4% growth in terms of additional container capacity on vessels, but most of this increase will be absorbed by the projected trade growth. (Refer *CI* February 2000 edition, pages 50-51.) In addition, the article forecast an increase in scrapping levels to at least 100,000 containers per annum (according to Solomon Smith Barney).

It is also worth noting that vessels are getting larger as construction prices for the large container ships have fallen over the past three years. The larger vessels have been utilised more fully with the growth in global alliances and mergers/acquisitions such as Maersk Sealand, P&O Nedlloyd and APL.

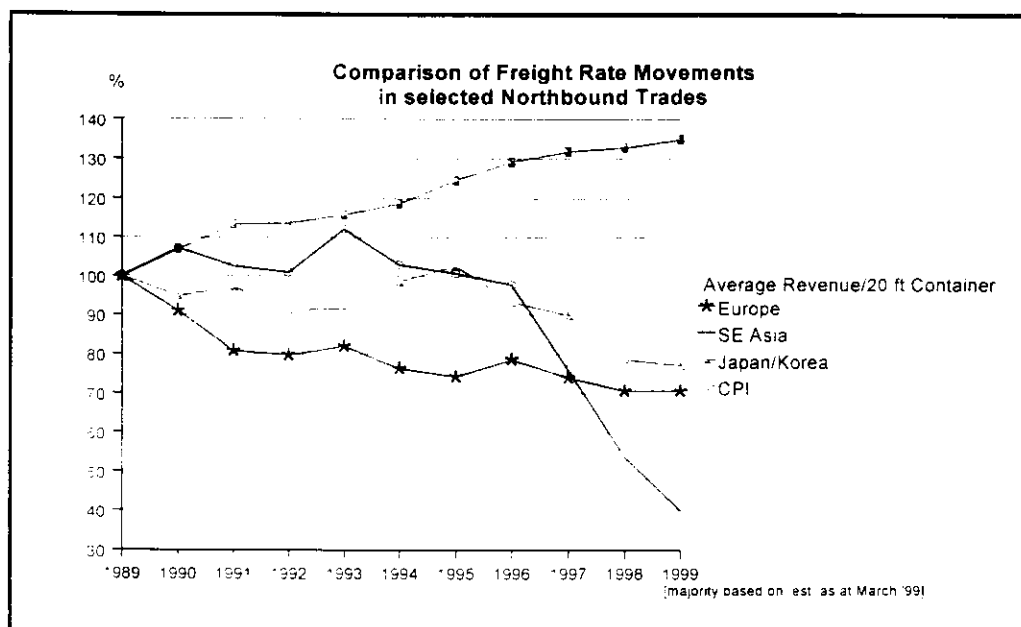
Whilst it should be noted that services generally increased over this period as a result of new entrants into the trade, low rates did not often allow for shipowners to meet shippers' total requirements for services, for example in terms of repositioning containers, supply of equipment to remote areas, in some cases an inability to adopt the latest e-commerce initiatives, service flexibility and so on. Another factor to be considered is the difficulty of charging actual on-costs in feeding from one overseas port to another, e.g. in the S-E Asian

trade to Indonesia, Thailand and Penang in Malaysia, current recovery is only 30-40% of actual costs.

Given the extremely low freight rates prevailing in the South-East Asian trade in 1998 and most of 1999, there was a move of traditional bulk cargo towards containers and significant growth in exports of low-valued commodities. An article in the April 2000 edition of *Containerisation International* entitled 'Bulk to Box' (pp. 69-71) gives examples of this trend in the Australian trades (see especially the section on 'going against the grain'). Whilst this, in itself, is beneficial to Australian traders, if based purely on unrealistic (or uneconomic) freight rate levels then such trade is being subsidised by the carriers. The eventual instability and reduction in service levels if this situation had continued would have impacted on all users of the service.

The other important point worth noting here is that the Australian trades cannot isolate themselves from the global trends/world marketplace which, as noted above, was changing in 1999 in terms of soaking up at least some of the excess capacity with a consequential increase in freight rate levels in most trades.

As illustrated in the graph below, whilst freight rate fell most dramatically in the Australia/South-East Asia trade, it was a clear trend in all trades from Australia.



graph 3

## 7. Key Issues Under Investigation

Reference is made to the Issues Paper circulated by the ACCC, and it lists the principal questions to be addressed, viz.

- Are freight rates efficient and economical?
- Are freight rates internationally competitive?
- Are services of a quality that meets the needs of shippers?
- Are services provided in accordance with the objects of Part X?
- Does the conduct of shipping lines warrant deregistration of the TFA?

If rates were reduced again to unsustainable levels, the more immediate impact is a lowering of service levels generally and over the medium to longer term more dramatic

changes, such as a vessel leaving the trade to be employed in more profitable trade routes with serious consequences, at least in the short term, for affected shippers or even worse, vessels being arrested for the non-payment of charges incurred. Importantly, the ability to fully meet shipper requirements in this trade could not be met if there was a return to the very low freight rate levels prevailing in the last few years. In terms of revenue recovery for the Lines, the comments on freight rates will also apply to the continuing ability of Lines to apply, in the marketplace, the surcharges and add-ons for this trade.

## 8. Freight Rates (Item 7.1 of the Issues Paper)

The Issues Paper asks whether (1) rates were internationally competitive 3 years ago and (2) whether they are currently internationally competitive, and further (3) whether rates from Australia to South East Asia have risen sharply relative to rates to South East Asia from other destinations.

There is no evidence that rates from Australia to South East Asia were not internationally competitive 3 years ago, as set out in the table on page 4 of this submission. In terms of international comparisons, some rates are set out in the table below, which are sourced from "*Containerisation International*".

|         | Europe/Asia<br>Eastbound<br>US\$/TEU | %<br>Annual<br>change | US/Asia<br>Westbound<br>US\$/TEU | %<br>Annual<br>change | Asia/US<br>Eastbound<br>US\$/TEU | %<br>Annual<br>Change | Asia/Europe<br>Westbound<br>US\$/TEU | %<br>Annual<br>Change |
|---------|--------------------------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|--------------------------------------|-----------------------|
| 4Q 1996 | 1137                                 | -3                    | 1384                             | -8                    | 1548                             | -5                    | 1281                                 | -4                    |
| 4Q 1997 | 1056                                 | -7                    | 1182                             | -15                   | 1362                             | -12                   | 1155                                 | -10                   |
| 4Q 1998 | 807                                  | -24                   | 842                              | -29                   | 1614                             | -19                   | 1465                                 | +27                   |
| 4Q 1999 | 775                                  | -4                    | 733                              | -13                   | 2195                             | -36                   | 1612                                 | +10                   |

table 8

Based on, say, A\$0.65 to US\$1.00, then the Europe/Asia Eastbound rate in the 4<sup>th</sup> Quarter of 1996 would equate to A\$1.748, which compares with a TFG tariff rate of A\$1.525 (General NOE).

Some exporters of low value cargo have suffered hardship, particularly if they only started exporting or expanded rapidly during recent periods of extremely low freight rates. The viability of these exports must be questioned if they can only survive at uneconomic freight rate levels but, nevertheless, Lines have been willing to enter into discussions if approached by exporters experiencing hardship to determine if there is any commercial solution. In addition, as mentioned previously, Lines phased in the proposed increases to assist exporters to adjust to more sustainable rate levels.

The question is raised as to what extent does the rate movement reflect optimising behaviour of shipping Lines. As explained in this submission, there is no evidence of optimising behaviour when current levels in the market do not provide an economic return to the Lines. As outlined in the advertisements announcing freight rate increases, TFG Member Lines adopt voluntary policy guidelines and have reached a non-binding consensus on the implementation of the increases. There has been a wide disparity between tariff or published rates and market rates in this trade for a number of years. For the reasons outlined earlier, particularly changes in the international liner shipping market, Lines have been trying to reverse the financially parlous state of this trade. On the other hand, market rates still prevail, but there could well be more general application of additional or add-ons being applied than there have been in recent years.

Additional, or add-ons, have applied in this trade for a number of years, at least as far as the tariff is concerned, but in 1998 and the first half of 1999 it would be true to say that these additional were not consistently or even generally applied. Lines do not believe that the application of surcharges and additional has encouraged or inhibited comparison of freight charges, as it is the total charge for delivery in the market which is the only true and correct comparison of transport charges. Such charges collectively applied by the Lines have always been negotiated with APSA, although it has not always been possible to reach agreement on the application of such charges.

**9. Decision Making Regarding Freight Rates** *(Item 7.2 of the Issues Paper)*

The Issues Paper suggests that whilst Australian exporters previously negotiated with local representatives of shipowners, it is understood that the final decisions regarding freight rates on the S-E Asian trade route now rest with overseas Principals of the shipping companies. It is irrelevant where a decision is made as it in no way reflects upon the responsibility of the parties to registered Agreements to fully comply with their Part X obligations.

It is interesting to note that in recent years, responsibility for total trade management has tended to shift, at least for some TFG Members, from overseas to Australia, but responsibility for Part X compliance has been in Australia since the inception of the legislation.

**10. Access to Containers** *(Item 7.3 of the Issues Paper)*

In the Issues Paper, reference is made in a number of areas to the "strong" involvement of overseas management in the decision making processes concerning this trade. There appears to be an inference that overseas Principals have removed decision making power in Australia as a result of, or since, the formation of the TFG. This is simply not the case as the Principals of individual Lines have always taken a close interest in this trade but, as noted previously, Lines' representatives are authorised to enter into negotiations with shippers but, they carry out the instructions of Principals as directed in relation to all aspects of the trade.

Also as noted earlier in this submission, the quality of liner shipping services has improved, not only with the growing membership of the TFG but as new Lines have entered this trade and introduced larger vessels over the last five years. Service levels have thus changed since the formation of the TFG, but what is important is that there is a greater collective commitment by Lines to shippers in the trade as a result of the TFG. Principals have always maintained a close interest in this trade in order to ensure adequate service levels are maintained but at hopefully more remunerative freight rates than those that have prevailed in recent years.

## **11. Negotiation Processes** *(Item 7.5 of the Issues Paper)*

The only shipper groups that TFG meet collectively to negotiate rates have been the Australian Horticultural Exporters' Association and the Cotton exporters. Whilst rates were left on the table with respect to the Cotton exporters, there is no formal agreement to accept those rates or provide a minimum volume of cargo. Minimum rates have been agreed for twelve months with the Australian Horticultural Exporters' Association, which has been designated by the Registrar as the relevant Designated Secondary Shipper Body with respect to negotiations with the parties to various Conference Agreements. There are, of course, individual negotiations by Members of the TFG with individual shippers.

The Issues Paper asks whether some exporters prefer to negotiate individually rather than to adopt the collective negotiation stance as envisaged in Part X. It should be noted that being designated as a Secondary Shipper Body under Part X provides exemption for groups of shippers to collectively enter into service agreements or loyalty contracts with groups of shipowners. There have been only two Designated Secondary Shipper Bodies, so far, designated to conduct negotiations, i.e. the Australian Horticultural Exporters' Association and the Australian Meat Council. The reason for this is the presence of the Australian Peak Shippers Association which carries out negotiations on shippers' behalf under Part X. This is not to say that there aren't many negotiations between groups of shippers and groups of shipowners, but they don't use the more formal processes set out, for example, in Section 10.41 of the Act. There is no prohibition on an exporter negotiating with an individual Line or with a group of Lines, parties to Agreements registered under Part X if that is the wish of the exporter.

It should be emphasised that in entering such negotiations, each Member Line is aware they are adhering to a non-binding consensus and that it is the wish of each of those individual Lines that they continue to adhere to that consensus, as provided for in the Agreement.

## **12. Access to Export Markets** *(Item 7.6 of the Issues Paper)*

The activities of TFG Member Lines have undoubtedly improved the potential to provide stable access to export markets. Declining freight rates as a result of competition pose the greatest danger of all to such stability. Not only has trade continued to grow since the formation of the TFG in 1996, but the ability to raise rates above a level that was unsustainable in the medium to long-term has undoubtedly had a positive affect on maintaining access to export markets.

## **13. Competition and Trade Agreements on the South East Asian Trade Route** *(Item 7.7 of the Issues Paper)*

As noted in section 5 of this submission, Discussion Agreements were comprehensively addressed by the Productivity Commission in its review of Part X which concluded that there was no reason to treat them differently from other types of Agreements. APSA has complained that Discussion Agreements hinder competition because Lines that were previously operating independently within the trade become Members of Discussion Agreements. In this trade, all the Members of TFG are also Members of individual Consortia or Joint Service Agreements separately registered under Part X. The ability of those individual Consortia to restore rates to minimum remunerative levels is limited by the total number of Consortia (4) in this trade, as well as the competition provided by

Independents operating in the trade. This submission has provided examples of the high degree of competition that prevails in this trade.

It is worth reiterating that the failure of the proposed 1 April increase in rates is an example of the dominance of the market and the competition that prevails, even with the formation of the TFG. Being a contestable market, it is not possible for Discussion Agreements or Conference Agreements to hinder competition for outwards liner cargo shipping services on any particular trade route.

**Liner Shipping Questionnaire:**  
**Australia/South East Asia (SEA) Trades - (TFG Lines)**

**1. Structure of Liner shipping supply servicing trade between Australia and South-East Asia**

1.1 Please complete the following tables as of 31 March 2000.

Refer attachments.

(att\_Q1.1.xls and att\_Q1.1A.xls)

1.2 What are the minimum standards of service provided by TFG members?

Refer table 1 on page 4 of the main submission.

1.3 Can you please indicate annual trends in the total supply of shipping services provided by your line between Australia and SEA since 1997?

| Consortium/Line                  |                                     | 1997   | 1998         | 1999         |
|----------------------------------|-------------------------------------|--------|--------------|--------------|
| <b>AAA</b><br>(estab. June 1998) | Total no. of sailings               | N/A    | 58           | 102          |
|                                  | Av. Capacity TEUS                   | N/A    | 80,276       | 146,520      |
|                                  | Av. capacity utilisation Northbound | N/A    | 52%          | 63%          |
|                                  | No. loops                           | N/A    | 3            | 3            |
|                                  | Service frequency                   | N/A    | weekly       | weekly       |
| <b>AAX</b>                       | Total no. of sailings               | 52     | 52           | 52           |
|                                  | Av. Capacity TEUs                   | 1,770  | 1,990        | 2,050        |
|                                  | Av. capacity utilisation Northbound | 88%    | 85%          | 85%          |
|                                  | No. loops                           | 2      | 2            | 2            |
|                                  | Service frequency                   | weekly | weekly       | weekly       |
| <b>ASA</b>                       | Total no. of sailings               | 52     | 78           | 78           |
|                                  | Av. Capacity TEUs                   | 860    | 860          | 860          |
|                                  | Av. capacity utilisation Northbound | 100%   | 70%          | 70%          |
|                                  | No. loops                           | 1      | 2            | 2            |
|                                  | Service frequency                   | weekly | twice weekly | twice weekly |
| <b>MAERSK</b>                    | Total no. of sailings               | 52     | 52           | 52           |
|                                  | Av. Capacity TEUs                   | 15,600 | 15,600       | 16,420       |
|                                  | Ave capacity utilisation            | 73%    | 63%          | 77%          |
|                                  | No. loops                           | 1      | 1            | 1            |
|                                  | Service Frequency                   | weekly | weekly       | weekly       |
| <b>K LINE</b>                    | Total no. of sailings               | 52     | 52           | 52           |
|                                  | Av. Capacity TEUs                   | 26,000 | 26,000       | 19,500       |
|                                  | Av. capacity utilisation Northbound | 70%    | 70%          | 70%          |
|                                  | No. loops                           | 1      | 1            | 1            |
|                                  | Service Frequency                   | weekly | weekly       | weekly       |

## 2. Freight Rates

2.1 *The Commission has possession of the current TFG minimum freight tariff (1 April 2000). Can you please give any indication of what the proposed minimum freight rates will be as of 1 September 2000?*

Member Lines have agreed that there will be no further adjustments to the minimum freight rates during the remainder of 2000. Therefore as of 1 September 2000 the minimum rates will be the same as at 1 April or as at present (refer page 4 of this submission).

2.2 *Can you provide us with details of recent trends in the minimum blue water freight rates (General cargo NOE) as set by the TFG for export trades (20 footers- dry) from Australian ports to Singapore / Port Kelang from January 1997 and explanatory reasons for these trends? Also can you explain the recent haste by the TFG in implementing rate increases since August 1999?*

|  | Jan 1997                           | Jun 1997                   | Jan 1998 | Jun 1998 | Jan 1999 | Jun 1999* | Jan 2000 to present |
|--|------------------------------------|----------------------------|----------|----------|----------|-----------|---------------------|
| <b>TFG minimum freight rate \$ / TEU</b> | TFG Agreement registered Jan. 1997 | from 1 July 1997 - A\$1000 | A\$1,000 | A\$750   | A\$750   | A\$600    | A\$800              |

\* A formal TFG tariff was only agreed in May 1999. The rates specified before then were collectively set, from time to time, by TFG Member Lines on a non-binding consensus basis.

As explained in our General Submission to the ACCC, the international shipping industry, including those trades to and from Australia, has experienced a down-cycle for almost 10 years. The above rate pattern reflects that trend.

The minimum rate as at June 1999 of A\$450/20ft referred to by ACCC in the Issues Paper is incorrect. This rate may have been a market rate in June 1999 but the minimum tariff rate at that time was A\$600/20ft, which was increased to A\$800 in July 1999 but was reduced again due to market pressures to \$600/20ft in August 1999. APSA, in their complaint, are thus not comparing "like" with "like".

In 1999 the TFG Lines tried to increase the General NOE rate from what was a very low base in June 1999. Even the minimum rate in January 2000 of A\$800/20ft was 25% below the minimum rate level in June 1997 of A\$1000/20ft.

The TFG Member Lines do not believe that they have been "hasty" in seeking increases in freight rates.

2.3 *Can you please indicate on how many occasions the TFG has instituted rate restoration programs prior to August 1999 and comment on the outcomes of these?*

The TFG instituted one programme prior to August 1999. This programme was from 1 May 1999 which, overall, was not successful because of competitive pressures in the marketplace.



2.4 *Can you indicate the extent of discounting (if any) of blue water freight rates that the TFG negotiate with the designated secondary shipper bodies, below the published TFG freight rates?*

The TFG conduct formal negotiations (usually on an annual basis) with APSA, AHEA (Fresh Fruit & Vegetables) and Cotton Shippers. In view of the volumes of Fresh Fruit/Vegetables and Cotton that are covered by these negotiations, as well as the importance of these commodities to the Lines' cargo base, the blue water rates for these commodities are set at a level below the rates for Reefer Cargo NOE and General Cargo NOE.

2.5 *What is the average length of negotiated shipping contract between the TFG and the designated secondary shipping bodies?*

Six to twelve months unless shorter by agreement. There has only been one instance of a three month adjustment.

2.6 *What proportion of the SEA shipper market on a volume & value basis, would be covered by large shippers / secondary shipper bodies, who have fixed contract freight rates, subject to negotiation under Part X? What proportion of the total market is on the basis of a spot freight rate? Has this proportion changed significantly in recent years?*

Estimates of cargo flow are contained in a separate, confidential submission sent to the ACCC.

If it assumed that the balance of the trade is on a spot freight rate, then clearly this covers the majority of the market but the proportions will vary each year depending on economic and seasonal conditions.

As mentioned in the main submission, there are few formal negotiations under Part X. It is not correct to refer to fixed contract rates as both parties are free to deviate from the contract given the non-binding nature of the agreement. It is up to each Member of the TFG to apply the minimum rates agreed or left on the table, but, at any time, that Member Line may no longer wish to continue to adhere to the original agreement.

2.7 *Do member lines of the TFG currently offer pricing discounts below the official TFG rates for high volume / or other users of their services for trade between Australia and SEA ports? If yes can you indicate both their degree and pervasiveness in the marketplace?*

Member Lines participate in global and national tenders and additionally recognise individual shippers of major volume or importance with whom they have special relationships, and for these shippers market rates can apply which would be below TFG minimum rates.

2.8 *Has the practice of discounting freight rates by individual TFG member lines changed appreciably in the last year?*

Freight rates continue to be discounted, as evidenced by the failure of the original proposal to increase rates on 1 April 2000. There has been a very modest lift in the overall market rate but the level of recognising important clients has probably not changed noticeably.

2.9 *Can you indicate the trend in actual market blue water freight rates for General cargo (20 foot and forty foot dry) on Northbound services between Australia and Singapore / Port Kelang since June 1995?*

|                         | <b>Singapore / Port Kelang -<br/>Australia per TEU SAUS</b> | <b>Singapore / Port Kelang -<br/>Australia per FEU SAUS</b> |
|-------------------------|---|---|
| <b>COTTON</b>           |   |   |
| June 1995               | N/A   | 1960  |
| June 1997               | N/A   | 1680  |
| June 1999               | N/A   | 780   |
| April 2000              | N/A   | 1260  |
| <b>OTHER REEFER</b>     |   |   |
| June 1995               | 3800  | 7260  |
| June 1997               | 3250  | 6080  |
| June 1999               | 2270  | 4450  |
| April 2000              | 2530  | 4600  |
| <b>FRUIT/VEGETABLES</b> |   |   |
| June 1995               | 3880  | 7180  |
| June 1997               | 3210  | 5920  |
| June 1999               | 2270  | 4330  |
| April 2000              | 2520  | 4450  |
| <b>GENERAL NOE</b>      |   |   |
| June 1995               | 1300  | 2050  |
| June 1997               | 1000  | 1520  |
| June 1999               | 580   | 860   |
| April 2000              | 750   | 1220  |
| <b>WASTEPAPER</b>       |   |   |
| June 1995               | 1400  | 1990  |
| June 1997               | 900   | 1380  |
| June 1999               | 500   | 580   |
| April 2000              | 800   | 1080  |
| <b>MINERALS</b>         |   |   |
| June 1995               | 1240  | N/A   |
| June 1997               | 1010  | N/A   |
| June 1999               | 600   | N/A   |
| April 2000              | 830   | N/A   |

2.10 *Can you indicate the trend in actual market blue water freight rates for general cargo (20 foot and forty foot dry) on Southbound services between Australia and Singapore / Port Kelang since June 1995?*

Not applicable as Ministerial reference only refers to the Northbound trade.

2.11 Can you please comment on movements in actual market blue water freight rates for international trade routes to South East Asia as compared to those on the Australia / South East Asia northbound routes over the past twelve months. Is those for Europe - South East Asia, US - South East Asia and North Asia - South East Asia.

|   | 1999      |           | 2000      |           |
|---|-----------|-----------|-----------|-----------|
|   | US\$/20ft | US\$/40ft | US\$/20ft | US\$/40ft |
| Rotterdam/Port Kelang – dry cargo – incl. BAF   | 551       | 1102      | 651       | 1302      |
| La Spezia/Port Kelang – dry cargo – incl. BAF   | 437       | 574       | 611       | 772       |
| Yokohama/Port Kelang – dry cargo – incl. CAF  | 410       | 715       | 480       | 795       |
| US West Coast/Singapore – reefer cargo – subject to all Additional                    | -         | 1900/2000 | -         | 2600/2900 |
| US West Coast/Singapore – general cargo – incl OTHC/CAF but subject to all Additional | -         | 1900/2000 | -         | 1000/1100 |

2.12 Could you please indicate the structure of surcharges as currently applied by member lines in addition to the blue water freight rate?

Additional charges to the base freight rate are as follows:

| Surcharge as of 1 April 2000                              | SA / TEU  |
|---|---|
| Terminal Handling Charges at Singapore & at Port Kelang * | See point 1. below  |
| Port service charges not included in freight rates        | See point 2. below  |
| Export Documentation Fee                                  | Approximately A\$25.00/Bill of Lading.  |
| Bunker surcharges   | Nil   |
| Currency surcharges                                       | Nil   |
| Other surcharges (please specify)                         | <p><u>Emergency Bunker Surcharge (EBS)</u> – agreed with APSA to apply this surcharge by monitoring the Bunker prices at Singapore each week. If there is an average variation of US\$20/tonne over a five week period from the current base price of US\$174.50/tonne, then a trigger occurs and new EBS is applied 15 days later.</p> <p><u>Lo/Lo/EHC</u> – a range of A\$11-A\$20/20ft &amp; A\$13-A\$25/40ft.</p> |

\* Singapore / Malaysia currency units respectively

Point 1 – Terminal Handling Charges:

|                 | <b>20ft</b> | <b>40ft</b> |
|-----------------|-------------|-------------|
| Singapore - Dry | SGD182      | SGD270      |
| - Reefer        | SGD237      | SGD351      |
| Pt Kelang - Dry | RM\$295     | RM\$440     |
| - Reefer        | RM\$364     | RM\$540     |

Point 2 – Australian Port Service Charges (as at 1/4/2000)

The range of PSCs (in A\$) applied in each Australian load port is as follows:

| <b>Reefer</b> | <b>20fts</b>  | <b>40fts</b>    |
|---------------|---------------|-----------------|
| Brisbane      | 61.50 – 68.00 | 123.00 – 136.00 |
| Sydney        | 55.00 – 58.93 | 110.00 – 117.86 |
| Melbourne     | 38.73 – 42.50 | 68.96 – 76.50   |
| Bell Bay      | 46.00         | 92.00           |
| Burnie        | 46.00         | 92.00           |
| Adelaide      | 60.00 – 64.31 | 118.62 – 120.00 |
| Fremantle     | 68.00 – 85.00 | 136.00 – 155.00 |

| <b>General</b> | <b>20fts</b>  | <b>40fts</b>    |
|----------------|---------------|-----------------|
| Brisbane       | 68.00         | 136.00          |
| Sydney         | 55.00 – 58.93 | 110.00 – 117.86 |
| Melbourne      | 38.73 – 42.50 | 68.96 – 76.50   |
| Bell Bay       | 59.00         | 118.00          |
| Burnie         | 59.00         | 118.00          |
| Adelaide       | 60.00 – 64.31 | 118.62 – 120.00 |
| Fremantle      | 68.00 – 85.00 | 136.00 – 155.00 |

Charges at Destination Ports: the following Charges are collected by the Lines at Destination Ports and represent Charges applied by either/or the Terminal and Port Authority:

- Equipment Transfer Charges
- Equipment Detention
- Container Demurrage
- LCL Conversion Service Charge
- Power Charges

Details can be supplied by Member Lines if required.

2.13 Can you please indicate movements of these surcharges since 1998? Can you explain when and why many of these charges were introduced and whether the blue water freight rate was commensurately reduced when they were applied?

| Surcharges  | June 1998 \$Aus TEU   | June 1999 \$Aus TEU  |
|---|---|--|
| Terminal Handling Charges at Singapore & at Port Kelang * | No uniform application.   | As above. Introduced by TFG from 1 July 1999 to formalise this charge, which had been applied previously by some Lines but not others, and for some Shippers but not others.           |
| Port service charges not included in freight rates        | Australian Port Service Charges at load ports – see below   | Australian Port Service Charges as above (point 2).<br><br>Destination Ports – Introduced from 1 July 1999 to formalise these charges which had been previously applied (refer above). |
| Export Documentation Fee                                  | Nil   | Approx. A\$25 per B/L set  |
| Bunker surcharges   | Nil   | Nil  |
| Currency surcharges                                       | Nil   | Nil  |
| Other surcharges (please specify)                         | 1. Emergency Bunker Surcharge (EBS) – Nil.<br><br>2. LoLo/EHC - a range of A\$11-A\$20/20ft & A\$13-A\$25/40ft. | 1. Emergency Bunker Surcharge (EBS) was introduced from Dec. 1999 at A\$75/20ft & A\$130/40 ft.<br><br>2. LoLo/EHC – a range of A\$11-A\$20/20ft & A\$13-A\$25/40ft.                   |

\* Singapore / Malaysia currency units respectively

| 1998 Reefer | 20fts         | 40fts           |
|-------------|---------------|-----------------|
| Brisbane    | 61.50 – 68.00 | 123.00 – 136.00 |
| Sydney      | 54.76 – 56.96 | 109.52 – 113.92 |
| Melbourne   | 58.05 – 60.36 | 116.10 – 120.72 |
| Bell Bay    | -             | -               |
| Burnie      | -             | -               |
| Hobart      | 37.28         | 74.56           |
| Adelaide    | 53.00         | 96.00           |
| Fremantle   | 71.00 – 72.00 | 140.00 – 142.66 |

| <b>1998 General</b> | <b>20fts</b>  | <b>40fts</b>    |
|---------------------|---------------|-----------------|
| Brisbane            | 68.00         | 136.00          |
| Sydney              | 54.76 – 56.96 | 109.52 – 113.92 |
| Melbourne           | 58.06 – 60.36 | 116.20 – 120.72 |
| Bell Bay            | -             | -               |
| Burnie              | -             | -               |
| Hobart              | 44.72         | 89.44           |
| Adelaide            | 53.00         | 96.00           |
| Fremantle           | 71.00 – 72.00 | 140.00 – 142.66 |

| <b>1999 Reefer</b> | <b>20fts</b>  | <b>40fts</b>    |
|--------------------|---------------|-----------------|
| Brisbane           | 61.50 – 77.00 | 123.00 – 148.00 |
| Sydney             | 55.00 – 78.00 | 100.22 – 156.00 |
| Melbourne          | 48.98 – 75.00 | 88.07 – 150.00  |
| Bell Bay           | 46.00         | 92.00           |
| Burnie             | 46.00         | 92.00           |
| Hobart             | 37.28         | 74.56           |
| Adelaide           | 67.62 – 76.00 | 125.24 – 152.00 |
| Fremantle          | 69.21 – 74.00 | 138.42 – 158.00 |

| <b>1999 General</b> | <b>20fts</b>  | <b>40fts</b>    |
|---------------------|---------------|-----------------|
| Brisbane            | 68.00 – 77.00 | 136.00 – 148.00 |
| Sydney              | 55.00 – 78.00 | 100.22 – 156.00 |
| Melbourne           | 48.98 – 75.00 | 88.07 – 150.00  |
| Bell Bay            | 59.00         | 118.00          |
| Burnie              | 59.00         | 118.00          |
| Hobart              | 44.72         | 89.44           |
| Adelaide            | 67.62 – 76.00 | 125.24 – 152.00 |
| Fremantle           | 69.21 – 75.00 | 138.42 – 158.00 |

The reasons for the introduction of Terminal Handling Charges were to increase the transparency of these charges in the freight statement in order that shippers can clearly see the level of these third-party costs and to assist Lines in applying pressure for their reduction. Some THCs applied for many years in Singapore and Port Kelang and it was only a more uniform introduction of these charges that occurred in 1999 and, thus, freight rates were not reduced at the time.

Port Service Charges only apply at Australian ports and were introduced in 1990 when some Australian ports dramatically increased statutory port costs for liner vessels.

Currency Adjustment Factors and Bunker Adjustment Factors were originally introduced in the early 1970s to deal with the significantly increased risks of floating

exchange rates and the oil crises. The formulae have been adjusted over the years to ensure that they only emerge at times of high fluctuation – they can be either positive or negative.

The Export Documentation Fees were introduced in 1999 by individual shipping agents and was not a charge agreed in the TFG forum.

More information, including the composition of these charges, can be provided to the Commission if required.

2.14 *Can you comment on any further intentions to introduce new cost recovery surcharges for shippers outside of the blue water freight rate in the near future?*

None known at time of response except Origin THC's in Australia to be introduced on 1 August 2000. These will be introduced on a revenue neutral basis with a commensurate reduction in freight rates.

2.15 *What major factors lie behind your company's price setting in this trade at present and have these changed appreciably in the past year?*

The factors listed in question 2.16 do play an important part in Lines' pricing decisions in this trade, as well as the need to raise rates to remunerative, but still competitive, levels. The driving force is to try and make some profit from this trade.

2.16 *To what extent do operational considerations such as the value of cargo carried in containers, the need to reposition containers, and differences in cargo balances between export and import trades, play a part in pricing in these trades?*

When negotiating with volume clients and/or designated bodies, the equipment requirements in various S.E.A. destinations are taken into account. The TFG Member Lines do not accept cargo bookings unless they have the equipment to support. Export/import imbalances are a major feature of the S.E.A. trade.

### **3. Container Repositioning Costs**

3.1 *Can you please outline the current supply availability of empty 20 foot and 40 foot containers for Australia and the cost to reposition empty containers between Australian ports as compared to repositioning them back to SEA?*

Availability by container type varies considerably between ports and there is no port with a balanced flow. There is a constant need to reposition between ports and internationally. The import dry volume pan-Australia will always exceed the export dry volume - by at least 15%. This is further complicated by the need to reposition empty reefer containers into Australia of some 85% of total requirements.

The costs of empty repositioning are included in the cost/revenue data provided to the Commission for the TFG as a whole and any specific enquiries will need to be directed to individual Member Lines.

3.2 *To what extent are cargo imbalances a structural feature of the market caused by the heavier weight of Australian export cargoes and deadweight restrictions?*

Considerable. Utilisation of export liftings (full vessel basis) varies according to the type of vessel employed but would range between 80-85% of space available during peaks and 65-70% during troughs.

3.3 *Can you please indicate whether the TFG lines have instituted any recent changes to terms and conditions of carriage? For instance, cut off times for export departure, terms and conditions for storage.*

Terms and conditions of carriage are largely an individual Line policy - local practices at ports of loading are usually determined outside the TFG interest.

#### **4. Revenue, Cost & Profitability of a representative line / consortia service.**

*In order to assess the efficiency of supply, it is necessary to benchmark cost of liner supply. To assist the Commission in making this comparison, TFG member lines are asked to submit cost and revenue data for your actual service rotations between Australian ports and South East Asian ports.*

4.1 *Please complete the following tables indicating various service characteristics and cost structure of this service.*

A table on the various service characteristics sought is attached (att\_Q4.1.xls).