



03 OCTOBER 2023

REVIEW OF THE NATIONAL FREIGHT AND SUPPLY CHAIN STRATEGY

Submission to the Department of Infrastructure, Transport, Regional Development, Communications on behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA)

“KEEPING AUSTRALIA’S INTERNATIONAL TRADE MOVING”



Australian Peak Shippers Association Inc. (APSA)

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ABOUT THE ALLIANCE

Freight & Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian biosecurity, border related security, compliance, and logistics activities.

FTA represents more than 500 businesses including Australia's leading customs brokerages, freight forwarders and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA). APSA is the peak body for Australia's containerised exporters and importers under *Part X of the Competition and Consumer Act 2010* as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member of the Asian Shippers' Alliance (ASA) and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

FTA / APSA also provide international trade and logistics advocacy support to the following associations:

- Australian Council for Wool Exporters and Processors;
- Australian Dairy Products Federation;
- Australian Horticulture Exporters and Importers Association;
- Australian International Movers Association;
- Australian Meat Industry Council;
- Australian Steel Association; and
- Tyre Stewardship Association.

The current APSA Officers and Committee of Management are listed below:

- Olga Harriton (Manildra Group) - APSA Chair
- Brian Thorpe (Visy) - APSA Vice Chair
- Flaminio Dondina (Casella) - Treasurer
- Paul Zalai - APSA Secretary
- Sarah Granger (Fletcher International Exports)
- Billy Davies (Australian Meat Industry Council)
- Brian Wright (Australian International Movers Association)
- Michael Lamperd (Norco Co-operative Limited)
- Mark Christmas (QMAG)
- Michael Brittain (AGT Foods Australia)

A list of all members and further information about FTA / APSA is available at www.FTAlliance.com.au

CONTACT

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EXECUTIVE SUMMARY

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) represent leading import and export businesses including world class manufacturers and producers, supported by skilled customs brokers and freight forwarders. This broad membership of professional entities is ready to take advantage of the opportunities created by trade liberalisation measures and those economies recovering from the pandemic.

As noted by various presenters from academia, industry and government during the highly productive *Simplified Trade System (STS) Summit* in Melbourne on Monday 26 May 2023, Australia is disappointingly currently ranked 106 by the World Bank for “*trading across borders*”. FTA / APSA do not attribute this ranking solely to inefficiencies in legacy government systems, processes, and regulation.

In support of the findings in the Productivity Commission’s review of *Australia’s Maritime Logistics System*, FTA / APSA provided extensive data to the Federal Government that specific supply chain practices are unfairly costing exporters and importers more than \$1billion per annum. It is essential that the Federal Government address the STS agenda in parallel with implementation of the well-considered recommendations of the Productivity Commission to reduce supply chain costs, stimulate an economic recovery and support significant growth opportunities for Australian exporters and importers.

In terms of the National Freight and Supply Chain Strategy (Strategy), FTA / APSA see merit in the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Department) formally commissioning the first five-year review of the Strategy, importantly with an expanded scope to include:

- key Government priorities of decarbonisation and supply chain resilience; AND
- an increased focus in international freight and cross-border reforms.

Supporting this position, FTA / APSA have prepared the following submission with seven (7) recommendations in response to the specific questions as outlined in the *Review of the National Freight and Supply Chain Strategy Discussion Paper (August 2023)*.

RECOMMENDATION 1 - the Strategy to introduce a focus on cross-border and international freight activities.

RECOMMENDATION 2 – the Federal Government to respond to the Productivity Commission *Review of Australia’s Maritime Logistics System* with policy outcomes to be incorporated into the Strategy’s goals.

RECOMMENDATION 3 - as a priority, targeted national actions need to specifically address shipping competition law (including repeal of Part X CCA, exclusive dealings via vertical integration, quayside cost recovery), Terminal Access Charges (stevedores & empty container parks), container detention (import & export).

RECOMMENDATION 4 – the Strategy to engage with the World Bank to establish KPIs aligned to its ‘*trading across borders*’ rankings.

RECOMMENDATION 5 – the Strategy to take a genuine and holistic approach to supply chain reform (including actions emerging from the Simplified Trade System and the Productivity Commission review of *Australia’s Maritime Logistics System*).

RECOMMENDATION 6 - maintain the existing Strategy governance arrangements with the Freight Industry Reference Panel (FIRP) including an expanded shipper (exporter / importer) representation.

RECOMMENDATION 7 - APSA, being the peak body as designated by the Federal Minister for Infrastructure, Transport and Regional Development of Australia, to receive appropriate federal government funding to: 1) resource key representation to the FIRP; and 2) ongoing administration of *Part X of the Competition and Consumer Act 2010* on behalf of all Australian containerised exporters and importers.

QUESTION 1. Do the Strategy's current goals support the needs of the freight and supply chain sector moving forward?

Whilst addressing a wide range of important domestic supply chain priorities, the Strategy's current goals do not adequately address the needs of Australia's export and import trade sectors.

FTA / APSA provided a detailed [submission](#) in 2017 with twelve (12) key recommendations as a part of the formal consultation process in developing the Strategy. These recommendations to date have not been addressed by either the Strategy or successive Federal Governments.

RECOMMENDATION 1 – the Strategy to introduce a focus cross-border and international freight activities.

QUESTION 2. Should other goals be included in the Strategy, and if so, what?

While many factors are out of the control of our Federal Government, at minimum, immediate intervention is required to review competition protections given to foreign owned shipping lines and to introduce regulation to prevent unfair cost impositions on shippers.

FTA / APSA are not advocating for the Federal Government to interfere with price setting as we need foreign owned shipping lines to be incentivised to continue to service Australian trade in a free and open market. We do however see merit in the Strategy examining whether shipping line vessel sharing arrangements should be conducted in line with competition laws faced by others in Australian commerce.

FTA / APSA is of the view that the Australian Competition and Consumer Commission (ACCC), or the creation of a federal maritime regulator, is required to oversee proceedings to safeguard the commercial viability of Australian shippers should the Federal Government see a need to give foreign owned shipping lines continued exemptions from the Competition and Consumer Act.

Importantly, a critical reform required for Australian shippers is to be protected from unfair pricing regimes imposed by foreign owned shipping line contracted stevedores and empty container parks. It is essential that these entities negotiate rates direct with their commercial client, the shipping lines, rather than imposing hundreds of millions of dollars in fees on transport operators who are held to ransom with no option to pay or are denied access to container collection / dispatch facilities.

FTA / APSA Submission to the Productivity Commission

- [FTA / APSA submission to the Productivity Commission - 11 Feb 2022](#)
- [FTA / APSA supplementary submission \(Terminal Access Charges\) – 19 Apr 2022](#)
- [Supplementary FTA/APSA submission \(Container Detention\) – 4 May 2022](#)
- [Supplementary FTA/APSA submission \(Landside Congestion\) – 19 May 2022](#)

FTA / APSA media coverage of the PC inquiry final report

- [ABC Country Hour - speaking out against terminal charges](#) (45min:27Sec to 52min:50sec)
- [DCN - FTAs recommendations to the Productivity Commission](#)
- [AFR - Patrick Terminals says curbing strikes at 'core' of port productivity](#)
- [DCN – PC report fuels more port efficiency discussions](#)
- [ABC Country Hour – mandatory code and PC report](#) (10min:30sec to 17min:50sec)
- [MHD - Patrick Terminals and FTA respond to PCI report](#)
- [SkyNews BusinessNow – PC recommendations](#)

RECOMMENDATION 2 – the Federal Government to respond to the Productivity Commission Review of *Australia's Maritime Logistics System* with policy outcomes to be incorporated into the Strategy's goals.

QUESTION 3. Should the National Action Plan focus on a smaller number of targeted national actions, or do you want to retain the existing reporting structure?

As outlined in the response to question 1, FTA / APSA is of the view that governments (Federal, state and territory) and industry should identify and work together with an expanded scope on policy affecting international trade in parallel to an increased focus on decarbonisation and supply chain resilience.

QUESTION 4. If we focus on a smaller number of targeted national actions, what action areas should be included in the National Action Plan that require national coordination?

SHIPPING COMPETITION

Repeal of Part X CCA

As referenced in response to question 2, the Federal Government must incentivise foreign owned shipping lines to continue to service Australian trade in a free and open market. To that end, FTA / APSA see merit in the Productivity Commission (PC) recommendation (as outlined in their review of *Australia's Maritime Logistics System*), to simply remove current competition protections offered to shipping lines without interfering with price setting.

FTA / APSA question whether shipping line vessel sharing agreements should continue to be protected and exempt from competition law faced by others in Australian commerce. While there appears to be a consensus across shipping and trade representative bodies for the repeal of the current protections offered under *Part X of the Competition and Consumer Act*, the difference of opinion lies in what should replace it.

FTA / APSA understand that shipping lines are looking for more liberal '*block exemption*' measures, presumably along the lines of the European Commission *Consortia Block Exemption Regime (CBER)*. FTA and APSA note the advocacy of the Global Shippers Forum (GSF) and those of multiple international associations advocating to the European Commission not to continue its CBER beyond the current period (expiration in 2024) believing its benefits have not been fairly shared with users of liner shipping services in the time since it was last renewed in 2020.

FTA / APSA agree with the PC that the onus should be placed on shipping lines to show that their agreements provide a net public benefit before entering into agreements whilst facilitating class exemptions allowing businesses to collectively bargain in negotiating terms with shipping lines.

Exclusive dealings via vertical integration

FTA / APSA are advised by members of increased scenarios whereby shipping lines and stevedores are offering capacity and / or significantly discounted rates contingent on using their other '*vertically integrated*' services such as landside transport, freight forwarding and customs clearances. Whilst benefits derived from vertical integration offerings are encouraged, it is imperative that the ACCC monitor any illegal exclusive dealing arrangements.

Quayside cost recovery

It is evident from consecutive ACCC stevedore monitoring reports that shipping line consortia are also benefitting from significantly reduced quayside charges administered by their contracted stevedore and empty container park providers. Savings that are clearly not being passed on down the supply chain via reductions in Terminal Handling Charges

With less quayside revenue, stevedores and empty container parks have resorted to a '*ransom*' model forcing transport operators to pay Terminal Access Charge (TAC) and ancillary fees or be denied access to container collection / dispatch facilities.

It is not sustainable for our exporters and importers to absorb this additional impost of hundreds of millions of dollars annually whereby they cannot influence service or price.

TERMINAL ACCESS CHARGES

Stevedores

The consistent position of FTA / APSA over many years of advocacy aligns with the PC finding in their draft report, recommending all charges be negotiated on a commercial in-confidence basis between the stevedore and their contracted client (shipping lines) negating the need to impose charges on third parties who have no ability to influence service or price.

All businesses face a dilemma of how to deal with unavoidable costs such as rent, infrastructure, labour, and power. Those same businesses are then forced to either absorb these costs or pass them on to their commercial clients. Similarly, stevedores and empty container parks should be forced to either absorb operating costs or pass these on to their commercial client (shipping lines). Shipping lines then have the choice to absorb or pass those costs onto exporters, importers and freight forwarders through negotiated freight rates and associated charges.

The existing voluntary arrangements established by the Victorian government and adopted by the National Transport Commission have proven to be futile, providing no ability to influence price, and giving stevedores' tacit approval to significantly inflate fees levied against our domestic transport operators.

FTA / APSA note that the PC deviated away from its original position and now recommend a mandatory code with the ACCC to act as the pricing regulator with special provisions to keep stevedores highly accountable for any charges imposed on the landside logistics sector. The proposed mandatory code will undoubtedly be an improvement to the current regime but will be less effective than simply allowing market forces to take effect by forcing cost recovery to take place exclusively via contracted commercial parties. Shipping lines are best placed to keep a lid on prices charged by their commercial suppliers.

Should the Federal Government implement the PC recommendation, it is essential that it do so in its entirety as any watering down of this recommendation will have devastating impacts, leaving our essential containerised trade sector exposed to ongoing and uncontrolled spiraling costs.

Empty Container Parks

While much of the attention has been focused on stevedores, it is important to note the empty container parks (ECPs) have adopted an identical cost recovery model. Transport operators cannot choose which ECP to dehire (return) containers after being unpacked by an importer.

The transport operator must also book a time slot with the ECP. This booking started as a minimal fee to cover technology costs, to many that now exceeds up to \$100 per container. Again, the transport operator has no influence on service and is purely a *'price taker'*.

The Federal Government must implement equivalent regulation to both stevedores and ECPS to protect the Australian export and import sectors from the current unfair cost recovery models.

CONTAINER DETENTION

Import container detention

FTA and APSA provided extensive material to the PC highlighting the administration of exorbitant container detention fees, payable when delays occur in returning empty containers within prescribed periods as set by shipping lines.

Furthermore, evidence included scenarios whereby these fees are unfairly applied in an environment of *'vessel bunching'*, limited operating hours of facilities to receive empty containers, the empty container park being at capacity, delays in border and biosecurity releases, extreme supply chain labour shortages and in many cases, the detention clock starting at a time when cargo is physically unavailable for collection from the wharf.

The impost of an unreasonable container detention charging regime continues to be a significant impost for Australian commerce and a windfall for foreign owned shipping lines contributing to their recent multi-billion dollar annual profits. A remedy is required in an environment with inflationary pressures being felt across

Australia with charges being passed down the supply chain, adversely affecting manufacturers, farmers, rural communities, and consumers.

This is hitting hard – everyone from major retailers through to small businesses. Freight forwarders, customs brokers and transport companies are left with the unenviable position of trying to explain this unbudgeted and unreasonable fee to importers and exporters costing anywhere from hundreds of dollars per consignment up to hundreds of thousands of dollars in some circumstances.

Whilst the PC sees a part of the solution being to remove the shipping line protections from Australian Consumer Law unfair contract provisions, we have asked the Federal Government to make decisive action by following the ACCC position in its last container stevedore monitoring report by creating a distinct prohibition on such unfair or unreasonable commercial conduct, either confined to the shipping industry as with the US model, or more broadly.

FTA and APSA remain of the view that the only realistic solution is for regulatory intervention to impose limits on when, or the amount of, container detention that can be charged.

Some options to protect importers could be:

- requiring shipping lines to offer to sell the container to the consignee after a set period and that the sale would end the detention period;
- cap the amount of detention to the lesser of the value of the container or the actual loss suffered by the shipping line;
- place a limit on shipping line's being able to charge detention where the delay in returning the container was due to:
 - extended free periods in the event of border or biosecurity intervention;
 - extended free periods for a Force majeure event;
 - extended free periods for any act of the shipping line (or their contractors);
- restricting the daily charges to an amount equal to set amount - for instance, the provision could provide that the maximum daily charge cannot be greater than an amount equal to 5% of the replacement value of the container.

Export container detention

Similar considerations are also required in context of exports whereby some shipping lines start the free detention from the time of container collection to the time it boards the vessel for export.

Again, this is unfair in circumstances whereby vessels bypass ports or face delays.

FTA / APSA see the need for some form of safeguard for the detention clock to stop once the export container is received by the stevedore and in circumstances whereby the exporter stage the container in their facility (or a contracted third party's yard) for the period until the vessel is available to receive cargo.

RECOMMENDATION 3 - as a priority, targeted national actions need to specifically address shipping competition law (including repeal of Part X CCA, exclusive dealings via vertical integration, quayside cost recovery), Terminal Access Charges (stevedores & empty container parks), container detention (import & export).

QUESTION 5. What KPIs are useful to measure the success of the Strategy?

In terms of cross-border and international shipping activities, an independent and respected benchmark service exists in the form of the World Bank's [‘trading across borders’](#) rankings.

Alarming, Australia plunged in the decade to 2020 from 25th in the world to 106th.

RECOMMENDATION 4 – the Strategy to engage with the World Bank to establish KPIs aligned to its [‘trading across borders’](#) rankings.

QUESTION 6. What data do we need from industry, state and territory governments to measure potential KPIs?

As above response to question 5.

QUESTION 7. What outcomes, findings or principles should the Review take into consideration from related works?

In response, the Federal Government in its most recent budget committed an additional \$23.8 million in 2023–24 to continue initiatives to modernise and improve Australia’s international trade system. Supporting this outcome, the Simplified Trade System (STS) Taskforce released a consultation paper last month for industry feedback. FTA / APSA provided a detailed [submission](#) to the STS (including 28 key recommendations) and note the Federal Government must do much more to turn around a further decline supply chain performance as it does not attribute the (World Bank) ranking solely to inefficiencies in legacy government systems, processes, and regulation.

Of greater significance, the PC review of *Australia’s Maritime Logistics System* highlighted the need for urgent reform in shipping competition and specific landside commercial practices. The Federal Government is yet to respond to the PC report that was released in January this year despite extensive evidence provided by FTA / APSA that specific supply chain practices are unfairly directly costing the trade sector \$1billion per annum.

RECOMMENDATION 5 – the Strategy to take a holistic approach to supply chain reform (including actions emerging from the Simplified Trade System and the Productivity Commission review of Australia’s Maritime Logistics System).

QUESTION 8. Are the current governance arrangements appropriate to support the effective implementation of the Strategy going forward?

Whilst the Freight Industry Reference Panel (FIRP) has had representation from highly respected executives from across commerce, to date the weighting of representation has been towards ‘*infrastructure owners*’ without any representation from ‘*cargo owners*’.

This needs to be addressed as a matter of priority to ensure governance arrangements have an inclusive representation from across all key stakeholder groups.

RECOMMENDATION 6 - maintain the existing Strategy governance arrangements with the Freight Industry Reference Panel (FIRP) expanded to have appropriate shipper (exporter / importer) representation.

QUESTION 9. What role, if any, should the Freight Industry Reference Panel have to support the implementation of the Strategy?

Dedicated resourcing is required to support an effective FIRP in the development of the Strategy and implementation of identified milestones. Additional resources are also required to support APSA whilst Part X remains an ongoing legislative instrument.

RECOMMENDATION 7 - APSA, being the peak body as designated by the Federal Minister for Infrastructure, Transport and Regional Development of Australia, to receive appropriate federal government funding to 1) resource key representation to the FIRP; and 2) ongoing administration of *Part X of the Competition and Consumer Act 2010* on behalf of all Australian containerised exporters and importers.