Waterfront, Ports and Shipping Conference

Trans-Tasman Shipping: An Australian Perspective

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AUCKLAND
28 JUNE 1991

TRANS-TASMAN SHIPPING: AN AUSTRALIAN PERSPECTIVE*

Speaking fifth, in a panel of five, on the same subject, has its risks. Will everything have already been said, leaving tail-end Charlie with nothing to do except to be repetitious and put everyone to sleep? Or, will the fifth speaker - given that his views on the subject under discussion are fairly well known - have been a convenient whipping post for some of the earlier speakers?

Which ever way it goes, how does one prepare a written paper in advance of the conference? The only option, it seems to me, is to cover the subject, and the questions posed in the conference brochure, as if one were the only speaker and then adjust the presentation as appropriate. In attempting to do this, I will provide an Australian perspective, albeit one which is reasonably conversant with recent developments in New Zealand.

Let me at the outset acknowledge the commendable progress which has been made by New Zealand on shipping and waterfront matters in recent years. By comparison, Australia's progress is virtually non-existent. Sure, we have been talking about the subject for a long time and at great length, but in terms of tangible improvement we have little to report.

On the waterfront, it took an all night session of prime ministerial cajoling and duchessing recently to endeavour to reach a so-called enterprise agreement between the Waterside Workers' Federation and one of Australia's largest stevedoring companies, Conaust - a subsidiary of the P and O group. No 'Sideline Stan' there. That deal was necessitated by the ACTU's earlier rejection of a national wage case decision of the Industrial Relations Commission, with characteristic churlishness and lack of respect for the umpire's verdict. The ACTU threatened that if its national wage case position - the so-called Accord Mark VI - did not form the basis of a Conaust agreement, then all bets were off as far as waterfront reform was concerned. The deal had more to do with reinforcing the prime minister's tenuous grip on the leadership of the Labour party than with improved waterfront productivity and efficiency. In an ironic twist, the IRC is threatening to refuse to ratify the agreement reached - which would leave Mr Hawke's much vaunted negotiating credentials somewhat up in the air. And, of course, those affected by the outcome - ports and shipping users - were not party to it, nor was any consideration given by the participants to lowering barriers to entry within the stevedoring industry so that a genuinely contestable outcome could be ensured.

As far as trans-Tasman shipping is concerned, we have at least had one form of progress in recent months. In the aftermath of the government's March economic statement, the prime minister has conceded that the maritime 'accord' costs Australia $A70 million per annum. Mr Hawke's admission came in the context of defending the statement against the almost unanimous business and media charge of 'opportunities missed'. He argued that pursuing gains of this magnitude was trivial compared with the gains of $A1 billion a year on offer from waterfront reform.

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* Address to 'Waterfront, Ports and Shipping Conference', organised by AIC Conferences, Sheraton Hotel, Auckland, 28 June 1991.

Perhaps they are. But an improvement in national welfare of $A70 million annually is surely not to be sneezed at, especially as it is relatively easy to secure.[1] Moreover, as I have said, the waterfront gains are, to put it mildly, not yet in the bag.

Let me state my position on trans-Tasman shipping quite unequivocally. The trade should be free. The so-called maritime 'accord' should be openly repudiated, by governments, shipping companies and, if necessary, the courts. The nature and extent of shipping services across the Tasman should be solely determined by the market. There is no justification whatever for the respective maritime or waterfront unions to be involved and the fact that they have called the shots for so long does no credit to any of the parties which have allowed this to happen. There is no need for repeated surveys by well-intentioned officials of user attitudes or service trends. There should be no involvement by ministers in encouraging minor reform in response to this representation or that. All of these activities merely add to the transactions costs of doing business and allow those involved to believe that the issues are complex, when they are really quite simple.

This, of course, is not merely my view. It is the view of business on both sides of the Tasman. It is the stated view of both the previous and present New Zealand governments. It is the stated view of the Australian opposition parties and it is the private view of many Australian ministers.

Indeed, it is an issue where, by any sensible assessment, the arguments for sweeping away restrictions are overwhelming, where the benefits of change are tangible and substantial, and where consistency with the objectives of microeconomic reform and desirable industry policy could hardly be clearer.

It is perhaps not surprising then that, prior to the March economic statement - a statement about microeconomic reform - media analysts in Australia argued that its two litmus tests were decisions regarding a third runway for Sydney airport and the trans-Tasman shipping accord.

The fact that restrictions remain despite the weight of argument to the contrary is a perverse compliment to the doggedness of their defenders. In the remainder of this paper I will consider why this is so, what should be done to redress the situation, how, when and by whom, and what the likely effects might be.

Before doing so, however, I would note that following a similar presentation to an equivalent conference in Sydney last February, I was the recipient of some stern correspondence. A branch of the Seamen's Union of Australia conveyed to me a resolution it had carried, advising me to "get my facts straight". And a well known shipping company representative wrote in somewhat similar terms. I responded to both groups with an invitation to provide a specific written critique or rebuttal of my paper. Regrettably, neither replied.

Another shipping company representative wrote with some helpful comments, particularly in respect of the motor vehicle industry and I have taken a number of these on board in this paper. But none of the comments alter the overall policy conclusion - that the maritime 'accord' must be done away with, and the sooner the better.

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[1] Incidently, the basis of the $A70 million figure has yet to be revealed publicly.

Background

Union-imposed restrictions on trans-Tasman shipping arrangements enjoy a considerable history. As early as 1931 the New Zealand Seamen's Union, supported by watersiders in Wellington and Auckland, thwarted an attempt by the Japanese carrier Osaka Shosen Kaisha to operate its Japanese crewed vessel, Brisbane Maru, in the trade. The success of the union strategy was credited with immediately persuading other foreign lines not to lift trans-Tasman cargo which they had already contracted to carry.

Sporadic and unstructured arrangements reserving the trans-Tasman trade to Australasian crewed vessels remained until 1974. In February 1974 these arrangements were formalised in a document entitled, 'Trans-Tasman Union Agreement'. Parties to this document were the Waterside Workers' Federation of Australia, Seamen's Union of Australia, New Zealand Waterside Workers' Union and New Zealand Seamen's Union. In March 1988 at a meeting in Auckland between New Zealand and Australian seagoing and waterfront unions, the 1974 document was updated and a new agreement entered into.

The critical clauses in these documents are Clause 8 of the 1974 agreement and Clause 6 of the 1988 agreement. It is these clauses which have reserved the trans-Tasman trade for Australian and New Zealand crewed vessels. Clause 6 of the 1988 agreement reads:

> "The Unions agree that trans-Tasman trade be retained for New Zealand and Australian manned vessels. Where specialised shipping of New Zealand or Australian ships are *unavailable*, the Unions are *prepared to consider* acceptable alternative arrangements" (emphasis added).

Thus the only exception made for the exclusive carriage of trans-Tasman trade by New Zealand and Australian crewed vessels is on grounds of vessel unavailability. No price competition by non-Australian or non-New Zealand crewed vessels is sanctioned by this clause. Moreover, the only commitment given to provide exemptions on unavailability grounds is to 'consider acceptable alternative arrangements'. Since vessel unavailability is only determined in the short term and since the giving of 'consideration' involves multiple unions on both sides of the Tasman, exemptions are difficult to secure. Although some exemptions have been given to timber and petroleum shipments from New Zealand to Australia, other traders have not been successful in obtaining exemptions even where suitable vessels have not been available.

In Clause 3 of the 1988 agreement (and Clause 5 of the 1974 agreement) the unions "agree with the principle of the New Zealand and Australian seafarer and waterfront unions sharing growth of trade across the Tasman". Apparently, competition is not even to be given free rein between Australian and New Zealand crewed vessels, but there is to be some 'equitable' dividing of the cake by the unions involved.

Neither the 1974 or 1988 agreements specify the mechanism the unions would use to reserve the trans-Tasman trade for Australian and New Zealand crewed vessels. The only practical mechanism, however, would be for the waterfront and towage

maritime unions to impose bans in Australia and/or New Zealand on the loading and/or docking of vessels manned by other nationals which engage in trans-Tasman trade.

Civil Remedies

The imposition of bans in Australia would certainly contravene domestic law. If a foreign crewed vessel wished to enter a port in Australia to take a load of cargo for trans-Tasman shipment and Australian unions placed bans on handling the ship, they would be in breach of the secondary boycott provisions of Section 45D of the Trade Practices Act. A person suffering damage as a result would be entitled to seek injunctive relief and damages. The most obvious persons suffering loss would be the consignee or shipping company.

Such bans are prohibited by Section 45D (1A), since they constitute conduct for the purpose of hindering a person from engaging in trade or commerce between Australia and places outside Australia. They could also be in breach of Section 45D (1) if seamen refused to man tugs or stevedores refused to load cargo with the purpose of preventing the shipping company acquiring berthing or stevedoring services.

In addition, common law proceedings could be taken in Australia against those involved in the imposition of bans. Further, Section 30K of the Crimes Act could be relied upon to bring criminal proceedings against those seeking to damage international trade.

In New Zealand, the situation is not as clearcut. Section 27 of the Commerce Act prohibits contracts, arrangements or understandings that have the purpose, or have, or are likely to have, the effect of substantially lessening competition in the market. However, there is some doubt as to the applicability of the Commerce Act to shipping. The Employment Contracts Act will facilitate the introduction of competition in trans-Tasman shipping by removing exclusive bargaining rights and blanket coverage awards. But there is, as yet, no case law behind the Act. Possible extensions or clarifications of legal remedies are currently under review following statements by successive ministers to this effect.

There would also appear to a wider obligation for the governments of Australia and New Zealand to provide port facilities to the vessels of other nations engaging in trans-Tasman trade. Both governments are signatories to an international treaty entitled 'International Regime of Maritime Ports'. This treaty provides reciprocal equality of treatment to all vessels of signatory nations. In the words of Article 2:

> "Every contracting State undertakes to grant the vessels of every other contracting State equality of treatment with its own vessels in the Maritime ports situated under its sovereignty... as regards freedom of access to the port, the use of the port and full enjoyment of the benefits of the port regarding navigation and commercial operations which it affords to vessels, their cargoes and passengers."

Finally, the agreement itself may be prosecutable under trade practices law in Australia. Section 45 of the Trade Practices Act, amongst other things, provides that

a contract, arrangement or understanding shall not be arrived at which has the purpose or effect of substantially lessening competition. The trans-Tasman union agreement may be captured by this provision.

The apparent illegality of the agreement begs the question of why importers, exporters and shipping companies have been so subservient to its terms and conditions for so long. There are two major reasons. The first concerns the expense and complication of possibly having to mount legal cases in two jurisdictions, and the fear by shipowners that involvement in a trans-Tasman dispute may well result in retaliatory union action elsewhere. The second is that, until recent times, the 'accord' enjoyed implicit endorsement by governments on both sides of the Tasman. In this environment, few were prepared even to consider a challenge to its legality.

Impact of the Featherbed

Making meaningful freight rate comparisons is a task fraught with difficulties. Especially in liner trades, freight rates are influenced by many factors unrelated to blue-water operations, such as the extent of port coverage, container storage times, land transport arrangements and stevedoring costs.

Nevertheless, in 1987 the Bureau of Transport Economics and the Ministry of Transport surveyed a number of selected large importers and exporters on freight rates they were being charged to ship product to various destinations.[2] This survey suggested that trans-Tasman rates (about $A2,000 per 20 foot container) were higher than rates from Australia to Asia ($A1,200-$A1,400), roughly the same as the voyage to Europe (approximately $A1,600-$A2,200) and lower than to North America ($A2,000-$A3,000). From this and other data, BTE/MOT concluded that cross-traders could offer trans-Tasman container freight rates roughly 25 percent below prevailing rates.

The potential for securing lower rates from cross-traders, however, must be traded off against a lower level of service from these vessels. It is because quality of service is valued that there will always be a place for dedicated trans-Tasman vessels. Moreover, operators of dedicated vessels will be able to charge a price premium. It would, therefore, be quite erroneous to believe that liberalisation of trans-Tasman shipping would lead to the decimation of Australian and New Zealand operators on the route. Rather, cross-traders would fill niche activities, a number of which can be identified.

Freight rate comparisons for bulk shipments can be made with relative ease. Quotes can be readily obtained for foreign flag bulk carriers. Data are available showing the movement of dry bulk freight rates for Australian/New Zealand crewed and foreign flag vessels between January 1987 and June 1990 (the data relate to 15,000 tonne shipments ex-east coast Australia to New Zealand). It is apparent from this information that freight rates pertaining to Australia/New Zealand crewed vessels have never been below those available from comparable foreign flags. At the beginning of 1987 and in 1990, Australian/New Zealand crewed vessels were about twice as expensive as comparable foreign flag vessels. At the point of closest

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2 Australian Bureau of Transport Economics, New Zealand Ministry of Transport (1987), *Review of Trans-Tasman Shipping.*

convergence, Australian/New Zealand crewed vessels were about 20 percent more expensive than foreign flag vessels.

Second, there have been substantial fluctuations over time in freight rates on foreign flag vessels. In contrast, freight rates on Australian/New Zealand crewed vessels have been relatively stable and gradually increasing. The foreign flag freight rate fluctuations are part of longer term cyclical variations in international dry bulk freight rates. These freight rates are low for extended periods of time, separated by short, sharp peaks. This pattern reflects the fact that rising freight rates stimulate new shipbuilding activity. The introduction of new vessels, in turn, forces freight rates down to more normal levels. Price stability is compelling evidence that a shipping operation is not fully exposed to the forces of supply and demand.

Bulk commodities, by their very nature, do not enjoy the benefits of product differentiation. Bulk products, such as grains, minerals and salt, sourced from Australia are much the same as these products sourced from any other nation. The predominant factor influencing a buyer's decision on where to source these products is frequently price. In this context freight rates are of critical importance.

There are numerous instances of potential bulk exports being lost to other countries largely because of high trans-Tasman shipping charges. Among the commodities that have suffered are wheat, gypsum, sugar and salt from Australia and urea from New Zealand.

The Case of Cars

The case of motor vehicle exports from Australia to New Zealand is both a topical and an extremely clear illustration of what is wrong with trans-Tasman shipping arrangements.

The Australian automotive industry is facing progressively lower assistance levels up to the year 2000. It has a daunting task to become internationally competitive. At present New Zealand is an attractive export market for CBU motor vehicles. New Zealand's own assembly industry is being wound back and industry estimates last year put the likely number of cars to be shipped from Australia to New Zealand in 1991 at about 14,000 - a value of around $A150m. The impact of recession has since cut these estimates in half.

Past shipping arrangements have been inadequate in several respects:

- total capacity scheduled to be offered by existing operators for 1991 was initially just over 5,000 cars, with no proposals for this to be increased;

- the Managing Director of Nissan Australia stated that the cost of shipping a car from Australia to New Zealand was about $A200 more than from Japan to New Zealand;[3]

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3 Ivan Deveson (1990), *Business Review Weekly,* 31 August 1990.

- there are no direct shipping services from Adelaide to New Zealand - and none were projected by existing operators - yet around half the cars to be exported would originate in South Australia; the cost of positioning these cars by road to Melbourne adds a further $A110 to the total transport cost;

- in an industry where quality is paramount and where Australian producers are being constantly exhorted to lift their quality standards to the best international levels, widespread damage has been reported in the form of footprints over car bonnets and roofs, major salt spray damage, cars knocked together because of poor stowage and vehicles being loaded from general freight areas.

At the time these problems were being experienced, there was ample capacity on specialist car carriers across the Tasman, unloading cars in New Zealand after first calling at Australia.

For example, Toyota told the recent Industry Commission inquiry that it:

> "has dedicated car carrier ships which deliver imported vehicles and CKD packs from Japan to Australian ports. The ships then sail to New Zealand, mostly empty, then return to Japan... Freight rates [on Australian exports to New Zealand] could be reduced substantially if the trans-Tasman shipping were deregulated and our own ships could be utilised for vehicle exports."[4]

The situation became so bad towards the end of last year that some car companies were considering resorting to air freight, taking advantage of the presence in Australia of, of all things, a large Soviet air freighter. One could hardly envisage a more telling indictment of the situation.

For several months the industry has been pressing both the government and shipping companies to improve various aspects of shipping services. A number of improvements have indeed been made, especially the introduction of new RO/RO capacity by the Union Shipping company, ANL's use of specialist car carriers and "some services out of Adelaide". I understand that freight rates are now also more competitive.

As a result, the minister for shipping, Senator Collins, concluded that "there are now better prospects for improved services to be available for trans-Tasman vehicle exports in 1991" and that he would "continue to monitor developments".

While Senator Collins is no doubt pleased with his efforts, they represent a failure to appreciate the true nature of the problem - normal commercial arrangements and competition being inhibited by the existence of an illegal trade union agreement - and hence the appropriate solution: the repudiation of the agreement in unambiguous terms.

It is **not** Senator Collins' responsibility to encourage or ensure that ANL, Union Shipping or anyone else should provide particular vessels, capacities, levels of service etc. to suit the motor vehicle industry or any other industry. This is the

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4 Industry Commission (1990), *The Automotive Industry*, December 1990, p. 51.

appropriate role for commercial negotiations. What *is* Senator Collins' responsibility - and what he has failed so far to achieve - is to ensure that the policy framework is in place so that maximum commercial pressure can be brought to bear to produce the optimum commercial outcome.

Before indicating what might now happen, let me briefly summarise the sorry record of more general attempts to address the trans-Tasman shipping issue by successive ministers and their officials on both sides of the Tasman.

Consultation and Recent Policy Developments

Since the 1987 review of trans-Tasman shipping the issue has gradually moved higher on the policy agenda. A brief chronology of recent developments includes the following:

- November 1987: New Zealand and Australian ministers of transport met and confirmed their commitment to achieving greater efficiency and lower shipping costs on the Tasman and to consulting with industry interests in the trade;

- December 1987: Officers from the Australian Department of Transport informed industry interests that the government's immediate objective was to obtain agreement from the unions to free some trans-Tasman trade from restrictions as a prelude to a complete freeing-up of the Tasman;

- February 1988: Two meetings took place between Australian officials, exporters and maritime unionists; exporters tabled examples of trades being lost or in jeopardy as a result of the 'accord';

- March 1988: Australian and New Zealand ministers of transport agreed to consider measures which could lead to the introduction of lower cost, more efficient Australian and New Zealand crewed vessels;

- March 1988: Australian and New Zealand seagoing and waterfront unions entered into a new 'accord' excluding foreign vessels from trans-Tasman trade;

- June 1988: A formal CER communique included an agreement between ministers "that it was vital to pursue measures to reduce the costs of shipping across the Tasman, in the interests of both economies and particularly to complement the accelerated elimination of barriers to trade resulting from the CER review"; the leader of the New Zealand side of the ministerial review of CER was quoted as saying that trans-Tasman transport was a disgrace;

- November 1988: Australian importers and exporters were advised that trans-Tasman shipping lay outside the charter of the Australian Shipping Reform Task Force;

- March 1989: The New Zealand minister of transport stated that:

> "While I have proposed to the New Zealand maritime unions that they consider relaxing their restriction, shippers can be assured that the law places no restriction on their freedom to contract with the carriers of their choice";[5]

- June 1989: An Australian ministerial statement on shipping and the waterfront foreshadowed discussions with the New Zealand government "to determine the scope for further reductions in trans-Tasman shipping and waterfront costs prior to the achievement of free trade between the two countries on 1 July 1990";

- September 1989: Australian importers and exporters were advised that the Australian and New Zealand ministers of transport had agreed to determine the scope for further reductions in trans-Tasman shipping costs;

- October 1989: Australian importers and exporters were advised by the Department of Transport of consultations planned for later that month between relevant Australian shipowners, importers/ exporters and maritime unionists (these consultations were never held);

- March 1990: As part of a wider economic statement, the New Zealand finance minister stated:

> "The government is serving notice that the union accord is on the agenda. The government is not happy that shippers are restricted in their choice of carrier, and that the union accord is effectively denying lawful trade in shipping services";

- May 1990: The New Zealand and Australian ministers of transport discussed trans-Tasman shipping but no agreement was reached;

- May 1990: The New Zealand minister of fisheries strongly condemned the 'accord';[6]

- July 1990: Following the prime ministerial review of CER, the joint communique stated:

> "We noted the positive trends in recent years arising from waterfront and shipping reforms. At the same time, most CER commerce continues to be reserved, under a Maritime Union Accord, to Australian and New Zealand crewed ships."
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> "Our governments regard competitive shipping services as vital to the trade between Australia and New Zealand. We expect that the benefits of shipping and waterfront reform programs

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5 Hon W P Jeffries, (1989), Address to the International Cargo Co-ordination Association, Annual General Meeting, Wellington, 15 March 1989.

6 Hon K Shirley, (1990), Address to the Third National Conference, Agribusiness Association of Australia and New Zealand, Canberra, 30 May 1990.

> and initiatives in both countries should produce further significant reductions in costs in the trans-Tasman trade and consider it is important that the benefits flow through to exporters and consumers. Reducing shipping costs on the Tasman - to at least OECD levels by mid-1992 - is a common objective of our respective reform programs. Meanwhile, if necessary, New Zealand will take steps to provide shippers and carriers with legal remedies complementary to those already provided under the Australian Trade Practices Act."
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> "There will be consultations at Ministerial level with Australian and New Zealand trade union leaders as we address the development of trans-Tasman shipping."
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> "Governments will continue to assess costs, freight rates and levels of service of trans-Tasman shipping to determine what further measures may be necessary to improve efficiency and competition in the trade. Trans-Tasman shipping policy will be reviewed in parallel with the full review of CER in 1992;"

- December 1990: The Australian minister for shipping, Senator Collins, warned the Seamen's Union that "the government's position on the trans-Tasman trade was quite separate from its position on cabotage policy";

- February 1991: Following the first official meeting between the prime minister of Australia and the new prime minister of New Zealand, a joint statement was issued. Trans-Tasman shipping barely rated a mention. The statement said, in part:

  > "The process of microeconomic reform was opening up opportunities for services providers to the other country's market. [The prime ministers] looked forward to benefits, specifically reduced costs to exporters, emerging from further processes of reform in the waterfront and shipping industries";[7]

- February 1991: The New Zealand prime minister was slightly more specific. At a press conference on 4 February, when asked how fast trans-Tasman shipping progress might be, Mr Bolger said: "the sooner the better as far as New Zealand is concerned, let's be quite clear about that. There is significant work to be done to inject much greater competition across the Tasman";

- March 1991: The Australian prime minister publicly acknowledged that the trans-Tasman 'accord' costs Australia $A70 million per year, although he said that the government's priority was to attempt to secure the $A1 billion per year waterfront reform benefits; he did say the government did not approve of the 'accord';

[7] Hon R J L Hawke and Rt Hon J B Bolger (1991), Joint Prime Ministerial Statement, 4 February 1991.

- March 1991: The New Zealand minister for trade negotiations, Mr Burdon, agreed to establish a joint government-industry working party to "crunch through" the issue of trans-Tasman shipping in the context of the 1992 CER review;

- March 1991: Australian government officials announced that they were working on a new survey of shipping users and service providers to establish current attitudes and emerging trends in line with the prime ministerial communique of July 1990; "an interim report will be published by the end of June";

- April 1991: The New Zealand minister of transport, Mr Storey, and the Australian minister for shipping, Senator Collins, discussed trans-Tasman shipping, with the New Zealand minister again foreshadowing amendments to the Commerce Act to enable the 'accord' to be challenged legally. The joint communique talked about continuing to monitor performance through the normal processes of reviewing CER; however, it did state that "both ministers reiterated that their governments did not support the current accord"; and

- April 1991: Mr Storey foreshadowed greater competition on both the New Zealand coast and trans-Tasman as a result of the Employment Contracts Act; on trans-Tasman, he said that "general labour market reforms in the (Act), involving voluntary unionism and the removal of blanket award coverage, may make it difficult for the unions to sustain such an arrangement (the 'accord')".[8]

This list may be lengthy but it can hardly be described as impressive. It indicates clearly that the Australian government's actions are timid and subject to continual consultations with a trade union movement which is opposed to the policy change required. It also suggests that the Australian government believes that merely talking about achieving lower shipping costs often enough (as in 1987-88) will make them a reality (given that the July 1990 prime ministerial communique was expressed in terms of *further* reductions). While the New Zealand government's position is less ambiguous, it has not been prepared to confront the Australian government directly by going to it alone, or by blowing the whistle on the Australian government's lack of political will.

What Has to Happen, When and by Whom?

So long as shipping costs and charges between Australia and New Zealand remain at unnecessarily high levels, the benefits possible from CER will not be fully realised. The effective exclusion of international competitors from the Tasman, and the excessive freight rates or restricted sailing schedules which result, discourage bilateral trade between Australia and New Zealand - an undesirable outcome for both countries.

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8 Hon R. Storey (1991), Press Release, 23 April 1991.

The New Zealand government has displayed a greater willingness than the Australian government to confront inefficiencies directly and has already chalked up some impressive achievements, especially in terms of port reform. It has also consistently and publicly expressed its opposition to the 'accord' over the past couple of years. Exporters in both countries have done so for a longer period. Even ANL is reported to have said recently that its performance has improved to the point where it is quite prepared for an end to the 'accord'.[9]

The Australian government, and successive ministers, duck and weave around the issue in a way which invites suspicion that somewhere in the background a secret deal has been done with relevant unions that the 'accord' will not be touched. We have recently had experience elsewhere of secret deals involving senior politicians and trade union leaders! The explanation that waterfront reform takes higher priority is certainly not compelling.

The responses of shipping companies and union representatives typically fall into one or both of two categories. They allege that:

- either particular freight rate comparisons are wrong, out of date, unrepresentative, anecdotal or do not fully account for the complexities involved - in other words, that existing arrangements are not greatly removed, if at all, from the commercial optimum which would exist in a free market; or

- opening up the trade to international competition would destroy dedicated services as fly-by-night operators, perhaps using unsafe vessels, picked the eyes out of the market.

Apart from noting that simultaneously advocating both viewpoints - as I have seen attempted - stretches credulity, neither response constitutes a case for leaving the 'accord' intact. If the potential for service or freight rate improvement is small, then encumbents have little to fear from greater competition. If there is enormous potential for cross-over or tramp services, then shippers are being heavily penalised now for their unavailability.

Resolving the issue - and removing it once and for all from the policy agenda - requires prompt action in three areas:

- first, the Australian government needs to be made to answer 'yes' or 'no' to two questions:

  - does it endorse the 'accord'?; and

  - will it in any way, implicitly or explicitly, seek to frustrate commercial attempts to use cross-over vessels on the trans-Tasman trade, including if civil remedies need to be sought as part of such attempts?;

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9 Quoted in *Inside Canberra*, 25 January 1991.

- second, the New Zealand government needs to decide what, if any, legislative strengthening is required to ensure that a legal challenge to the 'accord' would be successful and enact such changes; and

- third, cross-over vessels need to be engaged as and when appropriate.

As to the latter point, it is not a matter of seeking the elimination of, or substantial reduction in, services offered by existing shipping operators. Rather, it is to give shippers wider choice to make commercial arrangements which suit them, and to ensure that existing operators are more effectively motivated than hitherto to provide customer-orientated services. As noted earlier, there is much more to a shipping service than simply price. Service frequency, port coverage, ship board and waterfront equipment and so on, all contribute to the overall service quality. But there are many other shipper lines - bulk and liner - which ply between Australia and New Zealand as part of services to third countries. Some would offer attractive services to trans-Tasman shippers. It is long overdue that they be allowed to do so.

As to who might take the lead, there are several candidates - grain, sugar, alumina and motor vehicles from Australia, and forest products, urea and petroleum from New Zealand. Possibly the one closest to the starting gate is wheat. The Australian Wheat Board stated in April that, "having now exhausted all avenues for negotiating a reform of the accord", it was ready to defy it.[10] It has taken more than two years for the Board to reach this view and even then its government member is reported to be cautioning against hasty action.[11] The task of a pioneer is always difficult and at times lonely. When the first attempts are being made, the active support of shippers generally on both sides of the Tasman must be forthcoming. Once the precedents have been set, others will follow, including shipping company-initiated innovations and further service improvements provided by existing carriers.

It would be pleasing to be able to report to an equivalent conference in twelve months time that the 'accord' had, to use the American terminology, at last been rendered inoperative.

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10 AWB Deputy General Manager quoted in *The Land*, 25 April 1991.

11 Ibid.