Port Botany surcharges were causing consternation

Spotlight on Botany surcharge

FTA director and APSA secretariat **Paul Zalai** writes on the Port Botany congestion surcharges, their consequences and the rhetoric surrounding them

IN SEPTEMBER 2020, SEVERAL shipping lines announced the implementation of Port Botany congestion surcharges with the rationale that delays were caused by sustained industrial action.

APSA and FTA received a response to formal correspondence on 16 September last year from one shipping line stating that the imposition of their surcharge was made in a completely independent and in a commercial manner and there was no discussion or any other interaction with other shipping lines.

While not suggesting any breach of competition laws, it certainly appeared to be a case of follow the leader with each justifying very similar surcharges (ranging from US$285 to US$350 per TEU) within days of each other.

NEW RATIONALE

In February, APSA and FTA issued a member notice highlighting the continuation of the Port Botany congestion surcharges despite a period over many months without any industrial action. The notice also included reference to the positive news that DP World had finalised their national enterprise agreements and that all terminals are operating normally.

In direct response to our commentary, we welcomed the news that some shipping line agencies removed all references to surcharges from their public tariff.

Having stated that, many other shipping lines appear resolute in maintaining the surcharge and through Shipping Australia, responded with an explainer article titled *Container logistics, industrial woes, berthing delays and propaganda-busting*.

It is important to note that the SAL explainer didn't use industrial action as the rationale for imposing Port Botany congestion surcharges, instead reference is made to "global issues" and "global delays" causing vessels to miss windows.

The SAL explainer also made reference to residual Port Botany stevedore delays, specifically that in "some cases" a day and a half wait at DP World was experienced and up to seven days' vessel delay at Patrick (SAL noting that this a significant reduction from 21 days in September 2020 when the surcharges were introduced).

While we are waiting on further details from Patrick in terms of these reported delays, the advice from DP World Australia has re-stated that services at Port Botany have returned to pre-industrial action levels without berthing delays. Furthermore, DP World has the ability to accept subcontracts, ad hoc callers, and above-contract exchanges, which include empty container repositioning.

The SAL explainer states that costs to vessel delays are "massive" and shipping lines have been forced to adapt by adjusting sailings and/or recover costs through surcharges. These same shipping lines have achieved significant financial returns. At least one line last year netted a multi-billion-dollar annual profit.

We are reliant on foreign-owned lines in Australia. There is no questioning they must be incentivised to operate profitably. However, APSA and FTA continue to call for regulation to: ensure vessel-sharing consortia can continue with qualified exemption from normal competition rules administered in Australian commerce; and monitor the appropriateness of shipping line (and contracted stevedore/empty container park) surcharges and fees.

In this context, Part X of the *Consumer & Competition Act 2010* allows for shipping lines to be given partial and conditional exemptions from cartel conduct and contracts that restrict dealings or affect competition and exclusive dealings.

APSA is the designated peak shipper body as defined within the act, with FTA administering the Part X compliance in a contracted secretariat role to the association.

The events over the past 12 months have re-affirmed the APSA and FTA position that Part X does not adequately protect the interests of Australian exporters and importers and to that end we commend the ACCC in examining a replacement block exemption regime.

WHERE TO FROM HERE?

Based on our estimates, if current conditions continue, Australian exporters and importers will be paying in excess of $670 million per year in congestion surcharges. APSA and FTA will use this data and associated explanatory material as further evidence focussing on the need regulate certain shipping practices as a part of our submission to the Productivity Commission and ACCC reviews.

In the interim, we will continue direct engagement with shipping lines to encourage reasonable measures in voluntarily reviewing existing practices and surcharge administration.

NOTE: After this article was written and before publication, several shipping lines have suspended the surcharge, citing improved operational conditions at Port Botany.

Paul Zalai