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MARITIME EMISSIONS REDUCTION NATIONAL ACTION PLAN (MERNAP)

ISSUES PAPER: REGULATION & STANDARDS

Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts 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

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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.

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) see significant value in the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Department) Maritime Emissions Reduction National Action Plan (MERNAP) initiative. It serves as a proactive response to the industry's call for clear guidance and support in the face of a globally recognised imperative: the need to reduce maritime emissions and transition to a more sustainable, greener future.

By addressing the mosaic of regulatory challenges and providing a clear roadmap for transition, MERNAP lays the foundation for both a greener maritime sector and a resilient Australian economy.

FTA / APSA in collaboration with our members, have contributed to providing feedback to the Department's Maritime Emissions Reduction National Action Plan (MERNAP) Issues Paper focusing on Regulations and Standards.

Supporting this position, FTA / APSA have prepared the following submission with five (5) recommendations in response to the specific questions as outlined in the *MERNAP Issues Paper on Regulations & Standards*.

RECOMMENDATION 1 - MERNAP needs to take a holistic approach to decarbonisation, ensuring compliance with IMO standards set, and crucially ensuring stakeholder engagement, particularly with ship owners & port operators.

RECOMMENDATION 2 – To best serve the maritime industry's evolving needs, it is recommended that the government adopt a dynamic, sustainable, and inclusive regulatory framework that prioritises adaptability, global harmonisation, stakeholder transparency, and uncompromised safety.

RECOMMENDATION 3 – MERNAP should consider the impacts and regulation of shore-side electricity in maritime ports, thereby reducing emissions and enhancing air quality.

RECOMMENDATION 4 – 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). By doing so, holistically it would offset the cost impost of any carbon pricing mechanisms.

RECOMMENDATION 5 – MERNAP should ensure stakeholder engagement with ship owners and port operators to discuss and map the way forward in preparation of next generation fuel transitioning.

Part One: Australia's Maritime Sector and principles for regulation

QUESTION 1. What aspects of the domestic and international industry do you think we should be particularly mindful of?

FTA / APSA would like to ensure that the following aspects are also considered:

Compliance with IMO Conventions: Australia must ensure compliance with International Maritime Organisation (IMO) regulations, especially concerning safety, environment, and efficiency. We must understand the links between international and domestic regulations and ensure where possible, they are harmonised.

Decarbonisation and GHG Emissions: As international pressure grows to reduce greenhouse gas (GHG) emissions from shipping, Australia should actively participate in setting, endorsing, and implementing global decarbonisation standards.

Stakeholder Engagement and Industry Input

The maritime sector includes a variety of stakeholders, from shipowners to port operators. Ensuring mechanisms for their feedback on regulatory changes is essential.

RECOMMENDATION 1 – MERNAP needs to take a holistic approach to decarbonisation, ensuring compliance with IMO standards set, and crucially ensuring stakeholder engagement, particularly with ship owners & port operators.

QUESTION 2. These principles will help us provide advice to Government on what the potential future next steps might be. Do agree with these principles? What other aspects should we consider?

FTA / APSA agree with these principles, as they provide a broad framework for equitable, informed, and comprehensive decision-making. However, to further refine the regulatory approach and enhance its applicability, the following additional aspects might be considered:

Adaptability and Flexibility: Given the rapid technological changes and global dynamics impacting the maritime industry, regulatory frameworks should be adaptable to cater to unforeseen developments without necessitating frequent, disruptive changes.

Sustainability and Environmental Considerations: Regulations should inherently promote sustainable and eco-friendly practices. While decarbonisation is a significant part of this, other environmental concerns, such as ocean pollution, habitat destruction, and noise pollution, should also be addressed.

Incentivisation and Support Mechanisms: To encourage compliance, especially among smaller operators with limited resources, the government might consider financial incentives, grants, or support mechanisms. This can expedite the transition to greener operations and reduce financial burdens.

Capacity Building and Education: For smaller operators with limited access to regulatory information, the government can offer training and educational resources. This will ensure that even the smallest players are well-informed and can comply efficiently.

Harmonisation with International Standards: To avoid any potential conflicts and ensure seamless operations for international players, regulations should be harmonized with global standards and conventions where feasible.

Transparency and Accountability: Clear mechanisms should be in place for stakeholders to understand how regulations are formed, implemented, and enforced. Additionally, entities responsible for oversight should be held accountable for their roles.

Dispute Resolution Mechanisms: With varied actors in the maritime sector, disagreements or disputes might arise. It's crucial to have clear, efficient, and equitable dispute resolution mechanisms in place.

Periodic Review and Feedback: Regulations should not be static. Periodic reviews, perhaps every few years, can help in updating them based on industry feedback, technological advancements, and global trends.

Risk Management and Safety: While ensuring environmental sustainability and operational efficiency, the safety of the vessels, crew, and cargo should always be a top priority. Regulations should inherently ensure that safety is not compromised.

Part Two: Regulatory Barriers and Opportunities

a) General

QUESTION 3. Recognising the role of government in supporting the transition, what regulatory areas of Commonwealth responsibility should the MERNAP focus on?

MERNAP should focus on several regulatory areas of responsibility, including:

Harmonisation of Standards: Address discrepancies between Commonwealth, State, and Territory regulations. A unified set of standards will simplify compliance for maritime operators and ensure consistent decarbonisation efforts across jurisdictions.

Fiscal Incentives and Support: Consider providing tax incentives, grants, or subsidies to companies investing in cleaner technologies, alternative fuels, and green infrastructure. Such support can expedite the adoption of green technologies in the maritime sector.

Infrastructure Development: Invest in port infrastructure that can support alternative fuels. Ensuring that the necessary infrastructure is in place is vital for the transition to greener vessels.

Enforcement and Monitoring: Strengthen the oversight mechanisms to ensure compliance with decarbonisation standards. This could include regular inspections, enhanced monitoring systems, or penalties for non-compliance.

Data Collection and Analysis: Implement robust systems for collecting and analysing data on emissions from the maritime sector. Such data can inform future policy decisions and help track the progress of decarbonisation efforts.

Stakeholder Engagement: Maintain an open dialogue with industry stakeholders, ensuring that their feedback and concerns are addressed in regulatory decisions. Regular consultations can ensure that regulations are both effective and practical.

Alignment with International Regulations: Given the global nature of the maritime industry, ensure that Commonwealth regulations align with international conventions and standards, particularly those set by the International Maritime Organisation (IMO).

RECOMMENDATION 2 – To best serve the maritime industry's evolving needs, it is recommended that the government adopt a dynamic, sustainable, and inclusive regulatory framework that prioritises adaptability, global harmonisation, stakeholder transparency, and uncompromised safety.

QUESTION 4. What key regulatory arrangements would support or obstruct your operation and investment in decarbonising the maritime sector? What do you think the regulatory priorities to facilitate maritime decarbonisation should be?

Nil comment.

QUESTION 5. What would prevent you from embarking on an accelerated response to decarbonisation (e.g. long lead-in time with regulatory change)?

Nil comment.

QUESTION 6. We have set out a few potential areas below where there may be regulatory barriers or opportunities. What other areas exist from your perspective?

Nil comment.

b) Ports

QUESTION 7. The regulatory framework above begins to identify the intersections and complexities of regulation for ports. What situations have you or other potential investors come across where these regulatory layers contradict each other in relation to decarbonisation, or are inconsistent in their interlinkages?

Nil comment.

QUESTION 8. What have been your challenges with complying with the existing regulatory framework in relation to decarbonisation?

Nil comment.

QUESTION 9. What regulatory arrangements would support or obstruct your operation and investment for ports in decarbonising the maritime sector? For you, what would prevent an accelerated response to decarbonisation?

Nil comment.

QUESTION 10. Do you or your investors have visibility of the required standards/guidance for the development of shore power? How do these standards currently impact your investment decisions for ports? Are guidelines sufficient?

Nil comment.

QUESTION 11. What other information do you need to inform investment and operational decisions in relation to shore power? Is greater certainty in the status of the standards/guidelines a prerequisite?

Nil comment.

QUESTION 12. What examples/evidence of implementation of shore power internationally could Australia leverage or learn from?

The European Union Council in July adopted the Alternative Fuels Infrastructure Regulation (AFIR) which establishes, among other things, that maritime ports must provide shore-side electricity for vessels by 2030. FTA / APSA see merit in introducing similar to reduce emissions and improve air quality.

RECOMMENDATION 3 – MERNAP should consider the impacts and regulation of shore-side electricity in maritime ports, thereby reducing emissions and enhancing air quality.

QUESTION 13. What other regulatory challenges have you or others you know experienced in consideration of investment in shore power?

Nil comment.

QUESTION 14. What lessons can be learned from the development of liquefied natural gas (LNG) as a bunker fuel?

Nil comment.

QUESTION 15. What is your understanding of the scope and magnitude of the different requirements for the emerging fuels handling?

Nil comment.

QUESTION 16. What research is required to understand which equipment and procedural standards should apply?

Nil comment.

QUESTION 17. What is your understanding of the scope and magnitude of the different requirements for emerging fuels handling?

Nil comment.

c) Shipping

QUESTION 18. Do these or other regulations, or their current development uncertainty, impact investment in low and zero emission bunkering vessels?

Nil comment.

QUESTION 19. What other opportunities or barriers exist?

Nil comment.

QUESTION 20. What concerns do you have with the pathways for biofuel use (for example a perceived lack of standards across marine applications, or Original Equipment Manufacturers not supporting their use?)

Nil comment.

QUESTION 21. Is there a lack of standards across marine applications limiting the use and uptake of alternative fuels, including biofuels? If yes, what are the gaps?

Nil comment.

QUESTION 22. What standards apply to support engine manufacturers in the transition to biofuels? If there are no international or domestically recognised standards, is there an accelerated pathway for land-use engine standards for biofuels that can be adapted for maritime application?

Nil comment.

QUESTION 23. In what areas is further analysis on standards, regulations, and communication required to build confidence in the use of biofuels as a potential emissions reduction strategy?

Nil comment.

d) Future Global Regulatory Environment

QUESTION 24. Are there specific areas of Australia's international emissions reductions engagements, in relation to IMO regulations, that the maritime sector would benefit from greater knowledge of, and engagement in?

FTA / APSA believe there are several areas where deeper knowledge and engagement would benefit Australia's maritime sector:

Fuel Transition: Understanding the IMO's direction and recommendations concerning alternative fuels, their specifications, and bunkering requirements can guide Australia's maritime sector in preparing for the

next generation of fuels. Australia's maritime sector should also ensure stakeholder engagement, in particular seeking the opinion of the ship owners who are already investing heavily in new vessel builds with alternative fuels.

Carbon Pricing: FTA / APSA see it as essential for the maritime sector to understand how these might impact operational costs, competitiveness, and the overall market dynamics.

The recent Productivity Commission Review of Australia's Maritime Logistics System made key recommendations to address issues on pricing which should be incorporated into the MERNAP goals to assist in lessening the overall pricing impact required to help achieve goals for decarbonisation:

SHIPPING COMPETITION

Repeal of Part X CCA

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.

Data Collection and Reporting: IMO's data collection system for fuel oil consumption of ships is vital. Australia's maritime sector can benefit from understanding the nuances of this system, ensuring accurate reporting and leveraging the data for performance improvements.

RECOMMENDATION 4 – 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). By doing so, holistically it would offset the cost impost of any carbon pricing mechanisms.

RECOMMENDATION 5 – MERNAP should ensure stakeholder engagement with ship owners and port operators to discuss and map the way forward in preparation of next generation fuel transitioning.

QUESTION 25. What initiatives related to the above issues are happening internationally that we can learn from/consider/adopt when constructing our national approach to decarbonisation under the MERNAP? What has and hasn't worked, and what is feasible for us domestically?

FTA / APSA identifies various international initiatives which can provide valuable insights:

European Green Ports: Ports like Rotterdam and Amsterdam are pioneering various green initiatives, from electrification of quayside operations to incentives for green vessels.

Alternative Fuels: Norway's push for electrification of its ferry fleet and the use of liquid natural gas (LNG) in various European routes provide real-world insights into transitioning away from conventional fuels.

Carbon Pricing: Sweden's implementation of a carbon tax has shown both the challenges and potential of such an approach in reducing GHG emissions.

Innovation Hubs: Singapore's maritime sector, with its innovation hubs and green ship initiatives, offers insights into leveraging technology and industry partnerships for decarbonisation.

Incentive Programs: In California, USA, the state provides financial incentives for green vessels, which has driven the adoption of cleaner technologies.

Challenges: Some challenges observed internationally include the initial resistance to new regulations, the high upfront cost of green technologies, and concerns about the availability and reliability of alternative fuels.

For Australia, feasibility considerations should include:

Infrastructure Development: Assessing the readiness of ports to adopt new bunkering facilities and other green technologies.

Domestic Fuel Production: Evaluating Australia's capacity to produce and supply alternative fuels like hydrogen or biofuels.

Economic Implications: Balancing the need for green initiatives with their potential economic implications, especially in terms of trade competitiveness. The government addressing recommendations made in the Productivity Commission Review of Australia's Maritime Logistics System which go a long way to offsetting the costs.

Geographical Considerations: Given Australia's vast coastline and remote regions, ensuring that decarbonisation strategies are effective not just in major ports but also in more isolated areas.

In essence, while Australia can derive valuable lessons from international initiatives, it's crucial to adapt and implement them based on domestic circumstances, capabilities, and priorities.