PORTS AND SHIPPING REFORM IN NEW ZEALAND

CURRENT DEVELOPMENTS AND FUTURE REQUIREMENTS

NEW ZEALAND BUSINESS ROUNDTABLE
FEDERATED FARMERS OF NEW ZEALAND INC
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EXECUTIVE SUMMARY

The Government Has Created the Climate for Reform

The opportunity for substantial and durable reform in New Zealand's ports and shipping industry has been created by the far reaching, if overdue, approach to structural change throughout the economy taken by the Government in recent years.

It is difficult to overstate the importance of the Government's role in leading the debate and in establishing clear objectives. In the ports area the objective is unambiguous: to reduce costs and improve efficiency.

The Government has the responsibility for establishing a sound policy and legislative framework within which the industry should be capable of greatly improving its performance. Not all of this framework is yet in place. But on the basis of the measures adopted to date, the business community is now receptive - indeed eager - to respond to the challenge and the opportunities. This is clearly evident in and around the shipping, ports and waterfront industries.

Shipper Interests Are Being More Strongly Asserted

One change which has occurred already, with major consequences for the future, is the move by shippers - representing producer and exporter interests - to enhance their relative position in the overall scheme of things relative to shipowners and service industries, such as stevedores, port companies and container terminal operators. This change is important for two related reasons. First, it is shippers - and hence producers - who ultimately bear the costs of shipping and waterfront activities. Second, it is they who have most to lose from the cost-plus mentality which has been so prevalent hitherto.

A New Era on the Waterfront Will Commence on 1 October 1989

In the ports area, the Government has legislated to establish port companies. These companies have taken over assets from harbour boards, and been given a clear, accountable commercial charter. The Government has also legislated to normalise employee-employer relations on the waterfront. This involves the

termination of the Waterfront Industry Commission and, along with it, the system of labour pools through which waterside workers have been engaged.

The new arrangements will commence on 1 October 1989. Between now and then, negotiations between the Waterfront Workers' Union and employer representatives will endeavour to establish new award conditions. A redundancy package also needs to be finalised, given that up to a third of the existing watersiders will not be required beyond 1 October.

The Government has indicated a preparedness to facilitate some of the funding required, by drawing on the income from harbour board assets and imposing a levy on port company shares.

The Potential Benefits Are Substantial

In the context of the award negotiations there are two important issues which must be borne in mind. The first is that the potential benefits from the new arrangements are indeed substantial. Immediate reductions in cost and improvements in productivity of up to 50 per cent are achievable. Gains of this magnitude will make a major contribution to enhancing the competitiveness of New Zealand's exports. It therefore follows that the process of negotiation is crucial and that the various employer interests must accept the responsibility of achieving an international standard of excellence in port operations.

The Focus Should Be at the Individual Port - and Not the National - Level

Second, the objectives of promoting common interests - whether between employee and employer, or stevedoring employer and shipper - and maximising flexibility and efficiency will be best achieved if the focus of negotiations is the individual port, rather than the national level. Injecting a completely new culture and attitude into waterfront practices and loyalties is a key ingredient of the new approach. This is far more likely to be understood and achieved locally rather than nationally. This argument applies equally to the implementation of redundancy arrangements.

More generally, the interests of promoting competition and minimising monopoly rents on a sustainable basis will be facilitated with port by port negotiations. This is recognised by unions who see a port by port approach as a

threat to traditional power bases. It is indeed, but it must be acknowledged openly that such power bases have cost New Zealand dearly in the past. Port by port negotiations will lessen the scope for collusion between ports and the exercise of market power by port companies - either directly, or via the actions of port company employees.

Further Changes to Improve the Competitive Environment Are Needed

Whatever structure eventuates from 1 October next, the reform process will not then be complete. For a start, little will be gained if changes are negotiated merely to be eroded over coming years. More importantly, there is undoubtedly potential for further improvements to be made. The main requirement is that incentives for competition, including competition for ownership of port operations, be maximised. There are a number of elements:

- the present stipulation that not less than 51 per cent of port company shares can be owned by harbour boards (or, after November, local or regional authorities) is a disincentive to private sector equity participation in port companies; it should be relaxed, allowing new port company investors (in whole or part), especially those representing shipper interests;

- because of the conflicting incentives of the existing port company owners, legislation to require port company privatisation may be needed;

- the normal provisions of the Commerce Act should be used to prevent anti-competitive acquisitions of port companies, or discriminatory behaviour by them, for example against minor shippers and stevedoring companies;

- there should be no uneconomic barriers, formal or otherwise, to the entry of new businesses offering to provide stevedoring services at ports; such services may well involve consortia of shipper interests;

- as much as possible of the land-leg components of shipping services should be separated from the freight rate and paid directly by shippers on a port by port basis; the historical practice of pan New Zealand freight rates should, where possible, be confined to the sea-leg component;

- the greater transparency of port costs, and the fact that they will be paid up-front by shippers on a port by port basis, along with more competitive land

transport services such as rail, will mean that the current conventional wisdom that most New Zealand exports are captive to a particular port is unlikely to apply in future; every opportunity should be taken to promote inter-port competition; and

- civil remedies available to combat anti-competitive behaviour by waterfront unions need to be better understood and, if they prove to be insufficiently robust, to be strengthened and made more explicit; an explanatory paper which sets out clearly the options available in this area should be prepared and widely disseminated.

The Labour Relations Act Does Not Always Promote a Level Playing Field

A number of provisions of the Labour Relations Act are either inconsistent with the direction and philosophy of the Government's ports reform legislation, or do not constitute a level playing field as between employer and employee interests. Relevant issues - which, of course, extend beyond the ports and shipping industries - include:

- the question of union coverage;
- the disaggregation of national awards;
- the requirement of a 1000 minimum number of members for each union;
- the resolution of demarcation issues; and
- compulsory unionism itself.

Amendment of the Labour Relations Act at an early date to deal with these anomalies or inconsistencies is most desirable.

Coastal Shipping Competitiveness Has Declined

Turning to the shipping industry, the competitiveness of coastal shipping has steadily declined over time for a range of reasons. A major contributing factor has been the necessity for coastal cargoes to run the gauntlet of New Zealand's waterfront twice. Another has been the maintenance of unprofitable rail freight. The Minister of Transport has recently announced a review of coastal shipping, including its legislative backing. Such a review is timely and follows a similar one completed recently by Australia's Industries Assistance Commission.

It needs to be recognised that some New Zealand producers have been disadvantaged by partial deregulation. For example, South Island wheat farmers are now exposed to greater import competition, but their dependence on coastal shipping to reach North Island grain processors (or alternatively the need to use costly containers transported by rail) has meant that they are facing this competition with one hand tied behind their backs. At the same time, there is evidence of potential new technology or innovation in coastal shipping whose application to New Zealand will be greater, the fewer are the on-shore impediments.

Trans-Tasman Interests Have Been Inhibited by a Maritime 'Accord'

A major issue affecting the competitiveness of trans-Tasman shipping has been a so-called 'accord' between the maritime unions in New Zealand and Australia. This agreement, first formalised in 1974 and reaffirmed in 1988, seeks to restrict trans-Tasman shipping to ships crewed by either Australian or New Zealand seafarers. The agreement does not enjoy legislative backing but successive Governments on both sides of the Tasman have not repudiated it.

The New Zealand Minister of Transport recently noted that shippers were free to contract with the carriers of their choice, but no Australian Minister has even done this. As a result, and in the face of inevitable industrial retribution, shipowners or cargo interests have not been prepared to confront the 'accord'.

The issue rankles, especially in Australia. Bulk cargo business involving wheat, raw sugar and gypsum from Australia to New Zealand, which would normally have been expected to be secure, has been lost, apparently largely because freight rates have been excessive.

While some improvements have been reported in shipboard practices, crewing levels and costs in recent years on trans-Tasman liner services, it is hard to envisage that an effective negotiated solution to the maritime 'accord' issue will emerge. The respective Governments should repudiate the 'accord' and encourage cross-traders to offer competitive shipping services across the Tasman.

Seafarers Should Also be Employed Under Normal Conditions

The labour pool known as 'the corner', under which seafarers are engaged, will be even more anachronistic once watersider employment arrangements have been normalised as from 1 October 1989. As elsewhere, it leads to a lack of employer/employee loyalty, and no incentives for training or skill development. The Government should announce that normal seafarer employment arrangements will be introduced as soon as possible. At the same time, the opportunity should be taken to negotiate more sensible conditions of employment and to address the demarcation rigidities which so needlessly add to costs and reduce efficiency.

1. INTRODUCTION

This paper has been prepared on behalf of the New Zealand Business Roundtable and Federated Farmers of New Zealand. Its purpose is twofold:

- to distill and review recent and current initiatives taken by the Government to improve performance in ports and the shipping industry; and
- to identify further policy initiatives which will be needed to ensure that potential benefits are maximised.

There is a real risk that unless incentive structures and disciplinary mechanisms are clear, initial gains may over time be eroded. More important, it is vital for New Zealand to aspire to the most efficient, competitive and flexible port system and shipping industry in the world. Present arrangements are well removed from that ideal.

After all, as the Minister of Transport has rather aptly observed:

> "We are like the farmer on the far side of the river, who must work that much harder and rise that much earlier on market day to bring his wares to town. We are not conveniently located at the crossroads of international trade. We are not on the main street of the global village."[1]

The paper is structured as follows. In the next section, the main elements of recent Government policy initiatives affecting ports and the shipping industry are briefly outlined. In Section 3, the need for reform is demonstrated by way of citing numerous examples of inefficiency and/or excessive cost. This leads to a consideration in Section 4 of relevant competition issues affecting ports.

Section 5 provides an assessment of the improvements which have occurred to date as a result of Government ports policy. Section 6 describes further ports reform measures and related changes which will be essential if the benefits to the New Zealand economy are to be maximised.

Finally, Section 7 discusses the direction in which reform in the shipping industry - both coastal and international - should head.

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

2. BACKGROUND

As part of its wider program of reforming New Zealand's economic structure and winding back the level of intervention, the Government has identified the need for major reform in ports and the shipping industry. These industries link New Zealand with the rest of the world. They are vital to New Zealand's export performance and to the objective of progressively increasing living standards. Without improvement here, many of the benefits achieved from structural change elsewhere in the economy will not be maximised.

The Government's objective is unambiguous. It wants to reduce costs and improve efficiency. In the words of the Minister of Transport, Mr Jeffries, the Government is seeking to reduce the extent of the 'bridge tolls' which New Zealand's exports and imports necessarily must pay.

For many years the performances of the ports and shipping industries have, to put it mildly, left a great deal to be desired. They have been costly, inefficient, overstaffed, and plagued by industrial disputation. They have also been 'different' in that normal employee-employer arrangements have frequently not been practised. Finally, the Government has intervened in a variety of ways in an attempt to 'guide' the industries' endeavours.

While there may have been a historical basis for some of these actions, they have become increasingly out of step with developments elsewhere.

It is difficult to overstate the importance of the Government's economy-wide role in leading the debate for structural reform and in maintaining a consistent line. In response to the changes made to date, the business community has responded positively to the challenge and the opportunities. This is as true in the ports area as it is elsewhere in the economy.

2.1 Ports

In 1984 the Government commissioned an On Shore Costs Study. This largely descriptive study identified serious operating inefficiencies and unproductive work practices in New Zealand's ports. Many harbour board

investments had been wasteful and were yielding poor returns. The study found that the major component of port costs was associated with the value of ships' time, followed by the costs of stevedoring and harbour board charges. In its summary of the labour situation, the study concluded:

> "More than any other sector of onshore transport, the ports are subject to very strong and effective pressures from employee groups. While levels of trade are still the dominant influence on ports, industrial relations and manpower questions colour almost every consideration, and are at least as important as technological developments in shaping the ports industry."[2]

The description of the waterfront provided in the On Shore Costs Study led the Government to develop priorities for action. Heading the priority list was the need to change the way in which various statutory authorities operated on and around the waterfront. The second priority was an examination of the labour market framework with a view to normalising employment procedures.

In 1987, the Government introduced the Ports Reform Bill. This package, which was passed as four specific pieces of legislation, provided for the corporatisation of the various regional harbour boards which operated New Zealand's ports. Harbour boards were previously elected bodies and they performed a range of commercial and non-commercial tasks without a clearcut commercial charter.

The Ports Companies Act 1988 lead to the formation of separate port companies in each port which took over the ownership and operation of the commercial port facilities of the harbour boards. The boards of the port companies comprised representatives with broad commercial experience who were appointed by the harbour boards, not elected. The assets to be transferred were valued and submitted for approval by the Minister of Transport, whose department commissioned its own independent assessments. Following approval, the port companies commenced operation - four did so on 1 October 1988. They were wholly owned by the harbour boards but could, if they wished, divest up to 49 per cent ownership. In other words, at least 51 per cent ownership, and hence control, was to remain with the local authorities.

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2 Ministry of Transport (1984), On Shore Costs : The Transport, Handling and Related Costs of Goods Carried by Sea, Wellington, August 1984.

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The legislation also provided for the removal of inter-port labour cost cross-subsidisation and the termination of monopoly control by harbour boards in the provision of mobile cargo handling equipment. The cross-subsidisation arose from a levy which was charged across all ports in order to guarantee the wages of all waterside workers employed under the labour pool operated by the Waterfront Industry Commission. In practice it resulted in the larger and busier ports subsidising the smaller ones, or those with an uneven demand pattern. As to the ownership of mobile equipment, such as forklifts, the new legislation enabled stevedoring companies to purchase such equipment or hire it from other sources rather than being forced to hire it from harbour boards.

Finally, the 1988 legislation abolished the New Zealand Ports Authority. This was a centralised body which was charged with developing a national ports plan - to guide port investment and reduce duplication. Its approval was required before ports could purchase major items of equipment. It was thus completely at odds with the new arrangements which were bringing port operations under a standard company and commercial framework, subject to the provisions of the Commerce Act and the Fair Trading Act.

The Government's second priority - normalising employment arrangements - was tackled by the 1989 Waterfront Industry Reform Bill. This legislation provided for the winding up on 30 September 1989 of the WIC which administered the labour pool for waterside employees engaged by the various stevedoring companies or container terminal operators. Under the pool system, there was no link between employee and employer, or often between an employee and a particular port. Rather, employees were allocated to various stevedoring companies as the need arose - that is, as vessels arrived in port - and were frequently flown in to distant ports, particularly to cope with seasonal peaks in work demand, such as during the fruit exporting season. The costs of these arrangements were substantial, but they were largely hidden by the pooling arrangements, rather than being visible, and the responsibility of a particular port or industry.

This legislation took effect from 1 April 1989 and negotiations are underway between employer representatives and the Waterfront Workers' Union to determine the broad structure and specific terms and conditions of the new arrangements. Both sides have agreed that the present conventional port industrial award will lapse on 30 September. While a major issue yet to be

resolved concerns the extent and form of redundancy payments to displaced watersiders, the Government has said that it is now up to industry to determine the format of the new arrangements. It has indicated that scope exists for major efficiency and cost gains to be achieved but, consistent with its overall philosophy, has declined to state where or how they might be made.

Meanwhile, local government reform, which will see the creation of new, more responsible and accountable regional and territorial Government authorities as from November 1989, will result in the harbour boards being disbanded at that date. Ownership of the port companies will transfer to the (elected) regional and territorial Government authorities, with the 51 per cent minimum ownership provision still intact. However, this latter provision is currently under review by the Minister of Transport.[3]

2.2 Shipping

On the shipping side, a 1983 Ministry of Transport Review of Shipping lead to the publication later in that year of a Shipping White Paper. The White Paper explained the Government's intention to establish a competition policy regime for international shipping. Subsequently, a Shipping Bill was presented to Parliament which provided for competition to be safeguarded and fair dealing promoted in outwards shipping. The Government retained reserve powers to act in the event that restrictive shipping regimes were imposed by overseas Governments.

In 1987, a joint Ministry of Transport and Australian Bureau of Transport Economics review of trans-Tasman shipping was undertaken and published.[4] The Review found that crewing costs were 9 per cent of the total costs of liner operations while stevedoring and terminal costs accounted for 30 per cent. However, because cross-traders could afford to price trans-Tasman cargo at marginal cost (given that their vessels were crossing the Tasman with empty capacity in any event), the Review concluded that freight savings could be 20-25 per cent for liner cargo and 50 per cent for bulk

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3 Jeffries, Hon W P (1988), 'Port Company Shareholding Could Change', News Release, 12 December 1988.

4 BTE, NZMOT (1987), Review of Trans-Tasman Shipping, June 1987.

cargo if cross-traders were allowed to operate. The Review also noted that liner freight rates had fallen by 14 per cent in real terms between 1981 and 1986, due largely to an increase in competition on the routes, where previously the Union Shipping Company had enjoyed a near monopoly.

In 1988, the Government decided that the Shipping Corporation of New Zealand - New Zealand's national flag carrier - should be privatised. This transaction was completed in 1989 when the Corporation was sold to ACT (NZ) Ltd, the local subsidiary of a major United Kingdom liner shipping operator. The Minister of Transport noted that this venture into state-owned shipping had cost taxpayers $170 million, had never returned any dividends and would yield no more than $40 million by way of sales proceeds.[5] He acknowledged some benefits - such as the introduction of competition to the Tasman in 1983, the development of controlled atmosphere containers and the establishment of an innovative landbridge service to North America - but concluded that it had been 'an appallingly bad investment'.[6]

In June 1989, the Minister announced that a study would be conducted 'to see whether the laws controlling coastal shipping can be improved.'[7] He indicated that the study would be conducted by his department and that a discussion document would be released at the end of October. It would address all aspects of the economics of coastal shipping, including the impact of current laws and the attitude of the maritime unions. It would review trends in freight rates and shipping costs, including shore based costs, and the level of competition in the coastal shipping trade. A somewhat similar review has recently been undertaken in Australia by the Industries Assistance Commission.[8]

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5 Jeffries, Hon W P (1989), Address to the Annual General Meeting of the New Zealand Shipping Federation, Wellington, 21 June 1989.

6 ibid.

7 Jeffries, Hon W P (1989), 'Study to Challenge Coastal Shipping', News Release, 20 June 1989.

8 Industries Assistance Commission (1988), 'Coastal Shipping' (No.415), 20 July 1988.

3. THE NEED FOR PORTS AND SHIPPING REFORM

The economy-wide effects of inefficiencies in ports and shipping activities are difficult to quantify. A recent Treasury estimate suggested that the cost to the economy of these inefficiencies could be as high as 1.5 per cent of GDP, or $800 million in 1986/87.[9] This estimate, relying on a number of subjective assumptions and 'back of the envelope' calculations, drew in turn on more rigorous quantitative analysis conducted by the Australian IAC in the context of its recent Coastal Shipping report.

Other sources, including other Government Departments, believe that the Treasury estimate is a substantial exaggeration. Even if it is, the true figure is still undoubtedly very large and the case for reform does not need to rest on a more accurate estimate. As a well-known former Australian Member of Parliament (Hon Bert Kelly) once observed in a related context (the impact of industry protection on export industries): "if your foot is being crushed by a wagon wheel, it is of little comfort to be told that it is difficult to measure the weight of the wheel."

It is perhaps more revealing to describe a number of specific examples of inefficiency and to relate them to an overall analytical framework. In that way, the necessary conditions for reform can be established, against which the Government's initiatives to date can be assessed.

3.1 Inefficiencies in Port Operations

The terms and conditions of watersider employment are very generous by New Zealand standards. According to a report prepared for the Treasury, the average annual income of waterside workers in 1987 was about $37,000, for 27 hours of work per week.[10] More recent estimates put the current figure at around $48,000. This is roughly double average weekly earnings throughout the economy.

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9 The Treasury (1988), 'Shipping and Ports: Labour Costs,' Treasury Report 5427, 12 September 1988, released under the Official Information Act.

10 Garren, M (1988), 'Labour Related Issues Facing New Zealand Ports,' released as part of 'Labour Related Issues in New Zealand Shipping and Ports', Treasury Report 2729, May 1988, under the Official Information Act.

According to the paper prepared for the Treasury quoted earlier, the cost of unloading an LCL by the Auckland Container Terminal is $880, and $988 if undertaken by Wellington Container Terminals Ltd. By contrast, it would be $220 for a freight forwarder and $350 at a conventional wharf.[14]

Another inefficiency introduced at the time of containerisation was the stipulation that, in most situations, non-cellular vessels (that is, roll on - roll off vessels, or vessels which carry containers but have their own cranes to lift them), were prohibited from being serviced at container terminals. The prohibition was introduced at the instigation of major shipowners and incorporated into the 1972 Principal Order relating to container terminals. It has since been stoutly defended by both the watersiders and the harbour workers unions.

The charitable explanation for this practice is that the major container shipping companies feared that they would be unable to berth quickly if a plethora of non-specialised vessels, with perhaps only a handful of containers, were ahead of them. The less charitable explanation is that it was seen at the time as an effective means of squeezing out non-cellular competitors.

Whatever the reason, the effects have been damaging to the interests of port efficiency and shipper competitiveness. In the first place, container terminals have been operating significantly under capacity, at times and in some locations by as much as 60 per cent. Second, non-cellular vessels have generally faced much higher costs - because many more waterside workers have been required to complete the tasks of cargo handling. And third, while perhaps more difficult to quantify, New Zealand shippers have been denied the full benefits of competition in shipping services during the 70s and 80s. Structural change within the international liner shipping industry has led to more non-conference operators, frequently using non-cellular vessels, and more flexible custom designed vessels, able to handle containerised, conventional and/or bulk cargo alike. The additional expense of container servicing at conventional wharves has discouraged owners of non-cellular vessels from developing regular services to and from New Zealand.

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14 Garren, op.cit.

Yet another example is the so-called container equity or equity payments scheme. This scheme was introduced along with containerisation in the early 70s and initially involved all FCL (full container load) cargo handled by container terminals. Its 'justification' was as compensation to watersiders for loss of work as a result of greater mechanisation. It was paid by shipping companies to the WWU and the original intention was that it would boost superannuation payments to retiring watersiders. The rate of payment was raised to 49 cents/tonne the year after the scheme was introduced.

In 1976 it was withdrawn from the container terminal agreement on the grounds that it was not a form of remuneration paid by employers to employees. However, the scheme has continued to operate - no doubt under threat of industrial disruption - and was extended in the late 70s to cover FCL cargo handled by conventional wharves. For conventional ports and container terminals other than Wellington, payments are made by shipping companies to the WIC which in turn pays the WWU.[15] The amount paid to the WWU for the 1987-88 year was $1.8 million.[16]

It is understood that the payments are now used by the unions for 'general activities.' The continuation of the scheme is impossible to justify and it should be terminated from 1 October 1989, if not before.

There is also a 'modernisation fund' which is a payment to retiring watersiders reflecting length of service. This fund is administered by the superannuation fund and levies are imposed on cargo to meet the obligations. Its origins were also at the time of containerisation, to 'acknowledge moves towards greater mechanisation of cargo handling'. The initial rate of payment was $100 for each year of service; those rates remain but payments in respect of more recent years have been indexed and now amount to about $500 for the most recent year. The fund is additional to normal superannuation provisions and as at 31 March 1989 it contained $20 million in levy receipts, more than sufficient to meet existing

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15 For container terminals, six-sevenths of the payments go to the WWU and the remainder to the Harbour Workers Union. The latter receives no payment in respect of conventional ports, much to its chagrin. Payments in respect of Wellington are made direct, not via the WIC.

16 WIC (1988) 'Annual Report, 1987-88', p.36.

obligations. This fund also should be scrapped, as part of the new employment arrangements.

Much of the labour market inefficiency on the New Zealand waterfront stems from the artificial line of demarcation between the watersider and harbour board cargo service worker. Prior to the passage of the Ports Reform Bill in 1988, harbour workers had the sole rights to operate mobile plant, such as forklifts, on the wharf proper, while watersiders had exclusive rights to load or unload to or from the vessel. A line of demarcation - also referred to as the chalk line or the point of rest - on the wharf near the vessel was religiously observed. In addition, waterside workers had the responsibility of straightening stacks (of cargo or containers), repairing and washing containers and, as already noted, loading and unloading LCLs.

This division of labour is particularly inefficient because it:

- reduces flexibility and creates a requirement for additional labour; and

- creates a proliferation of supervisors, often two supervisors for the one labourer or piece of equipment, when harbour workers and their equipment are being contracted to stevedores.

Following the passage of the Waterfront Industry Commission Amendment (No.2) Act 1988, harbour boards lost their exclusive rights to own mobile plant. Watersiders were then able to operate such equipment owned by stevedores and the WWU sought to extend coverage accordingly. In December 1988, a Labour Court judge found for the watersiders in a demarcation dispute. More recently, another judge, arbitrating on a similar dispute at another port, made the Gilbertian ruling of granting coverage to the two unions on alternate days (this decision has been appealed). In other situations, there has been greater competition between harbour workers and watersiders as to who obtains the contract for driving mobile equipment on the wharves, with useful reductions in stevedoring costs as a result. The most recent development has been a negotiated agreement on demarcation between the two unions, but a long run solution may depend on union amalgamation.

Similarly, when container terminals were built, conflict arose between harbour board workers and watersiders as to which group should have the right to work at the facility. On this occasion the Federation of Labour became involved, and a 'composite workforce' was created consisting of six watersiders for every harbour board worker. The intrinsic logic of such a ratio is difficult to detect.

Under the labour pool system administered by the WIC, there has been little or no loyalty between employees and stevedoring companies, and no incentives for employers to seek more productive employees, offer training or other investment in human capital, or to innovate.

The practice of 'go slows' has been widespread, with watersiders able to manipulate the requirements for advance ordering of gangs. In an example described by Federated Farmers, a request for a Saturday shift was made on a Friday afternoon by the union in order to complete loading of hay on a live sheep carrier. The request was denied as the work could have been completed on the Friday. A 'go slow' was invoked and the stevedore had no option but to order a Saturday shift from the WIC. Thus secure that they would be paid for the additional shift, the watersiders resumed normal work, the loading was completed and the vessel was able to sail on schedule on the Friday.[17]

In terms of performance, it is not surprising that measured productivity in New Zealand ports has been low by international standards. While using rates of container movements per hour as a proxy for container terminal productivity is subject to some qualifications, the differences are sufficiently marked to be compelling. A survey by *The Economist* in 1987 found that New Zealand's rate of container movement of 20-30 per hour compared poorly with Northern European ports (35-40), Tokyo and Hong Kong (40-45) and Singapore 64. According to the article, the principal aim of the Port of Singapore Authority is to achieve even faster loading rates for container vessels. Turnaround times of as little as 7.5 hours have been reported, less than half the times achieved as recently as 1980.[18]

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17 Federated Farmers, op.cit., Appendix I.

18 *The Economist* (1987), 'South East Asian Ports - Clever Boxing', 18 April 1987.

In the petroleum industry, some companies are able to obtain a direct comparison between costs associated with the use of watersiders (who are involved, for example, in handling chemicals such as caustic soda) and non watersiders (in the handling of petroleum itself). In the view of senior petroleum company executives, the relevant costs have been 5 to 7 times greater where watersiders have been involved, including WIC levies and 'bonuses', than where non watersiders have been engaged.

3.2 Shipping Inefficiencies

Turning to the shipping industry, the story has been much the same, although a number of improvements have been occurring in recent years. According to a companion paper by Garren, earnings of New Zealand seafarers are comparable with those in other OECD countries, but crewing levels and conditions are far greater.[19] The artificial conditions which exist are held in place by an alliance between the Seamen's Union and the WWU, in which the WWU agrees to ban ships with non local crews where necessary.

For example, in the trans-Tasman trade, Garren has reworked figures provided in the Trans-Tasman Shipping Review to produce the following comparative table.[20]

	Average trans-Tasman Crew Numbers	Average OECD Crew Numbers	%Over-Crewed
Container Vessels	24.3	22.4	9
RO/RO Vessels	28.8	21.0	37
General Cargo Vessels	19.0	15.6	22
Bulk Carrier Vessels	30.4	21.6	41
Tankers	37.5	23.5	60

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19 Garren, M (1988), 'Labour Related Issues Facing New Zealand Shipping', released as part of Treasury Report 2729, May 1988, under the Official Information Act.

20 ibid.

This table has now been overtaken by a number of quite substantial improvements which have been made in recent years. Figures provided by the Ministry of Transport[21] indicate the following current crew levels and comparison with OECD (assuming that OECD levels have remained constant):

	Average trans-Tasman Crew Numbers	% Over-Crewed
Container Vessels	23.6	5
RO/RO Vessels	24.3	16
General Cargo Vessels	19.0	22
Bulk Carrier Vessels	23.0	6
Tankers	27.0	15

The improved crew position has been confirmed by the Managing Director of the Union Shipping Group Ltd, Mr John Keegan. He has indicated that the current position can be summed up as follows:

> "In Australia, crews on RO-RO vessels trading trans-Tasman are 21 and are expected to reduce to 18/19 next year. In New Zealand RO-RO vessels are currently at a manning of 27, bulk vessels at 23 and under current proposals this will reduce to RO-RO 22 and bulk vessels 21 later this year when the vessels are modified to allow for common messing facilities. Tankers have been reduced to a crew of 27."[22]

Mr Keegan stressed that the Union Shipping Group has invested substantially over the past 12 months in crew training in order to achieve greater integration.

The excess costs and inefficiencies extend beyond the numbers of seafarers in each crew. First, there is the number of crews per vessel - in the case of New Zealand (and Australia) two crews are required, operating on approximately a three month on, three month off basis. By comparison, United Kingdom seafarers are allowed only 84 days of paid leave per 365 days of work.[23]

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21 Ministry of Transport (1989), personal communication.

22 Keegan, J N (1989), personal communication.

23 Some improvements have also recently occurred in the leave area. For example, the *New Zealand Pacific* has a 0.73 week leave for one week worked, and *Forum New Zealand II* a 0.62 week leave to one week worked. The industry's objective is to achieve manning levels at, or close to, OECD levels - J N Keegan, personal communication.

Second, New Zealand vessels continue to enforce rigid lines of demarcation between the four classes of seafarers (each represented by a separate union) - seamen, cooks and stewards, engineers and officers. Most maritime nations have instituted the practice of 'general purpose manning', associated with multi-skilling. These demarcation issues partly explain why extra crew numbers are required. A further reason is that the different classes of seafarers 'require' separate dining and recreation facilities - hence a greater requirement for cooks and stewards. Even more cooks are required because of the range of choice for meals which must be provided. Again, these outdated practices or expensive luxuries can only be sustained in a non-competitive environment.

Shipowner representatives have been pressing for a single ratings union and a single officers union for some time. Some improvements have been made recently, for example in the areas of integrated ratings manning, common messing between officers and engineers, and pre-ordering of meals. The New Zealand Seafarers' Union was formed with effect from 1 August 1989 from the merger of the Seamen's Union and the Cooks and Stewards' Union. Whether these changes have been occurring fast enough, given that other countries have also been improving their competitiveness, is debatable.

Third, special conditions - not representative of other shipping nations or other New Zealand industries - add to costs. For example, the Shipping and Seamen's Act provides that a seaman who becomes ill on board a vessel is automatically entitled to 90 days of leave on full pay.

Like waterside employees (until 1 October 1989), seamen, cooks and stewards are industry employees, not permanently employed by one particular shipowner. They are engaged under a roster system known as 'the corner'. This system's provisions are detailed in the Maritime Award. Shipowners fund the scheme by a levy which covers a guaranteed wage and administration costs. The system is strongly supported by the unions and tolerated by shipowners as a supposed remedy to 'the bad old days of casualisation'. It is administered by the Ministry of Transport's Marine Administration Division on a self-funding basis.

There are varying views as to the impact of the corner system on shipping costs and performance. Certainly, like all pooling arrangements, it militates against mutual employee/employer interests and acts as a disincentive for shipowners to seek to innovate, to train their employees or to encourage superior performance within the workforce.

The trans-Tasman trade has been reserved for vessels crewed by Australian or New Zealand seafarers by means of an 'accord' between the seamen and waterside unions on both sides of the Tasman. The accord was signed in 1974 and reaffirmed in 1988. Occasionally, exceptions are allowed - in the case of specialised tonnage or where outports such as Fremantle are involved - but they are uncommon. Notwithstanding the additional competition which has existed in liner services since the early 80s, the fact remains that, by any measure, trans-Tasman freight rates are excessive.

The 'accord' does not enjoy legislative backing but successive Governments on both sides of the Tasman have not repudiated it. The closest to official criticism is the following comment contained in a recent address by Mr Jeffries:

> "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."[24]

No Australian Minister has even made this type of public observation. As a result and in the face of inevitable industrial retribution, shipowners or cargo interests have not been prepared to confront the 'accord'.

As noted earlier, the 1987 trans-Tasman Review concluded that liner freight rates were 20-25 per cent higher than they need be and bulk rates 50 per cent higher. While land based costs were more important in total than crewing costs, a more competitive market would have considerable potential for achieving freight reductions because vessels already crossing the Tasman with surplus capacity would be able to carry trans-Tasman cargo on a marginally costed basis. Cross-traders could offer lower freight rates, not because they were foreign, but because they could profitably charge at marginal cost.

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

In practice, the willingness and ability of cross-traders to offer these savings would be influenced by container logistics, availability of capacity, and constraints imposed by the requirements of the major long haul trades. It should also be noted that the bulk trade freight disparities are now much less than they were in 1987, because of a sharp increase in charter rates.

Concern has been expressed that, if cross-traders were free to service the trade, the existing dedicated services would be threatened and possibly destroyed. This concern appears to be exaggerated because:

- there is less likely to be sufficient westbound (New Zealand to Australia) cross-trader traffic to carry more than about half New Zealand's liner exports to Australia; hence a dedicated service would still be required, even if it carried less cargo than at present;

- there is undoubtedly considerable potential for New Zealand and Australian carriers to achieve further cost savings - and the spur of a genuinely competitive market would significantly improve the likelihood of such improvements being made;

- there is the possibility of a dedicated trans-Tasman service being offered by cross-traders; and

- in the ultimate, shippers are quite capable of making the commercially appropriate trade-off between quality and price (dedicated versus non-dedicated) in a shipping service.

Overall, even if these concerns are accepted as having some validity, they do not constitute a case for not seeking liberalisation in trans-Tasman shipping arrangements.

4. COMPETITION ISSUES IN PORTS

The previous section described examples of inefficiency, cost increases, waste and rorts which exist in New Zealand's ports and shipping industries. The broader question of why these problems are able to continue requires consideration.

Economic policy is ultimately concerned with the efficiency of resource use and the way in which the resulting income is distributed. Productive efficiency requires that goods and services are produced at least cost. Allocative efficiency requires that, taking into account the constraints facing producers and consumers, all possible welfare-enhancing transactions between producers and consumers should take place.

Monopoly behaviour potentially conflicts with the objective of allocative efficiency. A monopolist may prevent welfare-enhancing transactions by setting its prices significantly above the levels required to generate a normal, risk adjusted rate of return. Its capacity to do this is limited by the market pressures it faces.

Additional constraints on the behaviour of an organisation with market power are imposed through the response of the political process to pressure from interest groups. Regulation itself generally results from interest group pressures. Whether this political pressure enhances or reduces the efficiency of an organisation's behaviour depends to a large extent on the distribution of political power between the various interest groups.

An analysis of the extent of a port company's market power, and the potential threat to allocative efficiency it imposes, entails an investigation of the significance of the market and political constraints that it faces.

4.1 Market Constraints

The potential market power of a port company is constrained by alternative suppliers of port services and by suppliers of substitute services. The significance of these constraints depends on the ease with which other suppliers can, at a similar cost, provide or expand services which are close substitutes for those supplied by the port company.

The port companies are also constrained by the behaviour of their customers. In particular, large customers may have sufficient bargaining power to reduce the effective market power of the port companies.

Competition between port companies imposes a significant constraint on port pricing. The potential for competition depends on the costs of internal transport to and from competing ports and their customers. The use of containers has encouraged inter-port competition by improving the ease of cargo-handling. Deregulation of road transport has effectively broadened the catchment area of each port. The improvements in rail efficiency are continuing to increase the potential for competition between port companies. Further moves to enhance inter-port competition are discussed in Section 6.2.

Within a port, there are also a number of avenues for enhancing competition, for example, pilotage and navigation, land-based berthing facilities, loading facilities and facilitation of land transport facilities. Competition for land-based facilities is possible through separating the ownership of potentially competing berthing and loading facilities. For example, the port in Melbourne has five competing container terminals.

The scope for such competition within New Zealand ports may be more limited because of the lower volume of trade relative to the sunk cost investments required. For example, to establish competing container terminals at a port would require four portainer cranes in one port (since the efficient loading of container ships generally requires two). Only the container terminal in Auckland would have the minimum of four portainer cranes necessary to create competing operations. Further investment in container facilities might not be economically feasible because of the current oversupply of container loading capacity. In other cases the potential for competition may be limited by the scarcity of the physical resources needed for a port, for example, protected berths and the availability of land transport networks.

The scope for competition may be impeded by regulatory barriers to entry through, for example, the conferring of exclusive rights to operate port facilities or the introduction of onerous planning approval requirements.

Stevedoring services can clearly be operated competitively. Already, separately owned stevedoring companies operate on the waterfront. More are likely, and their competitive influence is likely to be more effective, after October 1989.

While competition can be introduced for some port activities, it will not have a significant effect if one organisation retains control over an input which is essential to the effective operation of the port (that is, if it controls one vertical level of the market). In that case, the organisation still has the ability to extract all of the available monopoly rents from port operations. For example, a port company may be able to extract monopoly rents from control over pilotage and navigation through the harbour's waterways. Competition between different berthing facilities would not then reduce the monopoly price charged.

The scope for intra-port competition is highly dependent on the ownership structure adopted. A single port company controlling all of the port's services would not have incentives to encourage intra-port competition which might limit its market power. On the other hand, it has no incentives to prevent competition if it can extract monopoly rents through its control of one level of the market. In that case, competition has no significant effect on the monopoly rents extracted by the port company.

A relatively weak constraint on port pricing is imposed by the possibility of a shipper using other modes of transport. Air transport will substitute for some sea transport business at the margin (particularly where there is a time/price trade-off). Land transport has almost entirely substituted for coastal shipping for moving goods around New Zealand.

In the port industry, a small number of customers, whether shipping companies or shippers, account for a large proportion of total trade. These customers are important to the profitability of the port companies and therefore effectively have a degree of bargaining power in their relationship with port companies. Such customers could generally be expected to achieve satisfactory pricing arrangements through negotiation. However, in the case of shipping companies, their incentive to do so is weakened by their capacity to pass on cost increases to their own customers.

In summary, the exercise of market power by a port company is constrained to varying degrees by inter-port competition, intra-port competition (potentially), the substitutability of air and land transport and the countervailing power of some of the major port users. The port companies will have little market power over non captive trade or for the major port users. Nevertheless, for the smaller port users who are 'captive', an unregulated profit-oriented port company may be able to set prices significantly in excess of the marginal cost of supplying the services, so long as it can distinguish such customers and set discriminatory prices for them. This then becomes a matter for the Commerce Act.

4.2 Political Constraints

Because of a port's importance to the local community and its apparent natural monopoly characteristics, it would be naive to believe its behaviour will ever be determined solely by 'market' considerations. Even an unregulated port company is likely to remain exposed to the implicit or explicit threat of regulation as interest groups attempt to use the political process to obtain outcomes that provide the greatest benefit to themselves.

The threat of regulation and the threat of change to existing regulation are not different in kind or type. The threat of regulation is a form of actual regulation. The more carefully the government defines the threatened regulation and the more carefully it defines the unacceptable behaviour, the closer the threat of regulation will become to explicit regulation. The overall impact of the threat of regulation will depend on the incentives and opportunities it establishes for parties involved in the regulatory process. The incentives of these parties will be shaped in part by the nature of the threatened regulation.

The relative political power of the different interest groups will influence a port company's pricing decisions. In the past, as Section 3 has indicated, the most potent political players were the port employees. Their interests were advanced by monopoly pricing of port services and poor port company profitability. The employees captured the resulting rents though excessive remuneration, overmanning and inefficient work practices. Public ownership meant that port companies were not subject to a strict profitability constraint and that the elected boards were sensitive to the

employees who represented a large number of local voters. Other users represented fewer votes or were outside the local region (for example, shipowners). The port users, including exporters and importers, appear to have been relatively unsuccessful in the regulatory game as demonstrated by the high price they have been forced to pay for many port services.

The political influence on a port company's behaviour will continue to be important in the future. The reforms should reduce the political power of employees (through a reduction in their numbers and also through removal of local body election considerations if port companies are privatised).

The threat of regulation may prevent port companies from discriminating between captive and non-captive customers when the costs of providing port services are comparable and readily assessable. Because the port companies have no significant market power in relation to non-captive customers, the threat of regulation may have the positive effect of ensuring that the benefits of competition are passed on to the captive customers. However, it remains to be seen whether the net effect of political pressure in the future will be efficiency-enhancing.

5. ASSESSMENT OF THE GOVERNMENT'S PORTS INITIATIVES

5.1 Corporatisation of Ports

The formation of port companies with a clear commercial charter has represented a significant step forward. Already, after less than a year's operation, there is evidence of more effective management and changing attitudes under the new environment, even though many of the key personnel concerned have not changed. This indicates the capacity of management to respond to its operating environment and the incentive structures provided - and hence the importance of the overall ground rules.

The process of the identification of assets and their transfer to port companies was carried out jointly by the harbour boards and the Ministry of Transport. Outside expertise was engaged by both sides, with the Ministry validating or modifying the proposals submitted by the harbour boards. The Ministry endeavoured to apply a consistent approach, using discounted cash flow analysis and a valuation reflecting a price earnings ratio of 12. The Treasury was also involved in the process.

Some observers have commented that the process was far less robust than that led by Treasury in the context of the corporatisation of larger State-Owned Enterprises. Certainly, harbour board managers who were about to become port company chief executives had an incentive to keep the valuations as low as possible, so that an acceptable return on investment would be more easily achieved. Some port company representatives have conceded that this was the case.

The port company boards are appointed by the harbour boards (this will change after the harbour boards are abolished on 1 October 1989) with the requirement that a broad spread of commercial expertise be involved and the restriction that not more than two harbour board members be appointed to the respective port company board. The general view appears to be that the calibre of the new boards is a significant improvement and that broader commercial perspectives are being brought to bear on port company deliberations.

Concern has been expressed that all the harbour board general managers have been transferred to the equivalent positions with the port companies

and that an opportunity for an infusion of new management talent has been missed. This may be true, although it will be of less concern to the extent that management can demonstrate its capacity to act differently in the new environment. In any event, new senior management personnel are likely within the near future, as up to 25 per cent of present port company managing directors are believed likely to retire or to transfer elsewhere within the next two years.

Initial financial results for the first six months of port company operation are encouraging although a longer period is needed before a full assessment can be made. The Minister for Transport issued a statement welcoming the results achieved by Ports of Auckland Ltd, commenting that:

> "not only has the company turned the harbour board's loss making situation into a satisfactory profit, but it has held charges at May 1988 levels."[25]

Ports of Auckland Ltd's financial objectives are expressed in terms of returns on operating assets and equity capital, and a dividend and debt/equity ratio policy. The particular targets specified may, of course, be relatively easy to attain, depending on the asset valuation at the time of the company's formation. However, it has also signalled an intention to reduce port charges by 10 per cent in real terms over two years. The holding of charges at their May 1988 levels was followed on 1 June 1989 by a 2 per cent reduction in shipping, wharfage and pilotage charges. Further reductions will be needed to achieve the 10 per cent objective.

The after-tax profit of several of the port companies for their first six months of operation is as follows:

- Auckland $5.4 million
- Tauranga $3.5 million
- Wellington $1.6 million
- Northland $1.1 million
- Lyttelton $0.7 million

Of course, from the viewpoint of shippers, reduced charges is a more desired goal than port company profitability. Given the smaller workforce in a

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25 Jeffries, Hon W P (1989), 'Minister Puts Efficiency Challenge to Port Companies', News Release, 5 June 1989.

number of the port companies, compared with their predecessors, it might have been expected that more rapid progress would have been achieved in this area. The 40 per cent real reduction in rail freights over the past three years is an indication of what is possible in a deregulated environment and with a more commercial charter.

To date, there have been no changes in port company ownership although a number of expressions of interest have been made, publicly and privately. For example, the former Chairman of the Dairy Board said recently that:

> "The Board is currently looking at buying shares in the Auckland and Bay of Plenty port companies. In each case the aim of purchasing a shareholding is to have the right to appoint one of the directors of the Board of the company. The dairy directors would act as watch guards to ensure that the regional councils do not allow costs to escalate, or use the port as a source of funds for unrelated (and possibly ill-justified) urban activities."[26]

Similar views are held by a range of other interests. However, most are reluctant to move while control of the port companies remains with the harbour boards/regional authorities. It is not that potential investors necessarily want control - let alone full ownership - themselves; rather it reflects a reluctance to become involved while control necessarily remains with local interests who may, when the chips are down, pursue a parochial or non-commercial approach. The implications of this issue are taken up in Section 6.4.

5.2 Port Company Activities

There are a number of encouraging examples of productive efficiency improvements made by port companies which are presumably being reflected in the profit results already announced. These range from rationalisation of labour and activities to the contracting out of services and the entry of some port companies directly into the provision of stevedoring services.

When Port Nelson Ltd commenced operation, it approached the Harbour Workers Union inviting its members to take up shares in the port company in return for the termination of inappropriate work practices - such as

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26 Graham, J T (1989), Address to the 1989 New Zealand Dairy Conference.

receiving 10 hours pay for 9 hours work. This offer was rejected by the employees who opted to take a cash settlement instead. However, as a result, the company's workforce was reduced from 103 to 63 (that is, by nearly 40 per cent) and greater labour flexibility became possible.

Similarly, the Wellington Harbour Board had 527 employees in 1987. This number was reduced to 280 (47 per cent fewer) at the time of the port company's formation. An attractive redundancy package was negotiated along with greater workplace flexibility - for example, the capacity of those in the works or maintenance areas to drive mobile equipment when a staff shortage occurred.

The Wellington Port Company has formed a port services division, the manager of which is responsible for the maintenance and operation of all floating equipment and related employees - such as pilots, tug operators and boatmen. As a result, costs and manning levels for maintenance have fallen sharply. When there is clear accountability for such functions, the real necessity for particular tasks tends to be more closely assessed, rather than 'maintenance' being a convenient task to fill all slack periods of a day, or a year.

Going one step further, Port Nelson Ltd has contracted out its pilotage services to the individuals involved. According to the port company management, the outcome has been beneficial all round - less administration and supervision required for the port company, and greater flexibility and performance incentive for the pilots.

Port Nelson Ltd has also formed its own stevedoring company in conjunction with several major cargo interests. It now competes with the established stevedore, which happens to be 50 per cent owned by the WWU. The new company has not yet won a large share of the available business, and even some of its equity participants have continued to engage the competitor. But it has succeeded in injecting a competitive stimulus and at least one major shipper has seen its stevedoring charges reduced by 40 per cent as a result.

There are some who are uneasy at the prospect of port company stevedoring subsidiaries. They feel there is the possibility that the port company might make life difficult for competitors in a variety of subtle ways. Indeed at Port

Nelson itself, litigation has been initiated by a stevedoring company against the port company under the Commerce Act. The action is yet to be heard by the High Court.

When and if a port company stevedoring subsidiary gains a dominant or monopoly position in a port - perhaps as a result of predatory pricing - then stevedoring costs could escalate rapidly, to the detriment of shippers. The chances of this occurring will be slight to the extent that barriers to entry for new stevedoring companies remain low. Possible remedies to prevent such tendencies are discussed in Section 6.4.

5.3 Employment Negotiations

The crucial matter immediately ahead is the negotiation of a new award for waterfront employment, to take effect from the time of the WIC's demise on 1 October 1989. Two awards are involved - one for conventional ports, in which waterside workers only are involved - and the composite agreement for container terminals, in which harbour board workers are also involved. The main emphasis to date has been on the former.

The major issues surrounding the negotiations are:

- whether the negotiations will proceed on a port by port or national basis;

- the form and extent of redundancy provisions for watersiders who will not be employed under the new arrangements;

- how the contingent redundancy liability for those that will continue to be employed, in respect of their pre 1 October 1989 period of service, will be handled;

- the way in which redundancy costs will be funded;

- the precise form of future waterfront employment - direct employment by the various stevedoring companies, the formation of port labour pools involving employment companies that would hire out their employees on demand,

the possibility of inter-hire between stevedoring companies, the conditions under which casual labour could be employed, especially in seasonal ports, or combinations of all of these alternatives; and

- the approach to past work practices now recognised as being inappropriate, and whether any financial inducement will be offered for those work practices to be terminated.

Those handling the negotiations with the union are representatives of the actual future employers - stevedores, port companies and container terminal operators - and not other parties such as shipowners or shippers. However, there has been a major shift in responsibility away from shipowners, the catalyst for which was shipper interests. In essence, the employers have been made more accountable to shippers for their actions. While, in the first instance, the new employers will continue to be under the control of their customers (shipowners), from now on shippers will be taking a far greater interest in what is occurring than hitherto.

This has important implications for the future in that shippers ultimately bear the cost of waterfront activities and it is therefore they who have the greatest incentive to see those costs minimised. Conversely, shipowners have in the past tended to operate in a cost-plus environment, knowing that cost increases would ultimately be recoverable via the freight rate. The wider implications of this shift in employer responsibility are discussed in Section 6.1.

It is imperative that the finalisation and funding of redundancy and the negotiations themselves should be handled at the individual port rather than the national level. Not only will this encourage greater flexibility and an outcome best tailored to local needs and circumstances, it is also consistent with the approach signalled by the Government - for example, in the decision, as part of the Ports Reform Bill, to terminate inter-port labour cost cross-subsidisation and have the relevant costs borne by each port (see Section 2.1).

Predictably this issue is emerging as a major sticking point in the negotiations. Its essence was recently summed up by the Auckland President of the WWU. He is reported to have said that:

"separate port arrangements would destroy the watersiders' power base."[27]

This statement is undoubtedly true. It is equally true that New Zealand will not be able to obtain the full productivity, efficiency and competitiveness benefits from reform unless the privileges, the rigidities, the rorts and the other monopoly rents which this union power base has fostered are swept aside. It is vital to the reduction of market power exercised by port companies, either directly or via the actions of port company employees, that opportunities for inter-port competition be maximised. Part of this involves preventing the scope for collusion between ports, which would be more likely were a uniform national industrial award to operate.

The alternative to a national award is not, as the union president fears, a 'bargain basement deal' leading to the exploitation of watersiders and a return to 'the bad old days', but rather a realistic and sustainable set of terms and conditions which:

- are more in line with conditions of employment elsewhere in New Zealand;
- provide incentives for performance; and
- recognise particular regional circumstances and commodity interests.

The WWU has indicated a preparedness to make extensive 'concessions' - such as direct hire, non-permanent labour and transfer between stevedores - in order to preserve at least a skeleton national award plus individual port schedules. The extent of these 'concessions' may seem significant by comparison with the past but, in reality, they are no more than what is commonplace elsewhere and intended by the Government's policy change. Therefore any suggestion that they represent a sufficient step forward should be strenuously resisted.

Indeed, there is a very real risk that employers may fall for a short-term trap - of accepting the 'concessions' offered as a first step in the hope of further

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27 The Evening Post, 'Further Talks Today on Waterfront Dispute', 21 August 1989.

improvements later, but in fact preserving the basic structural elements in the industry and, with it, the WWU's traditional capacity to exert centralised control, contrary to shipper interests and those of the broader community. Over time, the same excessive cost structures could re-emerge.

Without effective port by port negotiations, New Zealand's economy will forgo a unique opportunity for major and durable improvements in port performance.

The question of redundancy payments is also crucial to the success of the negotiations. This involves the extent of payments, who will receive them and how the payments will be funded. The parties involved had earlier agreed that watersiders made redundant would receive a redundancy package. A total of 280 watersiders has recently been made redundant by employers and a special cargo levy has been struck to fund the $12 million required, given that the WIC does not have surplus funds to make the payment. The average redundancy payment, inclusive of fringe benefit tax, is therefore approximately $43,000.

At the end of this initial redundancy process, there will be just under 3,000 watersiders in employment. The next question is how many are likely to be required beyond 1 October? This is difficult to answer as it depends on the local circumstances of stevedoring companies and port companies, competitive interaction between stevedoring companies within a port, and the outcome of issues such as LCL loading and unloading and the capacity of non-cellular vessels to be serviced at container terminals. The general view appears to be that the post 1 October workforce will comprise between 1,800 and 2,200 watersiders.

Assuming that a further 800-1000 watersiders will not be required after 1 October, and that the average redundancy payment for them is $43,000, a total of $35-43 million will need to be found.

The remaining watersiders will carry into the new system a contingent liability for redundancy in respect of their previous service. Potential employers are understandably reluctant to accept this liability, even if most of the individuals involved are not likely to be made redundant in the normal course of events. The WIC has made no financial provision for this liability, so the issue must be addressed. The need to cover a redundancy

obligation for service after 1 October 1989 would form part of the normal responsibilities of the new employers.

In principle, the issue could be resolved either by a buyout or by an institutional funding mechanism which would meet requirements if and when they arise. The practical resolution of the issue is a matter for the negotiations. Similarly, another important part of the negotiations is the way in which inappropriate past work practices will be discontinued.

The next issue to be addressed is how the redundancy payments should be funded. Last December, the Minister of Transport announced that income from assets which remained with harbour boards at the time the port companies were formed would assist the funding task.[28] These assets are substantial - believed to be in the region of $400 million, although heavily concentrated in Auckland and Wellington - but many are low yielding. More recently, the Minister detailed an arrangement which would generate a total of about $30 million over a three year period.[29] $12 million would be provided from a 75 per cent levy on the net income of harbour board land, and $18 million would come from a maximum 5 per cent levy on port company shares being transferred to local authorities. The Minister added that the assistance would only be provided if 'real benefits were shown to accrue. It would be up to those receiving the money to prove the benefits.'

The Government has played an appropriate catalytic role in helping to resolve the redundancy funding issue. However, the Government has also acknowledged that the $30 million will be insufficient to meet total requirements. A further amount of $10 million has been suggested as potentially available. This money derives from levies collected for, but not required to be paid to, the Accident Compensation Corporation.

Over and above these contributions towards redundancy, the entire industry - shippers, stevedores and shipowners - will need to resolve how any outstanding funding requirements will be met. In doing so, a balance will need to be struck between considering additional sources of funding - and therefore encouraging overly generous concessions - and being too

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28 Jeffries, Hon W P (1988), 'Government Encourages Waterfront Reform', News Release, 11 December 1988.

29 Jeffries, Hon W P (1989), 'Waterfront Redundancies to be Funded', News Release, 19 July 1989.

parsimonious - and possibly threatening an optimal outcome to the negotiations.

Any payments to remaining watersiders must be conditional on both an effective award negotiations outcome and adherence to the agreements over an extended period.

Finally, the award negotiations should ensure the ability of individual stevedoring companies to hire their employees directly. Direct hire will enable employers to achieve maximum employee flexibility. Given the ebbs and flows of competition between stevedoring companies, it may be necessary for a system of inter-hire to be implemented as an adjunct to direct hire. In addition, in those ports with a highly seasonal shipment pattern, there may need to be a facility to engage supplementary employees on a temporary basis. Recruitment should henceforth be handled by employers in the normal way, and the past role of unions in this area terminated.

5.4 Likely Developments After 1 October 1989

While it is, of course, difficult to forecast what might eventuate in the immediate aftermath of 1 October 1989, two things are reasonably certain, provided the award negotiations are not unexpectedly de-railed.

First, there is a good prospect of achieving, on an across-the-board basis, reduced-stevedoring charges of around 30 per cent - and, in some ports, up to 50 per cent - reflecting reduced manning and improved productivity. Reduced manning of this order of magnitude has already been achieved by some of the new port companies (see Section 5.2). There is every expectation within the industry that equivalent reductions are achievable in the case of watersiders.

Reduced port company manning has not yet resulted in an equivalent reduction in charges and pressure will need to be maintained to achieve this - with both port companies and stevedoring companies. The fall in rail freights of around 40 per cent in real terms over the past three years demonstrates what is possible.

Second, there is likely to be a significant influx of new stevedoring companies at a wide range of ports, especially companies formed by consortia of shipper interests. This is a particularly encouraging prospect and it will ensure that established stevedores are kept on their toes. It is vital that the delivery of stevedoring services be competitive and, provided barriers to entry remain low, the threat of new entry should keep even dominant operators charging competitively. A key issue here is the ability to hire temporary labour.

A further requirement, especially to ensure that initial benefits are sustained, is that inter-port competition be increased. This issue has a number of facets which are discussed in the next Section.

6. FURTHER PORT REFORMS AND RELATED CHANGES

Valuable as the Government's ports reforms to date have been, the process will not be complete on 1 October 1989. Additional reform measures will be needed and private sector interests should take several further initiatives themselves. This section of the paper outlines what those changes should be.

6.1 The Role of Shippers

The role played by shippers in determining the way in which the employer side of the current waterfront award negotiations should occur has already been described (Section 5.3). Although the direct employers - stevedoring companies, port companies and container terminal operators - are handling the negotiations, they have been made more accountable to shippers rather than, as traditionally has been the case, solely to shipowners. This is as it should be. While shipowners have usually paid the bills of stevedores, shippers have ultimately borne the cost. Shippers have the greatest incentive to ensure that those costs are minimised and that competition and efficiency considerations are appropriate to that objective.

The corollary is that as much as possible of the land-leg component of total shipping costs should be paid directly by shippers and not indirectly via the freight rate. This has a number of significant advantages in both principle and practice:

- first, it makes the costs transparent, so that areas of greater and lesser cost and efficiency can be easily identified; if shippers are paying the costs directly, they are far more likely to demand action where it is needed, especially if significant inter-port cost differences are revealed;

- second, as part of this, it will widen inter-port competition, encourage entry of new participants where opportunities are greatest and minimise market power enjoyed by particular port companies;

- third, it can lessen total land-based shipping costs by providing a closer alignment between what is rational at the individual and overall level than frequently occurs in a pooled and largely hidden system; and

- fourth, it will enable shipowners to concentrate on what they do best - operating vessels at sea - and will lessen land-based barriers to entry for new shipping operators which are usually high if the incumbents have effective control of the land-based infrastructure.

A necessary part of greater shipper influence is that costs should be calculated and paid on a port by port basis. This will mean that the historical practice of applying a pan New Zealand freight rate will be able to continue, but only on the sea-leg component. It will also mean terminating some of the pooling practices which were an article of faith at the time of the introduction of containerisation. Experience since has highlighted the disadvantages of these practices - principally that they make it easier for monopoly rents to be extracted from shippers and distributed among unions and businesses who thrive in a cost-plus environment.

A similar debate has occurred in Australia during much of the 80s. It has centred on the two principal liner shipping cargoes, wool and meat. In both cases, much of the land-based costs have been deleted from the freight rate in the major trades. As a result, farmers and wool and meat exporters have been taking a far closer interest than previously in what occurs prior to shipment, and a range of improvements, consistent with the points made above, have arisen - in cost levels, inter-port cargo shifts and new shipping services.

6.2 Inter-Port Competition

Conventional wisdom in New Zealand has been that a majority of the country's exports are captive to a particular port and the degree of inter-port competition is therefore limited. While the On Shore Costs Study stated that 50 per cent of New Zealand's cargo is captive, the New Zealand Ports Authority produced figures which suggested that the figures might be far

higher - for example, 67 per cent for Auckland and 88 per cent for Wellington.[30]

Whatever the true figures may have been to date, the level of inter-port competition is likely to increase in future. It is, of course, essential that it do so if benefits are to be maximised. There are a number of reasons why inter-port competition is likely to increase:

- in a deregulated environment, where costs are transparent, calculated on a port by port basis, and paid up-front by shippers, shippers will have a far greater incentive and ability to assess inter-port alternatives;

- the substantial reductions in rail freights which have occurred in recent years will facilitate the movement of cargo from one port to another;

- major shipping companies, given the right environment, may be tempted to relocate a substantial portion of their activities from a traditional port to an alternative, the mere threat of which, given the relative importance of such a decision, should minimise any attempt at overcharging; and

- in some specialised situations, the application of modern technology may enhance coastal shipping opportunities to contribute to inter-port competition (see Section 7.1)

Maximising inter-port competition, and identifying further ways to enhance intra-port competition (see next section), are the best ways to guard against the appropriation of monopoly rents by port companies or their employees. Port companies will have little market power over non captive trade or for the major port users. For smaller port users who are 'captive', a port company may be able to set prices significantly in excess of the marginal cost of supplying the services, so long as it can distinguish such customers and set discriminatory prices for them. Apart from making port charges as visible as possible and paid up-front by shippers, the best way to prevent

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30 Without impugning the Ports Authority's motives, it might be noted that the higher the captive element, the greater the justification to some people for an interventionist body like the Ports Authority having responsibility to 'guide' port industry investment and planning.

such outcomes is to have the port company ownership aligned with shipper interests. If there is still a problem, there is a role for the anti-competitive provisions of the Commerce Act (see Section 6.4).

6.3 Future Port Company Improvements

The progress achieved by port companies over the past 12 months can be extended, even without additional legislative change. Issues for consideration include:

- the feasibility of more port company initiated stevedoring ventures, especially in ports where there is limited competition at present and possibly in conjunction with appropriate shipper interests;

- the introduction of more explicit performance-based remuneration contracts for senior management personnel where performance can be objectively assessed;

- the development of employee share ownership incentives for port company employees, to encourage shared objectives between management and the workforce;

- the identification of opportunities for contracting out particular port company activities where there are mutual benefits in doing so; and

- the specification and publication of port company objectives not only in terms of profit and return on capital, but also of declining real levels of charges in line with reduced manning and increased productivity.

It is up to shippers in particular to ensure that these issues are addressed and, where possible, implemented. As part of this process there is a role for regular analysis of port company performance and wide dissemination of the results.

6.4 Privatisation of Port Companies

As noted earlier, the question of the ownership control of port companies is being reviewed by the Minister of Transport. There are three relevant issues:

- whether the present stipulation that at least 51 per cent ownership by harbour boards/local authorities should be relaxed;

- if the limit is relaxed, should port companies be rquired to divest ownership (or a portion of it); and

- should any regulatory regime be imposed to guard against a pattern of ownership deemed to be contrary to the national interest or in any other way undesirable.

On the first issue, there seems an unambiguous case for relaxing the present 51 per cent limit. This limit is already discouraging some groups from seeking to invest in port companies on the grounds that continued parochial control may be inconsistent with commercial decision making. More generally, the threat of takeover, in port companies as in the wider business community, is one of the ultimate sanctions for poor management and financial performance. There seems no sound reason why this sanction should not be present with port companies.

Given that the 51 per cent limit may be relaxed, a subsidiary question is whether there is any value in prescribing a new limit above zero. Again there is no sound case for doing so. Once control of port companies is made contestable, there seems little point in requiring minority local ownership - whether it be 49 per cent, 20 per cent or whatever.

The second issue is whether partial or complete privatisation of port companies should be mandatory - as opposed to being merely desirable. In one sense forcing privatisation is akin to pre-judging the issue - concluding in advance that port company management, given the present ownership structure, will by definition not be as effective as it would under an alternative structure.

Prior to the commencement of the new port companies, the Business Roundtable argued for a policy of privatisation. Among the options canvassed were:

- sale of shares on the open market, for example by tender; and

- distribution of shares without consideration directly to their owners, that is, rate-payers; a public listing of shares would then ensure that the normal monitoring mechanisms and incentives would apply and provide for ready transferability.[31]

The NZBR also noted that neither of these options would preclude employee and management participation in port companies. Finally, it argued that 'if the preferable option of immediate privatisation is not proceeded with, it would be necessary to require all boards to progressively relinquish their shareholding over, say, 3-5 years.'[32]

It may be felt that the existing owners will have little incentive to sell, especially given the windfall manner in which they inherited port company assets. Against this it is argued that some financial pressure will be imposed in the form of the redundancy package announced by the Minister (see Section 5.3). Regional and local authorities may also be reluctant to come up with the new equity injections that will be required by some ports in due course.

The interest of the Dairy Board, among others, in investing in port companies has already been noted (Section 5.1). Recently, the Dairy Board has been forced to suspend its interest. In the case of Auckland, it is understood that the Auckland Regional Authority has made it plain that it was not willing to even consider the sale of shares for some months.[33] It regarded the port company shares as a source of income to keep rates in Auckland down. Furthermore, the ARA advised the Auckland Harbour

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31 NZBR (1987), 'Corporatisation of Harbour Boards - A Submission to the Minister of Transport', August 1987.

32 ibid.

33 New Zealand Dairy Board (1989), personal communication.

Board that if it sold shares before 31 October (the date on which the harbour boards cease operation), the ARA would take legal action to stop the sale.

On the face of it, this is an extremely worrying development, and quite contrary to the Government's objectives. Equally, it confirms the necessity for user groups to seek to influence port company behaviour in the interests of efficiency and competition.

While in an ideal world there may be no need for legislation to force privatisation of port companies, the Auckland situation suggests otherwise. It will obviously be vital for the issue to be kept under constant review.

The third problem is the issue of whether any regulatory regime is required to govern or circumscribe potentially undesirable port ownership structures. This is a thorny issue as it requires hypothesising about a number of 'what ifs'. It has its parallel in the question of airport ownership to which the Government is also giving attention.

Certainly, it is not difficult to imagine circumstances in which port ownership could be seen as disadvantageous to either the national or a narrower commercial interest. Some examples include:

- all New Zealand port companies being acquired by the Government or an agency of a potentially hostile foreign power;

- all or some port companies being acquired by overseas shipowner interests;

- acquisition by groups which may decide that the assets could be better utilised in alternative development projects; and

- acquisition by consortia of major shippers which may discriminate against minor shipper or importer interests.

However, it needs to be asked whether these possibilities are at all likely in practice or whether alternative mechanisms are already in place, or could be invoked, if the circumstances warranted. For example, ports being acquired by a foreign Government would have to be viewed as a highly unlikely

event. If the prospect arose, the New Zealand community and Government would be outraged and steps would no doubt be taken to prevent such a purchase proceeding. This eventuality would be foreseen by any foreign Government which gave a moment's thought to the subject.

Inter-port competition is the most important element limiting the market power possessed by a port company. Horizontal aggregation of competing port companies would increase their market power and should therefore be prevented. The Commerce Act should provide sufficient constraints to prevent aggregation once the ownership of the port companies has been settled. However, it is important that in the initial stages of the reform process an organisation is not permitted to own competing ports.

Competition for land-based facilities could be introduced by placing separable facilities into separate ownership. The introduction of intra-port competition could potentially provide market constraints on port operations. This option is limited by the availability of assets that are physically separable and which could be operated on a stand-alone basis. The direct competition benefits would depend on whether the port company retains monopoly control over an essential input to port services. Separation may involve costs although these probably would not be large in relative terms. For example, while separate ownership of container and conventional cargo terminals may reduce the market power of the companies, it may reduce the productive efficiency gains that could arise (for example through better utilisation of waterside labour) if both port facilities were owned by the same company. Constraints on the merger of competing intra-port companies could be explicitly imposed or alternatively left to the judgment of the Commerce Commission.

Restrictions on foreign ownership would not assist in preventing competition problems. Foreign owners are no more nor less likely than domestic owners to engage in monopoly pricing. The constraints each will face are the same - competitors, potential competitors and the regulatory environment established by the Government. The major impact of restrictions on ownership is in reducing the constraints imposed by the threat of takeover on the performance of the managers of port companies.

At the commercial level, the normal provisions of the Commerce Act are relevant. For example, a port company would contravene Section 36 of the

Act if it had a dominant position in the market and used that position for the purpose of restricting, deterring or eliminating a potential competitor in that or any other market.

There have been few cases involving Section 36 so there is some uncertainty about its practical impact. Section 36 was applied in the 1987 case of ARA v Mutual Rental Cars Ltd. In that case, the judge concluded that exclusion from the market by means of a gateway facility *prima facie* indicates anti-competitive intention unless the exclusion could be explained by reasonable constraints in the circumstances. The case cited the United States 'essential facilities' doctrine with approval. If the essential facilities doctrine could be applied in New Zealand, it would ensure that a dominant firm (such as a port company) could not arbitrarily discriminate amongst alternative users of its facilities or terminate a long-standing relationship with the intent of disadvantaging a competitor. Such a rule would reduce a port's ability to price discriminate between different customers. Thus the effect of competition for non captive or powerful users would be transmitted through to other users, especially if prices were transparent.

The problem for politicians or officials who wrestle with these issues is that they worry they will not have thought up, and then second guessed, every conceivable possibility. Therefore, there is a strong temptation to insert a blanket or reserve regulatory provision 'just in case'. It is uncomfortable to think that one might be 'caught out' by a smart market operator. Unfortunately such provisions can often constrain quite acceptable conduct.

In general terms it is difficult to envisage circumstances which, for commercial reasons, would require special regulation over and above that covered by the normal provisions of the Commerce Act. If the Commerce Act proves to be insufficient, additional regulatory constraints could then be considered. There may be a political case for explicitly recognising the possibility of acquisition by a foreign Government or agency, however remote the possibility might be.

In summary, privatisation of port companies, in whole or part, is highly desirable, especially where equity partners represent shipper interests and are thus likely to require port company performance to be consistent with those interests. The present 51 percent rule should therefore be removed and the normal provisions of the Commerce Act used to prevent

discriminatory behaviour by port companies, for example against minor shippers. Mandatory privatisation of port companies should be required or at least kept under active review in case there is evidence of non-commercial behaviour by the existing port company owners.

6.5 Amendments to the Labour Relations Act

In a number of respects, the Labour Relations Act does not provide a level playing field as between the various parties involved in industrial negotiations. To that extent it is inconsistent with the Government's general policy approach. The issues, of course, extend far wider than the ports and shipping industries.[34] However, it is important to note several aspects which have relevance to these industries.

First, the requirement that minimum union membership should exceed 1000, which is partly designed to reduce the scope for demarcation disputes, makes port by port negotiations unnecessarily difficult. The national body of the union clearly has an incentive to prevent such negotiations, as this would threaten its power base, even if the members involved saw merit in a local approach. Accordingly, the minimum membership requirement, combined with effective compulsory unionism, could potentially preclude individual ports from negotiating with their own waterfront labour. If this outcome raised costs or reduced inter-port competition, it would clearly conflict with the Government's objectives. It is sobering to note that Japan has 70,000 trade unions with an average membership of 170 - and, of course, a much lower percentage of union membership than is the case in New Zealand.[35] Japan is not characterised by massive demarcation disputes, let alone an impaired rate of economic progress.

Similarly, procedures to achieve changes in union coverage are both cumbersome and heavily biased in favour of the *status quo*.[36] The interests of workers seeking a change of coverage come third in a three step

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34 For example, they were extensively canvassed in New Zealand Business Roundtable (1987), 'Submission to the Labour Select Committee on the Labour Relations Bill', March 1987.

35 Quoted by Sir Ronald Trotter in an address 'Reforming the Labour Market - Idle Dreams or Real Prospects?' National Press Club, Wellington, 29 May 1986.

36 New Zealand Business Roundtable (1987), op.cit., p.12

procedure. If the result of a single ballot of the relevant workers (which could involve the sole member of a union at a particular workplace) is negative, the application fails. The system is further reinforced by the restriction that only existing unions, not new ones, can offer services to would-be members of another union.

An effective labour relations system should allow employers and employees to devise contractual arrangements at whatever level suits their circumstances - establishment, enterprise, industry, regional or national. The current system of national awards, which extend via blanket coverage to all employers, is a totally inadequate framework for firms with different requirements and abilities to pay, and workers with different job aspirations and locational preferences. For example, its inability to take account of the position of firms under pressure in regional areas, and the different costs of living of workers in provincial towns, is a major reason for the high rates of regional unemployment.

Given the desire of the union movement to 'defend the national award system', the provisions for award disaggregation are, like the question of coverage, heavily biased in favour of the *status quo* and against greater regional flexibility.

Finally, the threshold question of compulsory unionism itself must continue to be addressed, even though it is regarded in some quarters as one of the most sacred of cows. Voluntary unionism is increasingly the norm overseas - even in countries, such as the United Kingdom, with a craft union heritage like that of New Zealand. Non unionised employment is not typically a threat to income levels - indeed usually the reverse is the case as it encourages workers and management to develop shared objectives without external influences or the creation of fictitious disputes.

A recent poll demonstrates that New Zealanders continue to be strongly opposed to compulsory unionism, four years after its restoration. In a survey conducted by the New Zealand Herald and the National Research Bureau, two-thirds of those questioned preferred a system of voluntary unionism.[37] Similar majorities have been recorded in other polls conducted on the issue over many years. The support for its continuation by the

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37 Quoted in New Zealand Herald, 13 July 1989.

Government and the labour movement is clearly unrepresentative of the community at large.

6.6 Civil Remedies

Finally, there is often a need for civil remedies to be available to assist in the effective resolution of industrial disputes. Such remedies are usually only invoked as a last resort measure but are nonetheless vital to achieving a level playing field - especially given the past history of industrial disputation in the waterfront and shipping industries.

This is one area where New Zealand can learn from Australian experience. Since the insertion, and subsequent refinement, of secondary boycott provisions in the Trade Practices Act (Sections 45D and 45E) in the mid 70s, Australian employers have had an effective legal instrument to deal with illegal secondary boycotts. The legislation has been effective for two reasons - first, actions are heard before a 'real' court, the Federal Court of Australia, rather than the Conciliation and Arbitration Commission (now the Industrial Relations Commission) and second, injunctive relief can be obtained quickly. The Federal Court is interested in substantive legal argument, not assertions, bullying or threats of dire consequences if a particular outcome is not forthcoming. It is prepared to issue interim injunctions seeking cessation of the secondary boycott, at short notice if necessary. Failure to accept the injunction puts the offenders in contempt of court, the financial penalties for which rise steeply and quickly. Claims for damages may be heard subsequently.

There is now a fairly extensive case law detailing how and in what circumstances S45D/E can be used. There have also been some notable cases which proceeded to the issuing of damages, especially the $A1.8 million awarded against the Australasian Meat Industry Employees Union in the Mudginberri case.[38] As a result, the mere hint that S45D/E is to be utilised is now often sufficient to resolve an otherwise intractable industrial problem - a far cry from arbitral proceedings and the hallmark of a very effective instrument.

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38 See Houlihan, P X (1986), 'A Brief History of Mudginberri and its Implications for Australian Trade Unions,' in Arbitration in Contempt, proceedings of the H R Nicholls Society.

There have also been cases in Australia recently where litigation has been taken through State Supreme Courts under the common law. Unions have been successfully sued for damages pursuant to industrial disputes. Industrial relations 'experts' said it could not happen and that it would exacerbate tensions. It has happened and it has exerted a sobering influence on illegal union behaviour.

Not surprisingly, the trade union movement reacted with outrage to these developments and the Hawke Government promised to delete the secondary boycott provisions from the statutes. However, this attempt failed when the broader industrial legislation of which it was a part was withdrawn under great employer pressure just prior to the 1987 election. When the revised legislation forming the IRC was introduced subsequently, the secondary boycott amendments were absent.

Their permanence has probably now been guaranteed in that one union has recently, for the first time, used the provisions against another union. The Government has also advocated civil remedies being taken against domestic air pilots in a recent major industrial dispute.

In New Zealand, the legal position is less clearcut and the case law is less extensive. There is no direct equivalent of the secondary boycott provisions, although some action is possible pursuant to the Commerce Act.

The Labour Relations Act specifies what are lawful and unlawful strikes and lockouts. It also determines the jurisdiction of the Labour Court in relation to torts and injunctions. Essentially, lawful strikes (S233) relate to disputes of interest or in respect of redundancy matters. Unlawful strikes (S234) relate to disputes of rights, demarcation issues, union membership or a change in union coverage, or strikes in essential services. Strikes can be lawful against one's own employers, but not when employees of another union are involved - that is, a secondary boycott. S242 of the Act specifies a number of torts (conspiracy, intimidation, inducement of breach of contract, or interference by unlawful means with trade, business or employment) over which the Labour Court has full and exclusive jurisdiction.

Other torts can proceed under common law and be heard in the High Court. For example, a recent case involving the Movers Association - whose

members handle domestic furniture removals for example - was taken to test the LCL loading/unloading issue (see Section 3.1). Because the particular tort being alleged - detinue and conversion - was not one of those specified in the Labour Relations Act, it was able to be heard before the High Court. The matter has not yet reached finality.

Regardless of the outcome of the current award negotiations, it is likely that unions will attempt over time to 'claw back' past privileges. A clear knowledge of the provisions of available civil remedies which may assist in resisting such tactics is obviously essential. Because there does not appear to be widespread awareness of the relevant issues at present among business managers, the preparation and wide dissemination of an explanatory paper on the subject would seem most desirable. If such an exercise highlighted particular deficiencies in the legislation, appropriate amendments or extensions could be sought.

7. SHIPPING REFORMS

Reforms in the shipping industry fall fairly naturally into four categories:

- coastal shipping;
- trans-Tasman shipping;
- international shipping; and
- employment terms and conditions.

In addition, of course, the competitiveness of overall shipping services is influenced by the impact of land-based costs. This final section of the paper briefly reviews current policy and commercial issues in each of the four categories.

7.1 Coastal Shipping

In New Zealand as in Australia, coastal shipping has been a declining activity over many years. Despite geographical considerations and, until recently, the high level of regulation in road and rail, coastal shipping has consistently lost out to land transport modes. Cook Strait necessitates an inter-island shipping component but even this expensive waterway has not caused an upsurge in longer distance shipping services.

The main commodities still reliant on coastal shipping are coal, cement, timber, wheat and limited quantities of general cargo. Coal is one commodity which, apart from its transport to the North Island for consumption by the Electricity Corporation, sometimes uses a coastal shipping leg prior to export, reflecting difficult weather conditions in the South Island port.

The wheat industry has been particularly disadvantaged in recent years. Traditionally, wheat has been shipped to the North Island using Union Shipping Company vessels, where it has been processed into cereal products. Wheat has also been imported from Australia to complete New Zealand's requirements. When the New Zealand Wheat Board, the agency responsible for co-ordinating imports, was disbanded about two years ago, processors were free to source their grain from wherever they chose. As a result, and with international freight rates well below coastal (or trans-

Tasman) rates, third country imports became more attractive. Consequently, the high coastal shipping costs had to be absorbed by New Zealand wheat farmers if market share was to be preserved.

In other words, the New Zealand wheat industry became the victim of partial deregulation: the demise of the Wheat Board left it more vulnerable to imports, and the continued protection given to coastal shipping meant that it was difficult for the industry to fight back.

Indeed, to rub salt into the wound, the direct coastal shipping service was then withdrawn. Faced with reduced farmgate wheat prices, farmers not surprisingly switched production to barley, the prices for which had become relatively more attractive. The volume of wheat produced dropped and the Union Shipping Company judged that its service was no longer viable. This was exacerbated by the fact that wheat consignments from Australia, or elsewhere, were much larger (15,000-20,000 tonnes) than from the South Island (typically about 5,000 tonnes).

Remaining wheat then had to be shipped at even higher cost in containers by rail to North Island markets. The cost of transport, which had been about $70 per tonne by sea - already nearly double international bulk freights for far longer voyages - subsequently increased to $85 per tonne by rail from Christchurch to Auckland, and $110 per tonne from Invercargill.

It is unrealistic to expect that a major revival in coastal shipping will take place. The key to assessing future opportunities is not to do so from a traditional perspective, but in terms of the contribution which new technology can make. There is also its possible role in widening inter-port competition for cargo destined for export. There are already some encouraging signs.

For example, there have been recent demonstrations of Finnish designed 'pusher barges', involving a barge component being clipped on to an engine component, allowing quick and flexible movement. While the barge is being loaded or unloaded, the engine can be pushing a different barge elsewhere. This is analogous to an articulated semi-trailer in reverse and it is deemed suitable for the movement of a range of bulk commodities, such as coal, grain, timber, salt, glass sand and scrap metal.

Other vessels, requiring minimum crews, have been investigated for use in positioning timber around the coast to specialist export timber ports. A conventional barge service utilising containers is now a very real possibility and offers significant savings. Barges used on the New Zealand coast are subject to international crewing levels and conditions.

A general cargo service, the Spirit of Free Enterprise, has been operating for several years between Lyttelton and Wellington, and Lyttelton and Auckland. In this service, semi-trailers can be driven directly on to the vessel and positioned. The trailer is uncoupled and the prime mover driven away. The reverse procedure occurs at the other end of the journey. The proponents claim that it is flexible, quick and economical. It avoids, for example, the need to involve a freight forwarder as the owner of the cargo can be responsible for driving it on to and off the vessel.

A range of alternatives has been examined for the Cook Strait service, including hovercraft. One new operator attempted to offer a competitive service to the passenger/rail ferry several years ago but it did not prove viable. Consideration is currently being given to privatising the service, which forms part of the Railways Corporation.

The review of coastal shipping, now being conducted within the Ministry of Transport (see Section 2.2), will presumably analyse these various developments. The Minister has denied that the review is to be a 'trojan horse' to enable the termination of cabotage (the system that ensures that no foreign vessels operate on New Zealand coasts). Nevertheless, the lack of effective contestability which cabotage leads to is unquestionably central to the poor performance of coastal shipping in New Zealand, as it has been in Australia.

The barriers are both legislative and industrial. The legislative barriers can be removed by Government action. The industrial barriers can be removed by business, provided it knows that the Government considers such action to be consistent with overall policy objectives and provided the various disciplinary mechanisms which may be required to support commercial negotiations are effective. It is up to the Government to provide a clear signal as to what its policy objectives are.

7.2 Trans-Tasman Shipping

An efficient and economical trans-Tasman shipping service is a vital ingredient to the success of CER. Both Governments have been ahead of schedule in winding back protective barriers inhibiting trade. But the question of shipping has continually been placed in the too hard basket - with both Governments inclined to blame 'domestic agendas' of the other for the delays.

At least in a policy sense it is now accepted that trans-Tasman shipping is a service to facilitate trade, rather than being an economic activity in its own right. The alternative view had been held within some Australian bureaucratic circles in the past. It reflects the immediate commercial interests of ANL, rather than shipper interests.

The cause and effects of problems with trans-Tasman shipping have been clearly established. The cause is a non-competitive environment, held together by the maritime 'accord', and the effects have been uncompetitive freight rates and a range of inefficiences and rorts.

To date, solutions have been sought by the gradualist route of negotiated incremental improvements. Attempts have been made to improve the quality of the debate and to focus on reducing port costs and some shipboard practices. The improvements may be real, but it can still be asked at what pace they have occurred, whether they have gone nearly far enough, and whether indeed the focus has been on the key issues.

There are increasing signs from the Australian end that a number of shippers and industries are losing patience with the gradualist approach. Over the past twelve months shipments of wheat, raw sugar and gypsum - and possibly others - that would normally have been expected to be made from Australia to New Zealand have been 'lost' to third country competition. The high cost of trans-Tasman shipping is believed to have been a major cause, if not the decisive reason, in each case.

Given that the maritime 'accord' enjoys no legal standing, it is open to commercial challenge. Hitherto, no commercial operator has been prepared to launch a challenge - especially given that neither Government has repudiated the 'accord' - for fear of the effects of industrial retribution. The

commercial view is understandable but it is an indictment of the lack of political will in pursuing consistent, efficiency-oriented objectives.

Without detracting from work done in recent years to improve trans-Tasman shipping - for example the reduced real freight rates in liner shipping and the wider use of custom built tonnage in specialised bulk trades - the case for the Australian and New Zealand Governments repudiating the 'accord' and encouraging the development of competitive cross-trader services is overwhelming. Such action should be taken promptly.

7.3 International Shipping

In the international shipping arena, both liner and bulk, there is little reason to consider other than a purely pro-competition policy position, especially following the sale of the Shipping Corporation of New Zealand.

Despite extensive intervention by overseas Governments in a variety of ways - such as low interest shipbuilding loans and subsidised state-owned operations in centrally planned economies - the international shipping industry has continued to adjust over the past decade. Bulk freight rates have been depressed and competition for cargoes has been fierce. The competitive balance between shipowner and shipper is now changing again. Liner services have become more flexible and the traditional dominance of Conference systems has been dented.

It is in New Zealand's trade interests to ensure that as many shipping companies as possible express interest in carrying cargo to or from the country. This means providing a flexible, efficient port system and land-based infrastructure, and not being distracted by international attempts to distort sensible shipping arrangements, of the UN Code of Conduct on Liner Conference Shipping (or 40:40:20 rule) type.

7.4 Employment Terms and Conditions

As documented in Section 3.2, New Zealand seafarers enjoy terms and conditions of employment which, by any comparison, are extremely

generous. Once again, market contestability is the best way to ensure these arrangements return to some semblance of reality.

As far as the employment system - 'the corner' - is concerned, it will appear to be even more anachronistic once watersider employment has been normalised on 1 October 1989. The view that the present system is 'self-funding' - that is, does not involve a subsidy being paid by the Ministry of Transport - and is therefore acceptable, misses the point. Quite apart from whatever the size of the administrative levy to fund the scheme may be, a pooled labour arrangement has all the disadvantages in this industry that it has elsewhere - lack of employee/employer loyalty, absence of incentives for training or skill development and so on.

Once the new waterside arrangements have settled down, the Government should give notice that seafarer employment will be normalised. At the same time, the opportunity should also be taken to negotiate more sensible conditions of employment, as is also happening on the waterfront, and to address the demarcation rigidities which so needlessly add to costs and reduce efficiency.