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Standing Committee on Infrastructure and Communications

Inquiry into the Shipping Reform Bills

Sugar Australia is an unincorporated joint venture between Sucrogen Australia Pty Ltd and Mackay Sugar Limited

In summary Sugar Australia ships about 300kta of raw sugar from North Queensland to its refinery at Yarraville Melbourne. This is carried today in licensed vessels which are internationally flagged. They will be subjected to the transitional arrangements and will end up as General License vessels under the proposed legislation. This will increase the costs of coastal shipping by 10-16% according to a study by Deloittes Access Economics[1] and reduce business flexibility. As an internationally traded commodity, it is difficult or not possible in the majority of cases, to pass on any additional business costs. In this case it is likely that the cheapest supply chain option will be pursued which could involve importing raw sugar from Asia to Melbourne and exporting raws from North Queensland.

By way of example the additional cost arising from the application of the Fair Work Act to international container ships (there are no Australian flagged container ships trading east coast to west coast) resulted in a loss of almost 30% of the Perth sugar market to Australian producers that demand being supplied by Malaysian refined sugar. So Australian raw sugar is shipped to Malaysia and processed to be sold back to Australia.

Refined sugar is an internationally traded commodity. The company uses the MV Pioneer, (one of three bulk refined sugar carriers in the world), to supply the Sydney market. The balance of product from the Mackay refinery is exported to Asia. This Australian registered and flagged vessel triangulates on the coast and internationally. No other dry bulk vessel can carry food grade product in bulk.

Sugar Australia was initially strongly supportive of the proposed legislation, but as the Bills unfolded the policy has limited attraction.

[1] *Economic impacts of the proposed Shipping Reform Package* February 2012 Deloitte

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Our concerns lie with the impact of the General Licence vessels and a lack of competition in what is essentially a thin market. In particular the forced acceptance of vessels which do not meet our International Corporate standards. Nevertheless the Act could provide an opportunity to provide a new vessel under the AISR if the Act was structured appropriately. It seems unfair that a vessel that triangulates, but is on the AISR needs to operate under the proposed conditions of the Temporary License. If a ship is owned by a strongly related party or by the same party as the shipper then it should be exempt from the Temporary License. It is highly unusual to force a shipper who owns its own fleet of trucks, trains or ships to be forced to put that business out to the market. (In this case a market constructed by legislation).

From time to time events occur, such as the restrictions on the Port of Bundaberg following the 2011 Queensland floods. The Port still remains under restrictions. To meet the immediate needs of the business it was necessary to use SVP vessels to maintain supply to the Melbourne refinery and to ensure there was sufficient ullage at the Port to not disrupt the sugar harvest. The Emergency provisions of the Act are too restrictive and would not have dealt with this situation. Therefore applications under the Temporary License provisions would have been necessary. However because the Temporary License provisions require five voyages, Sugar Australia could not have made an application. Therefore what was difficult enough under the existing legislation is impossible under these Bills.

Sugar Australia welcomed the tax reforms provided under the seafarer tax offset provisions. However a licensed vessel operating under Part A of the Fair Work Act essentially requires two crews and as the Sugar Australia vessel triangulates on the coast as well as shipping internationally, then the 91 day rule cannot be met.

We are pleased to provide our specific comments on the Acts.

Specific Comments on Exposure Draft Coastal Trading Bill 2012

Section 3 Object of the Act
The shipping industry is a service industry to the Australian economy. In the past 30 years the importance of the integrated supply chain has become well understood as part of an internationally competitive environment. Dissecting coastal shipping from the supply chain is likely to lead to a less competitive supply chain for Australian manufacturing or processing industries. It is imperative this be reflected in the Objects of the Act and be taken into consideration by the Minister in decision making.
Therefore the Objects should include a clause which reflects the role that the coastal trading framework has in promoting an efficient and effective and competitive supply chain for Australia's internationally trade exposed industries. The welfare of the coastal shipping industry should not be at the expense of the industries it is there to serve. The RIS would indicate that without reflecting this in the Object of the Act that in its current form, the legislation is value destroying – the more successful the policy is, the worse off Australia will be.

Section 21 Refusal of application
There are no grounds for appeal in Part 6 Sec 88 for the refusal of a licence. Provision should be made for an appeal to the Administrative Appeals Tribunal where information can openly be provided and contested in a situation where a party may be aggrieved by the Minister's decision.
Furthermore, shippers should have the right to appeal against the granting of a General Licence should any decision to grant a licence be considered inadequate.

Division 2 Temporary Licenses

The provisions for a Temporary License work against the Object of the Act in that they will essentially reduce the prospect of any vessels joining the Australian International Shipping Register (AISR).
Prospects do exist for additional vessels to join the AISR where triangulation is permitted. Thus a vessel can be fully utilized in international trades, which include one leg of the voyage on the Australian coast. This is a more efficient use of ships than the alternative which may force the use of a general licence vessel for the coastal leg, but require a re-positioning of an international vessel to do the export leg.
Furthermore we contend that a vessel on the AISR, which is owned by the shipper (or related parties) and carrying the shippers own cargo on the coast should be exempt from the provisions of the Temporary License that require the Minister to publish the application to general license holders. If a business makes a commitment to add a ship to the AISR to carry its own cargo in its own ship then that should not be challengeable. Furthermore under these circumstances it should not need to seek a Temporary License annually, but should have the same terms extended to it that apply to General Licence vessels ie 5 years, renewable. Provision should be made in section 34 to accommodate this.

Section 34 (3) (b) (d).
The shipper may have standard terms which have been well established and in use over an extended period of time for the engagement of ships. These requirements are based on experience and may go beyond the requirements of AMSA. A high standard of ships should be encouraged and welcomed by the Minister. It reduces risk to safety and the environment. Such provisions which could include the age of a vessel, unloading requirements and such like must also be recognised in negotiations. Vessels which do not meet the standards of shippers should not be imposed on shippers simply because there is a general licence vessel which might meet capacity and availability. The requirement of shippers must be defined broadly and include shippers standards – decisions are not based on freight rate and volume alone, but total cost and risk are uppermost in shippers in minds. Reasonable requirements must include commercial terms. Failure to do so drags the industry back to the days of SVP gaming and price gouging by licensed owners. This was a completely unsatisfactory and unsustainable regime in which to flourish, for both owners in the long run and shippers.

Section 34 (4) (5) Minister to Decide applications (Also Section 77)

It is important that the Minister has complete information available to make a fully informed decision on the issuing of licenses. However the stop clock method of determination releases officials from the obligation to make timely decisions and gather the information required up front. Stop clock provisions have frequently been abused to cover for inadequacies in resourcing within agencies. The SVP arrangements required timely decisions and the pace of commerce is such that businesses need to know when decisions can be expected. Parties can "game" the supply of information under these provisions to advantage themselves and disadvantage the other party. This is not an acceptable process for business. It encourages parties to provide insufficient information if time is their ally. The Minister has two weeks to make a decision where there is no notice to an applicant. The same period should be retained in the event there is a notice. The clock starts from when the applicant notifies the Minister following the negotiation outcome. By this time the parties are likely to have full information and the Minister will be well aware of the issues in the pipeline to resource a timely decision. The drop dead provisions of section 36 would apply in this instance also.

Section 38 Refusal of application
There are no grounds for appeal in Part 6 Sec 107 for the refusal of a temporary licence or the terms of such licence. Provision should be made for an appeal to the Administrative Appeals Tribunal where information can openly be provided and contested in a situation where a party may be aggrieved by the Minister's decision. Appeals should also cover sec 41, additional conditions imposed by Minister.

Section 61 Voyage notification requirements for Temporary Licenses.
It is not clear what the Minister will do with this information. Once a license is issued, the holder should be free to operate within the provisions of the licence (or as amended) and not be subject to compliance monitoring in advance. It is not clear the Minister will be resourced to do this anyway. Certainly an AISR vessel on a Temporary License should not have to report.

Division 3 Emergency licenses

Based on recent experience with the Queensland floods, agencies have difficulty in coping with all the demands made upon them. The Bundaberg Port has still not been restored to full operational conditions. After the initial closure it was extremely difficult to coordinate shipping with the port limitations that were changing frequently. The level of unknowns is possibly provided for in sect 64(2). However given the dependence on the Port Authorities restoration program, which was fluid, unpredictable and required special procedures to be evaluated, approved by authorities etc, the limited length of permit of 30 days s67 is too restrictive. At some point in the process it would be necessary to switch from an emergency license to a Temporary License to cover the situation. However if there were fewer than five voyages, shippers are unable to apply for a Temporary License. The Bundaberg situation could not have been managed effectively under this legislation.

Other - Compact
The Regulatory Impact Statement concludes that most of the benefits arising from the proposed changes in policy arise from the industry/union compact. Few of the benefits then are ascribed to the proposed Act. Presentation of the Bills to the Parliament should be conditional on achieving the outcomes from the compact.

Summary:

Sucrogen is supportive of sensible measures to encourage an Australian fleet. However the conditions imposed on manufacturing industry are burdensome and unwarranted. Sucrogen requests that this policy be subjected to a Productivity Commission inquiry. The policy and legislation should be re-developed on the basis of the recommendations from that inquiry.

Yours sincerely,
Sugar Australia Pty Ltd

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