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15 July 2024

Committee Secretary
Joint Standing Committee on Treaties
Parliament House; Canberra ACT 2600

Via webform:

https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission/Submit

Via email: jsct@aph.gov.au

Dear Committee Secretary,

Shipping Australia's submission to the Parliamentary Joint Standing Committee on Treaties inquiry into the "Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction".

A. About Shipping Australia

1. Shipping Australia is the principal Australian peak body that represents the locally owned and the locally active ocean freight-focused shipping industry. We provide policy advice, insight, and information to just over 70 members, who, between them, employ more than 3,000 Australians. We provide policy input to Australian State, Territory and Commonwealth Government bodies. We are recognised across Australia by politicians, public service officials, national media and trade media as being the national association for Australian shipping.
2. Our membership includes Australian ports, the local arms of global shipping agents and domestic shipping agents, towage companies, the locally active arms of ocean shipping lines, and a wide variety of Australian-owned and locally operated maritime service providers. Services provided by our members include ocean freight shipping, local seaport cargo handling, domestic harbour towage, Australian marine surveying, and domestic pilotage, among other services. Our members handle nearly all Australian containerised seaborne cargo. They also handle a considerable volume of our car, and our bulk commodity trades.

B. Executive Summary

3. International shipping is vitally important to the Australian economy – to our imports, our exports, the jobs that are available to Australians and to our standard of living. While, of course, there are no areas of Australian life that are immune from review or reform, ocean shipping services are vital to Australia. It therefore follows that minimal disruption to, or cost impositions on, ocean shipping is in the Australian national interest as any factors that adversely affect shipping thereby adversely affect the Australian economy and the quality of life of everyday Australian families.
4. The International Maritime Organization is the prime regulator of international commercial shipping and should remain so.

C. Importance of shipping to Australia

5. Exports and imports of goods and services (including intangible services) accounted for 25.8% and 19.9% of our gross domestic product in 2022, according to World Bank Data (accessed 06 July 2023).
6. The combined volume and value of Australia's import and export cargo (2020-2021), according to the Bureau of Infrastructure and Transport Research Economics (BITRE) publication, Australian Sea Freight 2020-21 was about 1.61 billion tons valued at about \$601.4 billion. Approximately 99.93% by volume of all cargo that enters or leaves this country is carried by ocean-going ships.
7. There were 6,315 uniquely identified cargo ships which together made a total of 30,613 port calls at Australian ports in 2020–21. This included 6,219 unique cargo ships that made 17 303 voyages to Australian ports directly from overseas ports, according to the Bureau of Infrastructure and Transport Research Economics (BITRE) publication, Australian Sea Freight 2020-21.
8. It was estimated in “Australian Trade Liberalisation: analysis of the economic impacts,” 2017 Centre for International Economics Report on Australian Trade Liberalisation for the Department of Foreign Affairs and Trade, that 1-in-5 Australian jobs were related to global trade. If that ratio still holds true today, then, based on August 2023 Australian Bureau of Statistics data which shows that over 14.1 million Australians were employed, global trade supports over 2.8 million Australian jobs.
9. Ocean shipping is vitally important to the State of New South Wales. According to the Port of Newcastle, the port handled over 404 thousand tonnes of imports with a value of AUD\$484.5 million in Calendar Year 2023 and, in the same year, it handled over 14.9 million tonnes of exports (predominantly coal), with a total value of AUD\$3.73 billion.
10. Meanwhile, according to NSW Ports – the operator of Ports Botany and Kembla, in the financial year ending in 2023, Port Botany handled exports just under 266 thousand TEU (full boxes; empties excluded) and just over 708 thousand TEU of full boxes, a total of 973,706 full TEU inclusive of exports and imports. Port Botany also handled just over 2.9 million tonnes (inclusive of both imports and exports) of non-containerised cargo (break-bulk, gas, liquids) in the same financial year.
11. According to NSW Ports, in the same year, Port Kembla handled just under 14.6 million tonnes of non-containerised cargo (break bulk, liquid, dry bulk, ro-ro) in the same financial year. As a part of that cargo, it handled over 222 thousand units of various kinds of ro-ro cargo, of which just under 213 thousand units were motor vehicles of some kind (i.e. just under 96% of that ro-ro cargo were motor vehicles).
12. It should now be obvious that ocean shipping services are vital to Australia. It therefore follows that minimal disruption to, or cost impositions on, ocean shipping is in the State and the Australian national interest as any factors that adversely affect shipping thereby adversely affect the State & Australian economies and the quality of life of everyday Australian families.

D. Shipping Australia's submission

13. We are always keen to emphasise that all activities, rules, policies, regulations, legislation, etc should be wholly consistent and aligned with International Maritime Organization (IMO) treaties, rules, regulations and guidance.
14. The primacy of the IMO over international and national jurisdictions in the regulation of global commercial maritime traffic is an internationally accepted principle and it is consequently wholly inappropriate for national- and sub-national governments to write laws in this area that conflict with international maritime law.
15. This principle of IMO primacy is – or ought to be – especially true in Australia given that our nation is a founding member of the IMO, has held a seat on the IMO Council (the organisation's executive organ), has repeatedly sought re-election to that body and has signed up to the IMO Convention, the first article of which states that the purposes of the Organization are “(a) to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical

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matters of all kinds affecting shipping engaged in international trade... [and]... (b) to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade”.

16. We of course note and accept that there are other areas of law where jurisdiction over different aspects of shipping are shared with other international bodies, such as, for example, the *Maritime Labour Convention 2006* which was developed by the International Labour Organization and which came into force on 20 August 2013.
17. Shipping Australia notes that the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (‘BBNJ’) was adopted in June 2023 and was subsequently welcomed by the International Maritime Organization and also by the International Chamber of Shipping.
18. Noting that the world maritime bodies are generally welcoming toward the BBNJ, Shipping Australia therefore also welcomes the BBNJ in principle.
19. However, we have concerns in relation to the practical implementation of the BBNJ.
20. Of prime concern is the proposal to create or adopt “Area-Based Management Tools” for conservation of biodiversity.
21. Details of what will constitute an ABMT do not yet (in relation to shipping at least) have been clearly and precisely defined, nor it is yet known what ships will be able to do (if anything; e.g. sail across an ABMT) in relation to an ABMT.
22. Controlling where ships can and cannot go is not a new concept; there are already location-based controls around the world. Traffic separation schemes, such as in the English Channel and the Strait of Hormuz (the entry / exit to the Persian Gulf), are but two. And there are a wide range of existing marine parks, particularly sensitive sea areas, and the like. There are a wide range of rules about what ships can go where in Australia’s Great Barrier Reef Marine Park, for instance. In some cases, shipping even voluntarily avoids certain areas so as to reduce the impact of ships and shipping on the living world; there are a variety of areas that ships do not travel so as to reduce the changes of whale-on-ship strike, for example.
23. In relation to the ABMTs under the BBNJ, however, it is hard to know what the impacts on shipping will be at this early stage. Only the most obvious speculation can really be put forward. Setting up new global marine parks could, of course, determine where ships can and cannot go, thereby adding complexity to international voyage passage planning, lengthening voyage times (potentially), increasing fuel consumption and therefore causing an increase in the cost of fuel, increasing costs generally (e.g. a longer voyage will increase the overall cost of crew wages for that voyage along with an overall bigger total cost for consumables).
24. Other possible restrictions could be the imposition of, say, speed limits, restrictions on the use of various technologies e.g. possible bans on the discharge of water from open-loop scrubbers for example, limitations on noise, and there could be other issues, such as strict liability for accidental pollution in global marine parks, for instance.
25. Shipping Australia is concerned that large swathes of the ocean could be locked away from use by ships, or that such areas could be located in extremely undesirable places (e.g. in the middle of straits or other waterways); or be in an area that would be extremely troublesome (i.e. involving excessive costs and delay) for ships to travel around on an approach to a given port. For example, placing a marine park in an area that would require ships to travel long distances out-of-route such as by creating long and thin marine parks to act as highways for any given marine species would be unduly burdensome if the new marine park were to lie across an established, regularly, and frequently-used shipping routes.
26. In relation to ABMTs in Australia, such as Marine Parks, it is a current point of concern that the locations of existing, Australian-declared, Marine Parks are not well defined nor are their exact locations well-known. Ships and shipping cannot comply with the rules on Marine Parks if the

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authorities do not accurately disclose exactly where the Marine Parks are and what the rules are in relation to those parks. Shipping Australia has been attempting for some time to persuade the relevant Australian State and Federal authorities to collate and promulgate this information. Similarly, Shipping Australia is concerned that future ABMTs set up under the BBNJ should be accurately charted and details (boundaries, restrictions etc) be published.

E. RECOMMENDATION(S)

27. Noting that proposals for new protected areas under the BBNJ will need to be sent by the park-proponent to the BBNJ Conference Secretariat and noting further that there will need to be consultation with a wide range of bodies for any new protected area, the Australian Federal Government, its public service / servants, and all Australian executive agencies involved with the BBNJ should be required to ensure that:
- i. **RECOMMENDATION:** the shipping industry is consulted in a full, open, frank and honest manner for all proposals that could affect shipping operations and that such consultation should not have pre-determined outcomes. Attendance as appropriate at Shipping Australia's Policy Council meetings would be ideal;
 - ii. **RECOMMENDATION:** that any proposal to create a marine park, or a marine park-like area, should not involve locating such a park in a place that would be unduly detrimental to the operation of ships or to the routing of ships;
 - iii. **RECOMMENDATION:** that any proposal to create a marine park, or a marine park-like area, should be limited in dimensions, scope, restrictions etc to that which enables the policy goal(s) to be achieved while entailing the least possible cost, burden, and / or disruption to the ocean shipping industry;
 - iv. **RECOMMENDATION:** if any marine park, or a marine park-like area(s) are actually created then these should be appropriately charted and its / their location(s), boundaries, and dimensions along with the full list of rules, regulations, restrictions, requirements, obligations, etc should be published and updated free of financial charge and on an open access basis.

Submission authorised by:

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CEO, Shipping Australia