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Coastal shipping policy in New Zealand: Economy wide implications

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COASTAL SHIPPING POLICY IN NEW ZEALAND: ECONOMY WIDE IMPLICATIONS

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ABSTRACT

Government recently introduced the Transport Law Reform Bill, which if passed by Parliament, will allow foreign vessels to uplift and discharge cargoes and passengers along the coast of New Zealand. Coastal shipping is part of the domestic transport industry along with other transport modes including road, rail and air. The domestic transport industry currently operates on a "level playing field" in a highly competitive and efficient industry, which has benefitted from deregulation and considerable restructuring over the last decade.

This paper presents a brief review of the coastal shipping industry in New Zealand and an overview of international cabotage laws. An alternative open coast shipping policy proposed by the New Zealand Shipping Federation, which is based on reciprocity and "level playing fields " principles, is presented. The scope of cost benefit analysis is outlined and the economy wide implications of the potential costs and benefits of the Government's open coast shipping policy are summarised. The potential costs to New Zealand include the effects on employment, equity, Government finances, regional development, service levels, the environment, primary industry and national defence strategy. The potential benefits primarily relate to the economic effects of possible lower freight rates, particularly for traffic from the North Island to the South Island, the route taken by most cross traders.

Government officials have prepared a Cabinet paper, which was subsequently agreed to by Government, recommending opening up the coasts to foreign vessels without undertaking an empirical costs benefit analysis. The Government officials' background papers related to this Cabinet paper have been obtained through the Official Information Act and these have been analysed. Based on this work it appears that the case for an open coast policy is far from convincing, and in actual fact there appears to be considerable evidence to suggest that the potential costs to New Zealand far outweigh the potential benefits. The conclusion of this paper suggests that Clause 240 (and other clauses) of the Transport Law Reform Bill relating to an open coast policy should be withdrawn and a full empirical cost benefit analysis should be undertaken to determine the best coastal shipping policy for New Zealand.

Keywords: Coastal shipping policy; Transport Law Reform Bill; economy wide implications; cost benefit analysis.

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1. INTRODUCTION

Government recently introduced the Transport Law Reform Bill (New Zealand Government, 1993), which if passed by Parliament, will allow foreign vessels to trade on the New Zealand coast:

> *"**240. Coastal shipping** - (1) Cargo loaded, or passengers embarking, at any port in New Zealand intended to be finally unloaded or to finally disembark at any port in New Zealand may be carried by any ship where all appropriate maritime documents are held in respect of the ship and any maritime products and seafarers on board the ship.*
>
> *(2) Nothing in this section shall limit any other provision of this Act or any other Act, or regulations made under this Act or any other Act, or maritime rules."*

The effect of this clause (and related clauses) will be to allow foreign vessels with foreign crews to uplift and discharge cargoes and passengers at ports along the New Zealand coast. These foreign vessels will not pay company and PAYE (income) taxes in New Zealand, will not be subject to New Zealand labour laws and will compete directly in the domestic transport industry (which includes coastal shipping, rail, road and air transport). In addition, most foreign ship operators generally receive subsidies and fiscal incentives from their own Governments and, in most cases, do not pay tax on crews' wages.

These conditions do not apply to New Zealand flagged ships or other New Zealand transport operators (eg New Zealand Rail Ltd or truck operators), thus creating an unfair competitive advantage for foreign ship operators. Currently operators in the domestic transport industry compete on a level playing field (all subject to the same rules and conditions in a fully competitive and deregulated transport environment). This was recognised in the 2nd draft of the Ministry of Transport Memorandum on Coastal Shipping Policy (Storey, 1993b, para 4):

> *"In many respects, coastal shipping is in a resurgent phase, actively competing within itself and with the land transport industry, and providing a wider choice of transport services for the domestic economy. Recent economic and labour reforms, such as port reform and the Employment Contracts Act, have combined with substantial industry reforms, including integrated ships and permanent company employment, to create a lower cost structure for coastal shipping, and an increasingly competitive coastal shipping environment. Gross tonnages carried on the coast steadily increased during the 1980s, and over the last eighteen months additional services have been started in competition with existing operators."*

Despite these improvements in the domestic coastal shipping industry, this open coast policy will create a different "playing field" for foreign operators compared with domestic transport operators. The proposed open coast policy is equivalent to allowing foreign airlines to compete with domestic airlines for cargo and passengers between locations in New Zealand - something which is not permitted by law. The policy is also similar to allowing foreign workers to operate foreign trucks or work in foreign owned factories in New Zealand and be subject to foreign labour laws and pay PAYE and company taxes in another country (also totally unacceptable in New Zealand).

Although there is considerable evidence suggesting that the costs to New Zealand of an open coast shipping policy far outweigh the benefits, a full empirical cost benefit analysis had not been undertaken by Government officials prior to the introduction of the Transport Law Reform Bill. This paper discusses the need for a full cost benefit analysis and suggests that Clause 240 (and other clauses) of the Transport Law Reform Bill relating to an open coast policy should be withdrawn until a full empirical cost benefit analysis has

been undertaken to determine whether foreign ship operators should be allowed access to the domestic transport industry.

The remainder of this paper is as follows. Section 2 provides some background information on coastal shipping in New Zealand. This is followed by a brief review of international cabotage laws in Section 3 and an outline of an alternative open coast shipping policy proposed by the New Zealand Shipping Federation in Section 4. The scope of cost benefit analysis is presented in Section 5 and Section 6 summarises the economy wide implications of some of the potential costs and benefits of an open coast shipping policy in New Zealand. Finally some concluding comments are provided in Section 7.

2. BACKGROUND TO COASTAL SHIPPING IN NEW ZEALAND

Already considerable competition exists in the transport sector between rail, road, sea and air. The deregulation of the road transport industry in 1983 had provided a strong impetus for restructuring the coastal shipping industry in New Zealand. With the dramatic restructuring that has occurred in the New Zealand shipping industry in recent years (Milne 1990), the coastal shipping business has become very competitive and provides an excellent, reliable and cost efficient service. Features of these changes, based on Plowman (1992), include:

- there have been substantial changes from the corner system of employing labour to company employment; the effects of the Employment Contracts Act on wage setting and employing non-union labour; and the changed work practices including multi-skilling (eg deck and engine room ratings being trained to work anywhere on the ship). These changes have resulted in staff manning of coastal vessels dropping between 20-40% in numbers between 1989 and 1992.

- coastal shipping real rates have dropped dramatically in recent years thus providing reduced costs to shippers and consumers alike. For example, Pacifica Shipping's real freight rates between Auckland to Lyttleton have dropped 27% between 1988 and 1992 and New Zealand Rail Ltd's ferry freight rates have dropped by 47% in real terms between 1983 and 1992. These dramatic reductions reflect the improved efficiency and competitiveness of coastal shipping in New Zealand.

Although real freight rates have reduced, costs have also decreased with improved efficiency. This has led to an increase in the number of operators in the coastal shipping industry in recent years. There are now about 10 different New Zealand shipping operators involving around 19 vessels (see Table 1) transporting a range of general cargo, passengers, vehicles, petroleum products and cement along New Zealand's coasts. In 1992 coastal vessels carried about 7 million gross tonnes of cargo. A detailed breakdown of this cargo is provided in Table 2. There are estimated to be about 1000 direct jobs and annual wage related costs of about $70 million in coastal shipping in New Zealand (Plowman, 1992). In addition there are a large number of indirect shore based jobs and services related to coastal shipping.

Table 1: New Zealand Coastal Shipping Operators

Ship Operator	Vessels	Cargo
New Zealand Rail Ltd	*Arahura*	General / passengers
	Aratika	General / passengers
	Arahanga	General
Pacifica Shipping Ltd	*Spirit of Competition*	General
	Spirit of Free Enterprise	General
New Zealand Coaster Services	*Northern Transporter*	General
Strait Shipping	*Straitsman*	Livestock / general
Milburn New Zealand	*Milburn Cement II*	Cement
	Westport	Cement
Golden Bay Cement	*Golden Bay*	Cement
Union Shipping New Zealand	*Kotuku*	Petroleum products
	Kuaka	Petroleum products
	Taiko	Petroleum products
Liquigas	*Tarihiko*	LPG
Sea Tow	*3 tugs*	Bulk
Southern Tug & Barge	*1 tug & 1 barge*	Logs / bulk

Sources: Derived from NZ Department of Statistics, 1993; Storey, 1993c and pers.comm., shipping industry.

Table 2: New Zealand Coastal Cargo

(for year ended 30 June 1992)

(000 gross tonnes)

Commodity	Unloaded	Loaded
Cement	465	553
Coal and coke	8	8
Petroleum products	4,329	4,529
Sand and shingle	151	151
Motor vehicles	388	393
Container goods	236	257
Other goods	1,113	1,247
TOTAL	6,690	7,137

Source: NZ Department of Statistics, 1993, Table 20.2, p415.

Currently only New Zealand registered ships are permitted to move passengers and cargoes between ports along the coast of New Zealand. This is similar to the usual international practice of **cabotage**, which is the term used in the international maritime community to mean: "*the reservation of maritime coastal trades for ships registered or licensed in the country concerned*" (ANMA, 1993). (The word cabotage is French in origin meaning coastal sailing). However there are exceptions in New Zealand to this general rule if no local vessels are available to transport specific cargoes. In this case a foreign ship operator can apply for a permit from the Ministry of Transport to shift the specified cargoes. Also any foreign operator can reflag (ie register) in New Zealand and be subject to the same general laws and conditions as other transport operators in the domestic transport industry. Under these circumstances foreign vessels would then be able to freely operate in coastal trade in New Zealand.

3. SURVEY OF INTERNATIONAL CABOTAGE LAWS

It is interesting to review the international position regarding coastal shipping. GATT does not include coastal shipping nor does the OECD in its common principles for shipping policy: *"This was so because most member countries held that it was not appropriate to allow overseas vessels to trade on their coast"* (Maritime Transport Division, 1990, p48).

Most maritime nations have a body of laws that govern the marine transportation of passengers and cargo between two domestic points and that restrict such trade to national flag vessels. The purpose of these laws varies, but all reflect social, economic, and political needs, as well as as the need to maintain resources for national security purposes.

Of the 53 respondents to a recent US survey of international cabotage restrictions (summarised in Appendix I) only 6 countries reported no restrictions whatsoever (Maritime Administration, 1991). These countries predominantly use road/rail transport for moving passengers and freight internally:

Belgium - has a very short coastal line and its major cities are inland. Belgium provides a range of direct and indirect subsidies to its merchant fleet, and it gives financial aid to shipowners and to shipping companies.

Cyprus - is a small island state with no national flag domestic marine fleet. All haulage is done by road.

Israel - Inland communication between the three commercial ports is more efficient and less costly than by sea. In general there is no interest in, or demand for, marine cabotage trade.

Kenya - Kenya's territorial and inland waterways are limited and largely undeveloped. Kenya has only one modern domestic ocean port plus small inland ports on Lake Victoria. The Government owned Kenya Railways Corporation has a monopoly on major shipping on the inland waters of Lake Victoria.

Singapore - virtually all commercial domestic transport between points within this small island nation is by truck.

South Africa - foreign flag vessels are allowed to operate without any restrictions or special permission.

Seven other countries, viz. Denmark, Ivory Coast, Netherlands, Nigeria, Norway, Panama and United Kingdom, disclaim the use of cabotage laws, but nevertheless impose restrictions that limit (or have laws that may limit), entry of foreign vessels into coastwise trade.

The remaining 40 countries surveyed indicated that they have cabotage laws that are utilised to exclude foreign nationals from domestic trade and thus maintain national control (ie comparable to the US Jones Act). These countries include Australia, Canada, China, Finland, France, Germany, Greece, India, Italy, Japan, Malaysia, Philippines, South Korea, Sweden, Taiwan & USSR. Reasons given for these laws include: to generate employment for nationals; to protect national seamen and support local shipbuilding; to develop a national merchant marine; to promote the development of a national fleet; to promote shipping, to safeguard national transport and for national defence reasons.

4. AN ALTERNATIVE "OPEN COAST SHIPPING POLICY"

Currently if a foreign shipping company wishes to transport freight along the coast of New Zealand it can do so providing it acquires a New Zealand flag for the vessel and it operates on the same terms as the New Zealand coastal shipping companies. Also if special cargoes are required to be transported around New Zealand then overseas carriers can apply for a permit to provide this service.

Although this is similar to general international practice, the New Zealand Shipping Federation has proposed an open coast policy (Plowman, 1992) based on the principle that new entrants would enter the industry on a "level playing field" basis. This proposal was developed in response to the New Zealand Government's stated intention to develop an "open coast shipping policy". The characteristics of the Shipping Federation's policy are (Plowman, 1992, para 85):

"a. Reciprocal arrangements must exist with the nation with which the foreign vessel is registered.

- This requirement is consistent with, and will promote, Government's free trade policy, but does not trade off access to New Zealand's coastal trades without receiving beneficial access in return.

b. Reciprocal nations would be those that have a significant coastal shipping task, they would also have ratified the major IMO and ILO conventions and would comply with their spirit and intent.

- This will ensure that vessels are registered with reputable flag states and avoid the burden of flag enforcement falling on the New Zealand tax payer.

c. The vessel's crew - master, other officers and ratings - are nationals or residents of a nation with which there is a reciprocal arrangement.

- NZ coastal ships are required to carry NZ crew by law. They must comply with IMO and ILO conventions, pay PAYE tax on seafarers wages, ACC & superannuation, etc. This requirement will ensure that insofar as it is possible, seafarer tax and social cost differences will not distort the coastal market.

d. The Ministry is satisfied that the reciprocal nation does not confer on the owner, charterer or vessel any form of subsidies which would undermine the level playing fields philosophy.

- The NZ shipping industry does not receive any subsidies, tax incentives, special allowances, training incentives or any other form of government assistance.

e. The vessel complies with all the specific safety requirements and standards contained in the Shipping & Seamen Act (or any legislation in substitution therefore).

- This will ensure adequate safety levels are maintained in terms of both the vessels and the training and competency of their crews."

It could be that under CER (Closer Economic Relations), Australia would be the first country to meet these conditions. This would be similar to the Memorandum of Understanding related to airline services that has been developed between New Zealand and Australia (see Appendix II). Nevertheless the New Zealand Shipping Federation proposed policy has been regarded as unacceptable by Government advisers (Storey, 1993c, para 34): *"The policy of reciprocity suggested by New Zealand shipowners is not supported."* This is in marked contrast to the Government's attitude towards aviation (Storey, 1993b, para 13):

"As a comparison with the aviation sector, the Air Facilitation Bill currently being considered allows for international airlines to carry internationally ticketed passengers between New Zealand's international airports, provided that the necessary rights had been negotiated under a bilateral international aviation agreement. This is, however, different from allowing foreign airlines to carry domestic passengers."

This paragraph was removed from the final Cabinet paper on Coastal Shipping at Treasury's request (Gould, 1993b):

> *"We would prefer you dropped this paragraph entirely. Restrictive arrangements apply in international aviation for a number of reasons unique to that industry. They do not constitute grounds for similar restrictions to apply in shipping services."*

It would be interesting to know the rationale for the differences in the Government's treatment between the two transportation modes.

Instead the Government has agreed with the recommendations of the memorandum prepared on behalf of the Minister of Transport on coastal shipping (Storey, 1993c), which has resulted in the inclusion of the open coast policy (including Clause 240) in the Transport Law Reform Bill. However this was prepared without an empirical cost benefit analysis, despite Treasury's warnings (Gould, 1993b) of the consequences of politicians' being asked to make a decision on coastal shipping policy in the absence of rigorous empirical analysis:

> *"...I still have a general concern which is that Ministers are being asked to decide on a policy matter without any real attempt at some empirical analysis. I made this point in my last letter to you and accordingly, I don't propose to labour the point anymore again."*

This reservation was also raised by other Departments, including the Ministry of Commerce (Hubbard, 1993) and the Ministry of Agriculture and Fisheries (Walker, 1993). Despite Treasury's acknowledgement that a detailed study was necessary before the best coastal shipping policy could be selected, they nevertheless emphasised to the Ministry of Transport (Gould, 1993b) their bias towards an open coast policy:

> *"Notwithstanding the foregoing, from a first principles perspective, I consider the full liberalisation option to be the preferred option".*

5. COST BENEFIT ANALYSIS

Cost benefit analysis is a method used to recommend policy actions based on a comprehensive evaluation of all the costs and benefits associated with public or private programmes and projects. When used for public sector policy making it has the following characteristics (Dunn, 1981, p244):

> *"1. Cost-benefit analysis seeks to measure all costs and benefits to society that may result from a public programme, including various intangibles that cannot be easily measured in terms of monetary costs and benefits.*
>
> *2. Traditional cost-benefit analysis epitomizes economic rationality, since the criterion most frequently employed is global economic efficiency. A policy or programme is said to be efficient if its net benefits (that is, total benefits minus total costs) are greater than zero and higher than those net benefits that would have resulted from an alternative public or private investment.*
>
> *3. Traditional cost-benefit analysis uses the private marketplace as a point of departure in recommending public programs. The opportunity costs of a public investment are often calculated on the basis of what net benefits might have been gained by investing in the private sector.*

4. *Contemporary cost-benefit analysis, sometimes called social cost-benefit analysis, can also be used to measure the redistributional benefits. Since social cost-benefit analysis is concerned with criteria of equity, it is concerned with social rationality."*

Cost benefit analysis involves considering all the costs and benefits associated with a policy or program. Dunn (1981, pp 245-8) has classified these costs and benefits as: inside (internalities depending on how the boundaries to the target group are drawn) vs outside (externalities or positive and negative spillovers outside the boundaries of the target group); tangible (directly measurable in terms of market prices) vs intangibles (indirectly measurable in terms of estimates of market prices); primary (directly related to the policy or program objectives) vs secondary (indirectly related or related to other policy objectives); net efficiency (total benefits less total costs) vs redistributional (which groups gain or lose). A comprehensive discussion of cost benefit analysis is also provided in Layard (1974).

The tasks involved in conducting a cost benefit analysis are summarised in Table 3. These tasks are interrelated and are not necessarily completed sequentially.

Table 3: Tasks in a Cost Benefit Analysis

TASK	DESCRIPTION
1. SPECIFICATION OF OBJECTIVES	Conversion of goals into objectives after structuring problem.
2. IDENTIFICATION OF ALTERNATIVES	Dependent on problem structuring, which implies alternate explanations and solutions of problems
3. COLLECTION, ANALYSIS, AND INTERPRETATION OF INFORMATION	Information from available data or feasibility analysis. Requires forecasting.
4. SPECIFICATION OF TARGET GROUPS	Listing of all affected groups (stakeholders), including losers and beneficiaries.
5. IDENTIFICATION OF TYPES OF COSTS AND BENEFITS	Description of costs and benefits by type: inside vs outside; directly vs indirectly measurable; primary vs secondary; net efficiency vs redistributional.
6. DISCOUNTING OF COSTS AND BENEFITS	Costs and benefits adjusted for inflation and interest rates.
7. ESTIMATION OF RISK AND UNCERTAINTY	Use of sensitivity analysis.
8. SPECIFICATION OF CRITERIA FOR RECOMMENDATION	Apply criteria of Pareto improvement, net efficiency improvement, internal rate of return, distributional improvement.
9. RECOMMENDATION	Choice of alternative best satisfying criteria.

Source: Dunn, 1981, Figure 7-11, p249.

Consequently an empirical cost benefit analysis of the Government's proposed open coast shipping policy would involve a detailed analysis of all the costs and benefits outlined above. Based on this method the policy of opening the coast to foreign vessels could be compared with the current coastal policy or any other policy alternative (eg the New Zealand Shipping Federation's proposed policy).

6. ECONOMY WIDE IMPLICATIONS

The economy wide implications of some of the potential costs and benefits of the Government's open coast shipping policy are summarised below. These could be more closely examined within the general framework of an empirical cost benefit analysis. Also presented are a range of the views expressed by Government officials in the background papers to the Government's coastal shipping policy obtained under the Official Information Act.

6.1 Potential Costs

The potential social and private costs of the "open coast shipping policy" are summarised under the following headings: employment/equity; service/prices; Government finances/social; economic/balance of payments; environmental/primary industry; and strategic.

Employment / Equity

- potential loss of up to 1000 people currently employed on New Zealand coastal vessels and about $70 million wage related payments (Plowman, 1992). However, concern over the loss of employment of New Zealanders is not shared by all business interests in New Zealand (Storey, 1993c, para 37):

  > *"In discussion on the issue during 1990, advocates of liberalisation included shippers of domestic cargo, such as Federated Farmers and Goodman Fielder Wattie, and other business interests such as the Business Roundtable and the Employers Federation. They have previously regarded issues such as the employment of foreign labour in competition to local labour as irrelevant."*

  This view also appears to be shared by Treasury officials (Gould, 1993b):

  > *"Employing local labour is not a sound objective. Labour, or any other resource for that matter, should be employed if it is the most productive resource. I cannot see any good reason for favouring NZ labour if foreign labour is more efficient."*

- the multiplier effects of additional jobs lost onshore and related spendings (eg on vessel repair and maintenance, ships provisions, and on shore spendings by New Zealand seafarers);

- loss of the future supply of trained maritime staff for ancillary jobs, eg pilots, harbour masters etc;

- foreign workers in a domestic industry not subject to New Zealand labour laws.

Service / Prices

- anti-competitive behaviour by foreign ship operators (Storey, 1993a, para 16):

> *"The entry of foreign ships into the coastal trade could see them engage in marginal pricing practices to gain market share. This could lead to charges of dumping. There are a number of significant difficulties in applying anti-dumping provisions to coastal shipping. The Dumping and Countervailing Duties Act 1988 relates to the dumping and subsidising of goods only, and was prepared in accordance with rules developed within the General Agreement on Trade and Tariffs (GATT). There are no accepted international mechanisms for dealing with the dumping of services within the draft General Agreement on Trade in Services (GATS), and it is unlikely that such a mechanism will be agreed in the near future".*

- if foreign vessels were allowed open access to New Zealand coastal traffic, they would most likely marginal cost traffic from Auckland (and other North Island ports) to the South Island, as they tend to unload the bulk of their cargo (imports) in Auckland and load the bulk (by volume) of their exports from the South Island. However they would provide a very poor service from the South Island to the North Island, as emphasised by the Maritime Transport Division (1990, p44):

> *"...On the other hand, while the southbound Auckland-Lyttleton and Wellington-Lyttleton sectors would be well covered with 55-67 calls a year, transit capacity would offer only 14 sailing opportunities from Lyttleton to Auckland and none from Lyttleton to Wellington.*
>
> *In scheduling transit capacity on the coast, carriers could be expected to give priority to their mainline trades, with New Zealand port rotations subordinate to the requirements of their main market. To that extent, the schedules for coastal cargoes carried on transit vessels would have a lesser degree of schedule integrity than those of carriers operating dedicated tonnage on the coast."*

- if lower rates resulted from marginal costing coastal traffic from the North Island, then this would drive out New Zealand coastal ship operators, and the South Island to North Island traffic would become very quickly more expensive for New Zealand shippers (due to less dedicated services available). The longer term result would be that foreign vessels would increase their rates again on North Island to South Island traffic after New Zealand operators had left this trade.

Government Finances / Social

- loss of company and PAYE tax which will not be paid to the New Zealand Government;

- foreign ship operators will not have to pay ACC payments yet their employees will be eligible for ACC benefits;

- increased unemployment benefits paid to New Zealand workers made redundant directly or indirectly by foreign ship operators;

- increased surveillance, administrative and policing costs by government agencies, eg Ministry of Transport, Ministry of Forests, Ministry of Agriculture and Fisheries, Customs Department etc. In a recent article in Fairplay (Stopping Ships, 1992, p3) it was emphasised that port state control cannot be a substitute for proper flag state control:

  > *"Bad flag states think that port state control is a good thing. They can rely on others to police their ships, leaving them free to pocket the registration fees for doing nothing more than faxing off a registry certificate. Good flag states...think port state control is a bad thing. It costs them time and money, first to police their own fleets, then to police the fleets of others... And they recognise only too well the limitations of port state control and the increasing problems it is facing."*

- increased problems perceived by New Zealand Customs for border protection (Dunn, 1993):

  > *"Foreign vessels operating the New Zealand coastal trade could create a 'risk' in terms of the Customs Department's role of protecting New Zealand's borders from the importation and exportation of prohibited and or restricted goods. A significant item in this category being illicit drugs."*

Economic / Balance of Payments

- regional development implications of higher freight rates for South Island manufacturers wishing to market products in the North Island;

- balance of payments effects of loss of earnings by New Zealand transport operators and seafarers wages.

Environmental / Primary Industry

- polution/environmental effects with potentially harmful side effects, eg on New Zealand's fishing industry. As Sapsford (1993) from the Ministry for the Environment observes:

  > *"Any increase in the quantity of shipping around the coast would of course increase the risk of shipping accidents and consequent damage to the coastal environment."*

- the net fuel usage and associated greenhouse (eg carbon dioxide) emissions. The overall change in fuel usage is unclear since there is likely to be more foreign vessels operating on the coast and a reduction of long distance road and rail transport activity. Sapsford (1993) notes:

"It is not possible to determine without detailed investigation whether an open coast policy would raise or lower overall efficiency of the transport system."

- increased risks to New Zealand agriculture (Walker, 1993):

  "MAF could not tolerate a coastal shipping policy which increases the risk of disease entering the country and potentially harming New Zealand's economic welfare. In our view the liberalisation of coastal shipping will increase this risk as domestic consignments get exposure to foreign goods and possibly ship stores. All domestic consignments would become "risk goods"..."

- increased risks to New Zealand forestry (Algar, 1993):

  "The Ministry of Forestry (MOF) sees increased quarantine risks to NZ by opening up coastal shipping routes to foreign ships. Some 60% of intercepted pests have been found on overseas ships arriving at NZ ports, and in the opinion of MOF, quarantine risks will be increased by possible "cross-contamination" of local cargoes by foreign cargoes in the ship. Many itinerant charter ships carry low grade dunnage, and this presents an added risk of carrying unwanted pests.
  ....After further consideration and discussion the Ministry does not wish to explicitly endorse the liberal option."

Strategic

- national security implications (Hunter, 1993):

  "The New Zealand Defence Force is concerned over the potential national security implications of the liberal option. If this option should have an adverse impact on New Zealand's coastal shipping operators, the result may be a lack of New Zealand ships and trained merchant navy personnel available for the Government to call on in times of national emergency. A further point for consideration is that in time of crisis a foreign country may withdraw its ships from the New Zealand coast, either in retaliation against New Zealand or for its own military purposes."

- given New Zealand's geographic location and dependence on the sea, New Zealand requires an efficient and reliable coastal shipping service for strategic purposes to cope with potential problems associated with national security or national disasters. For example the strategic importance of the coastal waters around New Zealand is apparent since:

  - New Zealand controls the 4th largest area of water in the world under the 200 mile Exclusive Economic Zone. From this is obtained an important source of export earnings from fisheries, etc;

  - the New Zealand government has committed expenditures of about $2 billion for the purchase of frigates from Australia, recognising the importance of a modern navy for strategic defence purposes.

6.2 Potential Benefits

- Against this wide array of potential additional costs associated with opening up the coast to foreign ship operators, the main case for the policy is that it may result in an increase in *"choice and competition, and has the potential to lower domestic transport costs"* (Storey, 1993c, p1). However, these benefits are likely to accrue to shippers (eg manufacturers) from the North Island to the South Island (at least on a short term basis until New Zealand operators have been put out of business). Nevertheless, even Treasury officials (Gould, 1993a) are not sure of the impact on freight rates:

  > *"It is accepted that it is very difficult (if not impossible) to gauge what impact greater competition would have in terms of domestic freight rates. This is because we do not have good data on the price or cross elasticities of demand or on the cost structures of foreign shippers."*

- If lower prices do occur then this may result in some minor increases in domestic economic activity and export earnings.

7. CONCLUSIONS

If the New Zealand Government opens up the coast to foreign ship operators then this is likely to have a severe impact on the New Zealand coastal shipping industry. It could be argued that this would be similar to allowing:

- any foreign airway to fly on domestic air routes in New Zealand and carry passengers and freight;

- any foreign company bringing subsidised trucks and cheap labour into New Zealand (and not paying taxes here) and unfairly competing with the New Zealand road transport industry;

- any foreign organisation purchasing farms, bringing in cheap labour into New Zealand and operating under foreign laws;

- any foreign firm taking over and setting up business in New Zealand using its own labour and not complying with New Zealand laws and business practices.

Naturally the New Zealand government does not permit any of these activities to take place currently, although it has entered into a Memorandum of Understanding with Australia covering airline services (Collins and Storey, 1992).

In summary then: *"Coastal shipping is, by its nature, a domestic transport operation..."* (Maritime Transport, 1992, p74). Hence the coastal shipping industry is regarded as a domestic industry in New Zealand (as it is in virtually every other country in the world) and, therefore, should operate on the same "level playing field" as other organisations operate in New Zealand. Hence an "open coast shipping policy" would need to be structured along the lines suggested by the New Zealand Shipping Federation to provide "fair and reasonable" competition for the New Zealand coastal shipping industry.

Nevertheless, despite the potential costs to New Zealand of an open coast shipping policy appearing to be considerably greater than the alleged benefits, the Memorandum to the Cabinet Committee on Enterprise, Growth and Employment on Coastal Shipping Policy (Storey, 1993c) contained no empirical cost benefit analysis, yet indicated a clear preference for an "open coast (liberal) shipping policy", despite concluding (para 39) that:

> *"Given the difficulty of carrying out an empirical cost-benefit analysis, neither the liberal nor cabotage options is favoured more than the other on the basis of empirically proven costs and benefits alone."*

Unfortunately this is an example where Cabinet has made an important policy decision, without the appropriate analysis having been undertaken by Government officials.

Consequently it is concluded that Clause 240 (and other clauses related to the open coast) of the Transport Law Reform Bill should be withdrawn and a full empirical cost benefit analysis should be undertaken to determine the best coastal shipping policy for New Zealand.

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Appendix I

SUMMARY OF NATIONAL FLAG PREFERENCES IN DOMESTIC TRADE

	Cabotage Restrictions	Fleet Subsidies	Crewing Requirements	Ownership Restrictions	Domestic Construction Provisions	Reflagging Restrictions	CABOTAGE AND RELATED LAWS
United States	X		X	X	X	X	TItle 46 U.S.C. App. 883 (Jones Act) and Sec. 289
Algeria	X	1	X	X		1	Ordinance 68-83 (4/16/68) and Ordinance 76-80 (10/23/76)
Argentina	X	4	X	X		5	Decree 19492 (1944) ratified by law 12980
Australia	X	4	X				Navigation Act of 1912
Bahamas	X	X	X	X		1	Boat Registration Act and Merchant Shipping Act
Belgium		X	X				
Brazil	X	X	X	X	X	X	Shipping Law of 1967
Bulgaria	X	4	X	X			Code for Commercial Navigation, Issue 55
Canada	X		X	3		5	Canadian Shipping Act, Part X
Chile	X	4	X	X		X	Maritime Transportation laws; Decree Law 600
China	X	4	X	X		X	Water Trans. Man. and Regis. Regs.
Colombia	X		X	X		5	Decree 2451, July 31,1986, Articles 55-62
Cyprus						1	
Denmark	2	4	X	X		5	Danish Merchant Marine Act, Part I, Section I
Ecuador	X	4	X	X		1	Cargo Reserve Law
Egypt	X		X	X	3	5	Law Number 63 (1961) and Egyptian Company Law 158 (1981)
Finland	X		X	X		1	Section 4 of the Right to Pursue Business Legislation
France	X	X	X	3		1	Customs Code, Articles 257 and 258
Germany	X	X	3			5	Coastal Shipping Act (7/26/57)
Greece	X		X	X		1	Legislative Decree 187/33, Articles 164 to 180
Honduras	X		X	X		1	Hond. Comm. Code (1948) and Hond. Merchant Fleet Law (1950)
Hungary	X	X	X	X		5	Belgrade Agreement of 1948
India	X		X	X		1	Merchant Shipping Act
Indonesia	X	4	X	X	X	X	Regulation PP 17 (1988)
Israel						1	
Italy	X	4	3			5	1
Ivory Coast	2	4	X	X			National Shipping Policy
Japan	X	X	X	X		5	Japan Ship Law, Articles 1,3,4,5 (1988)
Kenya						1	
Malaysia	X	4	X	X		1	Merchant Shipping Ordinance of 1952
Malta	X		3			5	Mer. Ship. Act, Code of Pol. Laws and Port and Brth. Regs.
Mexico	X	X	X	X		1	General Law of Means of Communication
Netherlands	2	X	3	X		1	Law of Commerce, Article 311
New Zealand	X		X	X			Shipping and Seaman Act
Nigeria	2	X	X	X		1	Shipping Policy Decree (1987)
Norway	2	X		X		1	1
Panama	2						Law 56 (1979) and Law 2 (1980)
Peru	X	X	X	X	X	5	1
Philippines	X		X	X		1	1
Poland	X			X		5	Polish Maritime Code, Article 13
Romania	X	X	X	X		5	Decree 443 of 1972
Saudi Arabia	X			X		1	Governed by cargo and passenger regulations
Singapore						1	
South Africa						1	
South Korea	X	X		X		X	Korea Maritime and Port Adm. Guidelines
Spain	X	4	X	1	X	1	National Maritime Act (5/12/56)
Sweden	X		3	X			Ordinances dated November 10, 1724 and February 28, 1726
Taiwan	X	1	X	1	1	1	Maritime Transportation Law, Article 4 and 18
Thailand	X		X	X		5	Thai Vessels Act (1938)
United Kingdom	2	4	X				Merchant Shipping Act of 1988, Sec. 33
Uruguay	X		X			1	Law 12091 (1954)
USSR	X	X	X	X	1	1	Merchant Shipping Code
Venezuela	X	X	X	X		5	Law for the Prot. and Dev. of the Natl. Merch. Mar. Art. 7
Yugoslavia	X	X	X			5	Article 27 of the Law on Maritime and Inland Navigation

NOTES
X - Yes (Blank) - No

1. No information provided.
2. Countries that do not exclude foreign vessels but do have certain restrictions.
3. No formal requirement, but some minor restrictions.
4. Indirect benefits provided.
5. Reflagging allowable, but controlled.

Source: Maritime Administration, 1991.

Appendix II

MEMORANDUM OF UNDERSTANDING

1. Ministers representing the Governments of Australia and New Zealand met in Darwin on 31 July 1992 to discuss air services arrangements.

2. The discussions were held in a friendly and cordial atmosphere.

3. Pursuant to the Agreement between Australia and New Zealand relating to Air Services which entered into force on 25 July 1961, (hereinafter referred to as the Agreement) the Ministers decided as follows:

(A) AIRLINE DESIGNATION

With immediate effect, either contracting party may designate more than one airline to operate air services for the carriage of passengers, cargo or mail between the two countries provided that prior to 1 November 1992, unless the parties otherwise decide, neither party can be required to accept the designation of more than one airline for passenger operations on any one city pair linking a point in New Zealand and a point in Australia irrespective of the manner in which the city pair is operated.

(B) CAPACITY TO BE OPERATED BY THE DESIGNATED AIRLINES

Subject to sub-paragraph (E) the designated airlines of the two countries may provide such capacity for passenger and/or freight services as they decide.

(C) ALL POINTS EXCHANGE AND POINTS LINKAGE

Further to the route descriptions contained in the Schedule to the Agreement, the designated airlines of either Contracting Party may operate to, from and between any designated international airport(s) in the territory of the other Contracting Party provided that, in the case of passenger services:

from 1 November 1992, no more than three trans Tasman city pair combinations, excluding Sydney/Auckland, Sydney/Wellington, Sydney/Christchurch and Brisbane/Auckland, may be served by more than one airline designated by each Contracting Party;

from 1 November 1993, no more than six trans Tasman city pair combinations, without restriction as to the city pairs to be nominated, may be served by more than one airline designated by each Contracting Party;

from 1 November 1994, all trans Tasman city pair combinations available for international air services and such other city pairs as approved by the Contracting Parties may be served by more than one airline designated by each Contracting Party;

no traffic rights will be exercised between the points served in the territory of the other Contracting Party except as provided for in sub-paragraph (G).

(D) BEYOND ROUTES

Prior consultation between and consent of the Contracting Parties is necessary before the designated airlines exercise the beyond rights set out in the Schedule to the Agreement. Notwithstanding this, the designated airlines are permitted to exercise the following rights without further consultation:

(i) For the designated airlines of New Zealand

with immediate effect, the right to fly with full traffic rights beyond Australia (initially Sydney) to points in the USA and Canada;

from 1 November 1992, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and two other points to be nominated;

from 1 November 1993, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and five other points to be nominated;

from 1 November 1994, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and nine other points to be nominated.

Points may be optionally omitted.

(ii) For the designated airlines of Australia

with immediate effect, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; and points in South America;

from 1 November 1993, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; points in South America and two other points to be nominated;

from 1 November 1994, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; points in South America and six other points to be nominated.

Points may be optionally omitted.

(E) BEYOND RIGHTS CAPACITY

In the exercise of the rights identified in sub-paragraph (D) (i) and (ii) above:

(i) the designated airlines of New Zealand may between them:

with immediate effect, operate the equivalent of four B 747 services per week in total;

from 1 November 1993, operate the equivalent of eight B 747 services per week in total;

from 1 November 1994, operate the equivalent of ten B747 services per week in total unconstrained; or the equivalent of twelve B747 services per week in total provided that the additional four services per week available from that date are not operated to a point previously served beyond Australia, excluding USA and Canada.

(ii) the designated airlines of Australia may between them:

with immediate effect, operate the equivalent of four B 747 services per week in total;

from 1 November 1993, operate the equivalent of eight B 747 services per week in total;

from 1 November 1994, operate the equivalent of ten B747 services per week in total unconstrained; or the equivalent of twelve B747 services per week in total provided that the additional four services per week available from that date are not operated to a point previously served beyond New Zealand, excluding USA and Canada

The services identified above may be operated as passenger or freighter or combined passenger and freighter services at the option of the airlines.

(F) TARIFFS

Pending the entry into force of an Air Services Agreement to replace the 1961 Agreement, the aeronautical authorities will administer tariffs in accordance with Annex I.

Notwithstanding the provisions of paragraphs 4 and 7 of Annex I, where a designated airline of one country files a tariff for the carriage of passengers or cargo (excluding mail) on its services between any point in its territory, which the designated airline of the second country has no authorisation to serve, and any point in the territory of the second country, the aeronautical authorities of the second country could give notice of dissatisfaction with that tariff within fifteen (15) days of receiving the filing. If such notice is given, the tariff would not come into force. For the purposes of this paragraph, the aeronautical authorities of the country giving notice of dissatisfaction would, at the same time, request consultations with the aeronautical authorities of the other country. Such consultations would be completed within fifteen (15) days of being requested. The aeronautical authorities may decide mutually to approve the tariff which the designated airline filed, or another tariff. However, if the aeronautical authorities are not able to decide mutually upon a tariff, any tariff already in force would continue in force.

(G) ACCESS TO DOMESTIC MARKETS

Notwithstanding sub-paragraph (C) above and subject to the outcome of consultations referred to in sub-paragraph (H)(ii) on questions relating to the ownership and control of Australian and New Zealand airlines, the Ministers will recommend to their respective Governments that the Schedule to the Agreement be amended so that, from 1 November 1994, or earlier if agreed, airlines of either Contracting Party may operate with full domestic traffic rights, including the right to carry cabotage traffic, between points within the territory of the other Contracting Party.

(H) CONSULTATIONS

Further consultation will occur on the following matters:

(i) consultations, to be completed before 30 June 1993, will examine if access to the Australian domestic market for New Zealand airlines (referred to above in sub-paragraph (G) above) can be brought forward to 1 November 1993, subject to progress in the deregulation of trans Tasman aviation services and to the implementation of appropriate facilitation arrangements.

(ii) the consultations referred to in sub-paragraph (H)(i) would also examine new treaty arrangements to be concluded, if possible, by 30 June 1993 to cover, inter alia, issues associated with the grant of beyond rights after 1 November 1994, including establishing the date when additional beyond rights and capacity will be allocated in following years, and the date for the achievement of a full exchange; questions relating to the ownership and control of designated Australian and New Zealand airlines operating on trans Tasman routes and on the domestic routes referred to in sub-paragraph (G), and the possibility of both countries establishing at some future time a joint bloc for the purpose of negotiating international traffic rights.

REPLACEMENT OF PREVIOUS UNDERSTANDING

4. This Memorandum of Understanding replaces the Memorandum of Understanding Concerning Air Services Between Australia and New Zealand which came into effect on 14 December 1989.

REVISION

5. This Memorandum of Understanding may be revised at any time by the mutual decision of the aeronautical authorities communicated to each other in writing.

DATE OF EFFECT

6. This Memorandum of Understanding will enter into effect on the date of signature and will continue in effect until the aeronautical authorities decide in writing that they will no longer give it effect.

Dated 1 August 1992.

(Bob Collins)
Minister for Transport
and Communications

For the Government
of Australia

(Rob Storey)
Minister for Transport

For the Government
of New Zealand

ANNEX I

TARIFFS

1. The tariffs to be applied by the designated airlines of each Contracting Party for the transportation of traffic between the territories of the two Contracting Parties on agreed services will be established, in accordance with the provisions of this Annex, and will be consistent with the development of a fully competitive air transport system and will not be predatory, unjustifiably discriminatory or reflect abuse of a dominant position.

2. The tariffs referred to in paragraph 1 of this Annex may be decided upon between the designated airlines. At the option of the designated airlines, such decision may be made in co-ordination with other airlines. In any event each designated airline will be entitled to establish a tariff individually.

3. Each Contracting Party may require the filing with its aeronautical authorities of any proposed tariff referred to in paragraph 1 of this Annex. Such filings if required will be made at least thirty (30) days before the proposed date of the introduction of the tariff or such shorter period as both aeronautical authorities may decide.

4. Subject to paragraph 7 below, any tariff proposal filed in accordance with paragraph 3 above will be treated as having been approved and will come into effect on the date stated in the filing unless, within fifteen (15) days of receipt of the proposed tariff (or such shorter period as the aeronautical authorities of both countries may agree), the aeronautical authorities of both countries have notified each other in writing that they are dissatisfied with and intend not to approve the proposed tariff. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also decide that the period for giving notice of dissatisfaction will be less than fifteen (15) days.

5. Any designated airline of either Contracting Party will be permitted to match any publicly available tariff established in accordance with this Annex by any designated airline on a basis which would not necessarily be identical but which would be broadly equivalent in terms of routing, applicable conditions and standards of service. The designated airlines of either Contracting Party will also be permitted to match any publicly available tariff approved for international air transportation between points in the territory of the other Contracting Party and a third country where the airline's tariff filing complies identically with the levels and associated conditions of the approved tariff.

6. The filing of a matching tariff, will be made at least one (1) day before the proposed date of the introduction of that tariff and will include satisfactory evidence of the availability of the tariffs to be matched and of the consistency of the matching tariff with the requirements of this Annex. Matching tariff filings will be permitted

to come into effect on the date stated in the filing, provided that such filings conform with the matching provisions of this Annex.

7. If the aeronautical authorities of either Contracting Party consider that the introduction of a proposed tariff filed with them by a designated airline would be inconsistent with the provisions of paragraph 1 above or that its application would constitute anti-competitive behaviour likely to cause serious damage to another designated airline, they may, within fifteen (15) days of the tariff being filed, request consultations with the aeronautical authorities of the other Contracting Party. Such consultations which may be through discussion or correspondence, will be completed within fifteen (15) days of being requested and the tariff will take effect, unless disapproved or otherwise varied by the aeronautical authorities of both Contracting Parties, on the date stated in the filing or on the date of conclusion of the consultations, whichever is the latter.

8. In the event that a tariff referred to in paragraph 1 above which has come into effect in accordance with this Annex is considered by the aeronautical authorities of one Contracting Party to be causing serious damage to another designated airline on a particular route or routes, those aeronautical authorities may request consultations with the aeronautical authorities of the other Contracting Party.

9. The tariffs established in accordance with the provisions of this Annex will remain in effect until new tariffs have been established in accordance with the provisions of this Annex.

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