



About ICHCA – International Cargo Handling Co-ordination Association

The International Cargo Handling Co-ordination Association (ICHCA) is an international, independent, not-for-profit organisation dedicated to improving the safety, security, sustainability, productivity and efficiency of cargo handling and goods movement by all modes and through all phases of national and international supply chains. ICHCA International's privileged non-government organisation (NGO) status enables it to represent its members, and the cargo handling industry at large best, in front of national and international agencies and regulatory bodies. Its Expert Panel provides practice advice and publications on a wide range of practical cargo handling issues. ICHCA Australia Ltd is proud to be part of the ICHCA International Ltd global network (www.ichca.com). To access past newsletters and other useful information go to the ICHCA Australia website at www.ichca-australia.com.

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'Sector focused legal experts'

ICHCA SA luncheon

ICHCA SA will hold its first industry networking luncheon for 2025 on **1 May at Coopers Alehouse Gepps Cross**, 560 Main N Road, Blair Athol.

The keynote speaker is **Mr Darren Byrne**, GM – Business Development (SA & WA), Qube Logistics. Darren joined QUBE in 2008, transitioning from P&O Trans Australia where his role was State Manager South Australia. Prior to this, Darren worked for DP World in SA and his career also covers many years with shipping lines including P&O Nedlloyd and ANL. Darren has over 25 years' experience in international logistics, transportation and warehousing, freight forwarding, 3PL facility management and container park management.

Darren will be speaking about: *Freight movement strategies between key SA catchment points and Adelaide ports*. Book soon as places are limited.

More details and the registration form are available on the [ICHCA Australia Events page](#).

This event is sponsored by:



ICHCA Australia AGM

The ICHCA Australia Ltd Annual General Meeting will be held on Thursday 1 May 2025 at Flinders Port Holdings office and via video conference. The meeting will commence at 11.00 hrs Adelaide time. All financial members are invited to attend. Please advise ICHCA Australia Company Secretary Peter van Duyn (peter.vanduynd@ichca.com) if you wish to attend.

AMSA warning about container packing

The Australian Maritime Safety Authority (AMSA) has issued a safety alert to raise awareness of the structural and stowage requirements for shipping containers and other cargo transport units (CTUs) in Australian ports. The alert comes in response to a rise in improperly stowed CTUs and structural issues identified during inspections.

The safety warning is for:

- anyone who packs, sends, or stows cargo
- packers of shipping containers
- shippers
- container owners
- ship owners.

Two recent incidents involved improperly packed CTUs that resulted in catastrophic structural failures. These failures posed risks to vessels and crew, as well as port operations and maritime supply chains. These types of incidents show how important it is to follow structural and stowage guidelines. Everyone involved in cargo handling should:

- review safety protocols
- ensure compliance with international cargo handling standards to mitigate risks.

The safety alert highlights the importance of proper cargo-handling practices in preventing dangerous incidents at sea and in port facilities. Read the [safety alert here](#).

Containers overboard

The Portuguese-flagged container vessel *MSC Houston V* recently lost at least 15 containers in the Atlantic Ocean during rough weather off the coast of Portugal. The ship had departed on 20 March from Piraeus,



Source: Port of Vigo

Greece, and was en route to Liverpool. The *MSC Houston V* encountered extreme conditions as Storm Martinho lashed the waters off Cape St Vincent, with wind gusts reaching up to 48 knots.

The severe weather caused several containers to collapse, leaving some hanging precariously over the vessel's starboard side near the stern. In response, the containership sought refuge at the Port of Vigo, Spain, arriving on the morning of 21 March, to assess the damage and stabilise the cargo.

The Port of Vigo authorities confirmed the vessel's unscheduled arrival, noting: "Following approval from the Maritime Authority, we docked it at the Container Terminal early this morning." Due to the complexity of the cargo stabilisation operation, terminal officials removed cranes from the immediate area and deployed a mobile crane to ensure the safety of port workers and the terminal. Further assessments are underway to determine the condition of the remaining containers and their cargo.

Common errors in trading transactions and how to avoid them

Commodity transactions are often fast paced and driven by the commercial motivation of closing the deal. As a result, in some instances there may be no scope for detailed review of the legal terms and instead, parties to a transaction rely on standard terms and conditions (T&Cs). This can help to reduce the risk of disputes arising, but it does not fully eliminate it. There are some common errors which should be considered carefully before finalising a deal, to avoid disputes.

Commodity transactions are usually concluded via a mix of verbal and written negotiations, often set out in email exchanges between traders. It can sometimes be difficult to identify exactly when a contract has been formed. In *BP Oil International Limited v Glencore Energy UK Limited*, a dispute arose from a contamination claim in relation to a cargo of crude oil. BP and Glencore exchanged a series of emails between 1 April and 8 April 2019 negotiating terms of the trade. Following consideration of all of the communication, the Court found that the contract had been formed on 2 April 2019 during the early stages of negotiation. This was because the subsequent communication was considered to be attempted variations to the contract which were unsuccessful. Phrases such as "*We are pleased to have concluded this further business with you*", were not sufficient to conclude that BP had accepted the variations as suggested by Glencore.

It is therefore necessary to ensure that all parties are clear as to when a contract is agreed as this will affect the nature and effect of any subsequent negotiations. It is also worth noting that contracts can be formed orally, however this can lead to uncertainty and may become a matter of 'he said/she said'. It is therefore important to take detailed notes during negotiations to keep a record of what has been discussed and agreed.

Interestingly, in *South West Terminal Ltd v Achter Land & Cattle*, the Court found that contracts can be concluded by emoji. The judge decided, based on the facts, that a thumbs up emoji amounted to an acceptance of an offer with the intention of creating a legally binding contract. When it comes to emojis,

how they are interpreted will depend on the context of the dispute. For example, in some cases in America, the use of a thumbs up emoji as a means of showing acceptance has been denied. It is therefore recommended that parties use words during negotiations rather than emojis or abbreviations, to ensure there is no uncertainty or room for interpretation.

Generally, an offer cannot be accepted by silence. However, remaining silent can still be a risky strategy. Whilst an offer cannot be accepted by silence, it can be accepted by conduct, for example by commencement of performance. In the same dispute between BP and Glencore, the Court considered the 'last shot' doctrine, which provides that where counteroffers are exchanged, the contract will be formed on the terms of the final offer in the series, being the 'last shot'. Where a party remains silent in response to a counteroffer and a contract comes into effect, the terms of the counteroffer may apply under the 'last shot' doctrine. However, the Court accepted that carefully worded reservations during contract negotiations can prevent unwanted terms being included in the contract. The doctrine was expressly displaced by BP's inclusion, in one of its emails, of the wording *"only terms which have been expressly agreed by both parties, at the time of trade or subsequently, shall be binding for the agreement..."* The effect of this wording was to prevent an agreement being reached by the parties on certain unwanted terms. Therefore, it is important to note that including wording of this nature may help displace your counterparty's 'last shot' and may avoid the inclusion of unwanted terms.

Trading transactions are often evidenced by a recap sent from one party to another. Such recaps generally incorporate T&Cs that form part of the transaction. A recap which contains a set of specifically negotiated and agreed terms would generally prevail over any T&Cs if there was an inconsistency between the two. In *Septo Trading Inc v Tintrade Limited*, a clause in the recap for the sale of fuel oil provided for quality and quantity inspections to be *"binding on parties save fraud or manifest error"*. However, the T&Cs provided that certificates of quality and quantity were *"conclusive and binding on both parties for invoicing purposes"* but without prejudice to the buyer's right to bring a quality claim. In the first instance, the Court mistakenly considered the recap and T&Cs together, finding that the certificates were binding for invoicing purposes only and did not prevent the buyer from making a quality claim. Subsequently, the Court of Appeal overturned this decision, stating that the terms were in fact inconsistent with one another and as such the recap prevailed preventing the buyer from pursuing its quality claim. It is therefore particularly important to pay extra attention to any expressly negotiated terms especially in relation to all key terms of your contract.

When it comes to transactions and contract negotiation, clarity is always preferable and with careful drafting, most common errors and uncertainties can be avoided. For key clauses in a contract, it is recommended that T&Cs are considered carefully to ensure they achieve the desired result. If not, expressly negotiated terms should be used. It is also important to keep track of exchanges during negotiations to make sure that parties are clear on what has been agreed before commencing performance.

This article was supplied by HFW, sponsor of Inside ICHCA.

More containers overboard

The South Korean container ship *SM Portland*, operated by SM Line, recently encountered extreme winter weather conditions while sailing through the Bering Sea on its way to Vancouver, Canada. The 4,228-TEU vessel battled strong winds and rough seas, causing it to roll heavily. This led to the loss, collapse and damage of 115 containers. *SM Portland* had departed from Busan, South Korea, making stops in China and South Korea before heading toward Vancouver.

According to SM Line, the high winds caused the ship to tilt dramatically, leading to container losses. The vessel adjusted its course and slowed down to ensure safety. It is now on its journey across the Pacific under close monitoring. SM Line has issued a customer alert, informing cargo owners about the container

losses. The company urged its clients to check their shipping documents to confirm whether their cargo was affected. SM Line has warned customers about possible delays due to the inspection process.

A 2024 report by the World Shipping Council revealed that 221 containers were lost at sea in 2023, a major drop from 661 containers in 2022. The industry has been working to reduce container losses by improving safety protocols, increasing crew training and implementing new technologies to detect dangerous rolling conditions. In response, the International Maritime Organization (IMO) Maritime Safety Committee has introduced mandatory reporting requirements for lost containers, which will come into effect on 1 January 2026.



New board appointments for ARTC and National Intermodal

The Federal Government recently announced a number of appointments to both the Australian Rail Track Corporation (ARTC) and the National Intermodal Corporation (National Intermodal). Mr Ingilby Dickson, Ms Janet Finlay, Mr Michael Carter and Ms Jill Rossouw were appointed for three-year terms, and Dr Marlene Kanga AO for a two-year term, as Non-Executive Directors of the ARTC Board.

Mr Michael Carter was appointed as the Deputy Chair of National Intermodal, Ms Janice van Reyk was appointed as Non-Executive Director and Mr Michael Byrne AM was reappointed as a Non-Executive Director of the National Intermodal Board, each for a three-year term.

ACCC raises concern over Silk acquisition by DP World

Global port and logistics company DP World has acknowledged the Australian Competition and Consumer Commission's (ACCC) statement raising concerns over DP World's planned acquisition of transport operator Silk Logistics. Recently, the ACCC raised "preliminary competition concerns" over DP World Australia's proposed acquisition of Silk Logistics. With Silk being one of the only national door-to-door container logistics providers in Australia, hauling import and export containers via trucks to and from the ports that DP World Australia operates at, the ACCC says the acquisition would result in DP World Australia owning a national container transport provider. ACCC commissioner Dr Philip Williams said:

We have heard concerns that DP World's ownership of a national container transport provider is likely to reduce competition in the supply of container transport services. This could lead to higher prices and reduced quality for Australian importers and exporters. Our review is focused on DP World Australia's ability and incentive to either increase terminal fees or worsen the quality of terminal services for container transport providers that compete with Silk, after the acquisition. We are also assessing whether DP World Australia, after acquiring

Silk, is likely to offer below-cost transportation prices to importers and exporters if their containers are also picked up and dropped off at DP World Australia's stevedoring terminals. This is because a discounting strategy involving below-cost prices could reduce container transport competition allowing a combined DP World Australia and Silk to raise prices later.

On top of this, the ACCC is also concerned that DP World would be able to access and use commercially sensitive data about Silk's rivals in a way that would damage competition. Silk Logistics' operations are currently categorised into two divisions, being port logistics and contract logistics for warehousing and distribution services. In response, DP World has acknowledged the ACCC's views and says it's not a final decision.

Stevedores deaths

The Marine Accident Investigation Branch (MAIB) recently published their accident investigation report into the deaths of three stevedores in a cargo hold access space on board *Berge Mawson* on 27 June 2022 at Bunyu Island anchorage, Indonesia. Chief Inspector of Marine Accidents, Andrew Moll OBE, stated:

Cargo operations on board bulk carriers require stevedores and other shore workers to carry out tasks on board, often working separately from the crew. In this accident, it is evident that the stevedores did not have sufficient understanding of the hazards posed by coal cargoes nor, more worryingly, had they received training about the dangers associated with entering enclosed spaces.

Although *Berge Mawson's* crew were well trained in their emergency response to enclosed space accidents, their drill scenarios did not involve shore workers who could be on board at the time. In the crew's rush to collect rescue equipment they left the entry point to an enclosed space containing a noxious atmosphere unguarded, and this oversight tragically led to the second and third stevedores dying in a well-intentioned but misguided attempt to rescue their colleague.

Despite international and industry guidance on the training stevedores should receive before working on bulk carriers, InterManager data shows that of the 257 enclosed space fatalities reported between 1999 and 2023, 67 (26%) were stevedores or shore workers. To help prevent further loss of life it is essential that bulk carrier and terminal operating procedures, practices and training equip shore workers to operate safely on board the vessels they attend.

The investigation was carried out by the UK Marine Accident Investigation Branch (MAIB) on behalf of the Isle of Man Administration (Vessel's Flag State)

The report ([available here](#)) contains details of what happened, subsequent actions taken and recommendations.

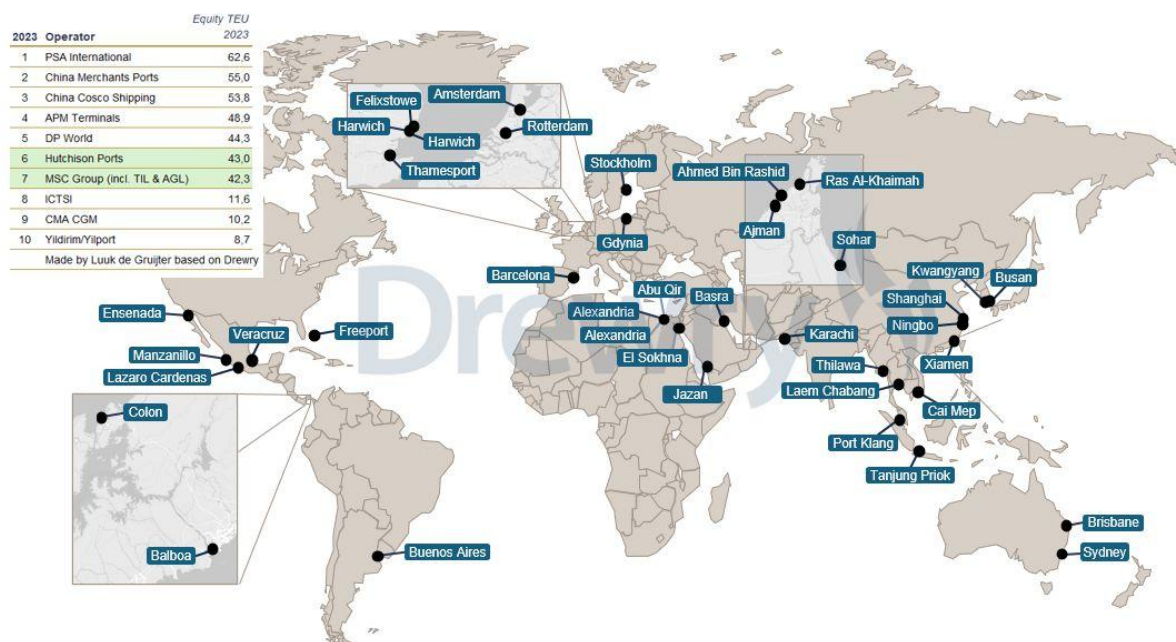
New TT line CEO

THE board of TT Line has appointed Chris Carbone as the ferry company's new CEO. Mr Carbone comes to the Bass Strait ropax operator from the Toll Group, where he was president of Resources & Industrials, overseeing a division with more than 100 operating sites, 2,000 team members and over \$1 billion in revenue.

The Board chair, a Board director, the Secretary of the Department of State Growth and an independent member recommended the appointment of Mr Carbone to the Board. TT-Line chairman Ken Kanofski said the new CEO was selected from a number of strong candidates after a search process that attracted applicants from across Australia.

Global ports sale to have consequences

Scaremongering by US President Trump about perceived Chinese influence over the entrance to the Panama Canal has resulted in some unintended consequences. Hutchison Port Holdings (HPH), a Hong Kong-based company that owned ports at both ends of the Panama Canal has sold its holdings to the Black Rock-TIL Consortium (BRTC). However, rather than just those two ports, it has decided to sell all of its ports and terminals outside China/Hong Kong to the consortium. The HPH portfolio has interests in 40 ports and terminals in 23 countries including two container terminals in Australia.



Source: Independent analysis by Drewry Maritime Research

HPH is 80% owned by CK Hutchison Holdings and 20% PSA International Pte Ltd. The BRTC consists of Black Rock Inc. and Terminal Investment Limited (TIL) which is 70% owned by Mediterranean Shipping Company (MSC), 20% Global Infrastructure Partners (which in turn is owned by Black Rock) and 10% Government of Singapore Investment Corporation. The acquisition will put TIL at the top of the global container operator table, leapfrogging number one, PSA International, by about 20 million TEU annual throughput.

Because of the mix of ownership of the BRTC and its related companies in a number of other container terminals around the world, there is still a lot of uncertainty with regard to competition issues in several countries, but certainly in NW Europe. For instance, in Rotterdam Hutchinson already has a major share in three large-volume container terminals that would now come under TIL's (i.e. MSC's) control whilst MSC already owns nearly 50% of a large Hamburg terminal and has large holdings in the Port of Antwerp. Similarly, in Spain TIL owns the MSC Terminal Valencia and would become owner of the BEST Terminal in Barcelona after the takeover. The Panama Maritime Authority, which oversees shipping and port infrastructure in the country, has already asked for more details on the take-over deal concerning the ports of Balboa and Colon. Experts believe it would take at least a year before all these competition issues are sorted out. As far as Australia is concerned, HPH operates container terminals in Port Botany and Brisbane that currently only have a relatively small market share and that service mainly COSCO vessels. I believe the sale will raise no competition issues in Australia, but we'll have to wait and see what the Australian Competition and Consumer Commission (ACCC) will have to say about that.

However, if the new consortium needs or wants to divest some of its newly acquired assets it could be an opportunity for operators like China Merchants Ports, DP World, APMT (the terminal division of Maersk) or others to acquire some strategic assets. If so, this could be an opportunity for ICTSI (owner of the Victorian International Container Terminal) in Melbourne to acquire the HPH terminals in Brisbane and Sydney so it can offer its clients a fully integrated East Coast service.

No doubt shipping lines will be busily ascertaining what this means for their container stevedoring contracts, especially as currently COSCO Shipping is very much aligned with HPH. However, having TIL as the new owner of certain terminals, they might decide to no longer call at these terminals. In turn MSC might want to direct more of their vessels and services to their newly acquired facilities. Change of ownership might also trigger the break clause in the shipping line contracts with their stevedoring providers.

If the above upheaval is not enough, Trump has also decreed that, in order to revitalise American owned and crewed ships and US-based ship building, all Chinese owned and built ships calling at US ports will be hit with a substantial port fee. About 25% of the fleet of the three largest shipping lines could be hit with these fees. Comments from the CEOs of these lines suggest that this could be damaging to the lines and their customers and increase costs to all participants in the supply chain. All this means an uncertain outlook for the shipping industry going forward and who knows what the guy in the White House will come up with next!

Peter van Duyn

The above article was first published in the Daily Cargo News

Updates from the Department of Agriculture, Fisheries and Forestry

DCCC meeting

The Department of Agriculture, Fisheries and Forestry Cargo Consultative Committee (DCCC) brings together DAFF and industry representatives to address biosecurity issues impacting trade and logistics with the purpose of ensuring effective biosecurity regulation without unnecessary trade barriers. The next meeting will be held on 3 April 2025. Please notify Peter van Duyn if you want any issues raised at the meeting.

Methyl bromide fumigation methodology update

The Department will be hosting information sessions for the upcoming implementation **of version 3.0 of the Methyl bromide fumigation methodology** which will come into force on 1 May 2025.

These virtual sessions are intended for treatment providers, industry partners and stakeholders located outside of Australia involved in fumigation practices for consignments bound for Australia. The sessions will cover the key changes that have been made to the Methyl bromide fumigation methodology (version 3.0). The information sessions will be held on the following dates:

- 7am AEDT on Tuesday 25 March 2025 (2pm PDT/5pm EDT Monday 24 March 2025)
[Register here](#)
- 5pm AEDT on Thursday 27 March 2025 (9am CEST/3pm SGT/CST/PHT).
[Register here](#)

The sessions will be held virtually on Microsoft Teams Live to accommodate an international audience. Please note that while the presented information will be most relevant for pre-border treatment providers and related industry, attendance at either session is open to all. The Department encourages treatment providers to share this registration link with their customers and supply chain partners to encourage maximum participation at the sessions.

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