

[AS REPORTED FROM THE COMMUNICATIONS AND ROAD
SAFETY COMMITTEE]

House of Representatives, 20 November 1986.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Richard Prebble

SHIPPING

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A BILL INTITULED

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5 **An Act to promote negotiation and consultation between shippers and carriers, to facilitate competition in international shipping services, and to discourage discrimination against New Zealand shipping and trading interests by foreign governments**

No. 117—2

Price \$1.50

incl. GST \$1.65

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An Act to promote fair dealing and safeguard competition in New Zealand's outwards shipping services, and to discourage discrimination against New Zealand shipping and trading interests by foreign governments

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BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Shipping Act **(1985) 1986**.

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(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. Interpretation—In this Act, unless the context otherwise requires,—

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“Agreement” includes any contract, arrangement, or understanding, whether formal or informal and whether express or implied; and also includes—

(a) An agreement made outside New Zealand; and

(b) An agreement made before the commencement of this Act; and

(c) An agreement that is not enforceable by legal proceedings, whether or not it was intended by any party to the agreement to be so enforceable:

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“Carrier” means a person who, in the ordinary course of business, carries or procures to be carried by sea goods owned by any other person, whether or not as an incidence of the carriage of passengers:

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“Carrier” means a person, whether an operator of vessels or not, who contracts with any shipper to carry or arrange for the carriage of goods wholly or partly by sea, whether or not as an incidence of the carriage of passengers:

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“Direction” means a direction given by the Minister under section 7 of this Act, and, where a direction has been amended, means the direction as so amended:

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5 “Fighting ship” means a vessel used in a particular trade by a carrier for the purpose of excluding, preventing, or reducing competition by driving another carrier out of that trade:

“Foreign government” means the government of a country other than New Zealand:
“Minister” means the Minister of Transport:
10 “Outwards shipping” means the carriage of goods wholly or partly by sea from a place in New Zealand to a place outside New Zealand:
“Registered New Zealand ship” means a ship that is registered in New Zealand under the Shipping and Seamen Act 1952:

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“Shipper” means any person by whom or in whose name or on whose behalf goods are consigned by sea.

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20 “Shipper” means a person who is both the consignor and owner of goods by whom or in whose name goods are consigned or to be consigned wholly or partly by sea from a place in New Zealand to a place outside New Zealand; and includes any class, group, or association of shippers:
25 “Unfair practice” has the meaning assigned to it in section 4 (1) of this Act.

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PART I

COMMERCIAL SHIPPING RELATIONS

30 **3. Carriers to give notice of impending changes in terms or conditions of services**—Every carrier who intends to change any of the terms or conditions upon which the carrier carries goods shall give reasonable notice of such changes to every shipper who may be affected thereby.

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- 4. Shippers may require carriers to negotiate or consult—**(1) A shipper may at any time, by written notice given under this section to any carrier engaged in outwards shipping, require that carrier to enter into negotiations or consultations or both relating to the terms and conditions of the carriage of goods by the carrier. 5
- (2) Without limiting the generality of **subsection (1)** of this section, the matters on which a shipper may require a carrier to negotiate or consult or both include the following: 10
- (a) Changes in general tariff conditions and in the policies on which such conditions are based:
 - (b) Changes in the general level of tariff rates for major commodities:
 - (c) Promotional freight rates: 15
 - (d) Special freight rates:
 - (e) The imposition of and changes to surcharges:
 - (f) Procedures for the supply of information by shippers in respect of cargo availability and the nature and volume of cargo to be shipped: 20
 - (g) The introduction of new technology:
 - (h) Changes in the pattern of services.
- (3) A notice under **subsection (1)** of this section shall—
- (a) Specify with sufficient particularity the matters in respect of which negotiations or consultations or both are sought; and 25
 - (b) Specify the place at which, and the date on which, it is proposed that such negotiations or consultations or both be held.
- 5. Parties may be required to furnish information—** 30
- (1) Any party to any negotiations or consultations proposed to be held or being held pursuant to a notice given under **section 4** of this Act may, by written notice given under this section to any other party to those negotiations or consultations, require that other party to furnish any specified information 35 that—
- (a) May reasonably be required by the party giving the notice to deal properly with any matter to which the negotiations or consultations relate; and
 - (b) Is in the possession or under the control of that other party. 40

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- (2) Every notice under **subsection (1)** of this section shall—
- (a) Specify the information sought with sufficient particularity to enable it to be identified; and
- 5 (b) Specify the date by which the information is required to be furnished.

6. Complaints may be settled by Minister—(1) Where the recipient of a notice properly given under **section 4** or **section 5** of this Act fails to comply with the notice within a reasonable

10 time, the aggrieved party may refer the matter, by way of a written complaint, to the Minister.

(2) On receiving a written complaint under this section, the Minister shall either investigate and determine the matter or refer it to some other person for investigation and

15 determination.

(3) Any person to whom any written complaint is referred by the Minister under **subsection (2)** of this section shall have the same powers to make orders as the Minister has under **subsection (4)** of this section.

20 (4) In exercising the power of decision under this section, the Minister may, after considering the representations made by the parties,—

- (a) Order the carrier to enter into the required negotiations or consultations or both, in accordance with the terms
- 25 of the order; or
- (b) Order any party named in the order to furnish to any other person so named any specified information in accordance with the terms of the order.

7. Certain anti-competitive practices prohibited—(1) No

30 carrier engaged in outwards shipping shall—

- (a) Use a fighting ship; or
- (b) Engage in a pricing practice that has the purpose or effect of limiting, preventing, or reducing competition among carriers; or
- 35 (c) Tender for the supply of outwards shipping services at prices, or on terms, agreed or arranged with any other carrier or carriers without the knowledge and consent of the person inviting the tender, or agree or arrange with any other carrier or carriers that one or more of them will abstain from tendering for the
- 40 supply of such services, where tenders for the supply of such services have been invited; or

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- (d) Retaliate or threaten to retaliate against a shipper for giving patronage to another carrier, or for making a complaint under **section 6** of this Act by refusing, or threatening to refuse, to carry goods of the shipper or to carry goods of the shipper otherwise than on terms disadvantageous to the shipper when compared to terms offered by the carrier to other shippers for the carriage of similar quantities of similar goods. 5
- (2) Nothing in **paragraph (a)** or **paragraph (b)** of this section shall prohibit the setting of any prices designed to achieve or retain a reasonable share of the market. 10

8. Minister may investigate suspected anti-competitive practices—(1) Where the Minister believes on reasonable grounds that any person may be engaging in any predatory practice or other practice or conduct having the purpose or effect of limiting, preventing, or reducing competition among shippers (including any practice or conduct to which **section 7** of this Act applies) in relation to any outwards shipping service, the Minister may either investigate the matter or arrange for it to be investigated by some other person whom the Minister considers to be qualified to conduct such an investigation by reason of that person's experience in or knowledge of the shipping industry. 15 20

(2) Any person to whom any such matter is referred by the Minister under **subsection (1)** of this section shall have the same powers as the Minister has under **subsection (3)** of this section. 25

(3) For the purposes of an investigation under this section, the Minister shall have the powers of a commission of inquiry; and all the provisions of the Commissions of Inquiry Act 1908, except sections 2, 4A, and 14, shall apply accordingly. 30

(4) The Minister may cause the whole or any part of the findings of an investigation under this section (whether conducted by himself or any other person) to be published.

(5) In respect of any investigation under this section, every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court. 35

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(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of that person's sworn testimony, no statement made or answer given by that
5 or any other person in the course of any investigation under this section shall be admissible in evidence against that person in any criminal proceedings in any Court.

9. Offences—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000
10 who fails to comply with an order made under **section 6 (4)** of this Act.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 who acts in contravention of any of the provisions of **section 7** of this
15 Act.

(3) Where the owner, charterer, manager, or operator of a ship commits an offence against **subsection (1)** or **subsection (2)** of this section, every person who is the agent in New Zealand of that owner, charterer, manager, or operator, or is the agent
20 for the ship, shall be guilty of the same offence and liable to the same penalty.

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PART I

SHIPPING POLICY AND PRACTICES

3. Shipping policy objectives—For the purposes of this Act, the objectives of New Zealand's shipping policy relating to
25 outwards shipping are as follows:

(a) To promote and safeguard fair competition in international shipping serving New Zealand's
30 outwards shipping to the benefit of both shippers and carriers, having regard to—

(i) New Zealand's reliance on efficient, reliable, and competitive shipping services, whether provided by individual carriers or by members of a conference:

(ii) New Zealand's market and product
35 diversification:

(iii) Developments in international shipping, including shipping operated other than on a commercial basis or for other than a commercial purpose:
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|---|----|
| (b) To safeguard against the abuse of a dominant position by any carrier or association of carriers, and to ensure that the entry of new carriers into New Zealand's outwards shipping is not unfairly or unreasonably prevented or prejudiced: | 5 |
| (c) To discourage practices by carriers that have the effect of limiting, preventing, or reducing competition among carriers: | |
| (d) To encourage carriers to give reasonable notice to shippers who will be affected of impending changes to the terms and conditions upon which the carrier carries goods: | 10 |
| (e) To encourage consultation and negotiation between shippers and carriers relating to the terms and conditions of the carriage of goods by carriers, particularly in relation to the following matters: | 15 |
| (i) Changes in general tariff conditions and in the policies on which such conditions are based: | |
| (ii) Changes in the general level of tariff rates for major commodities: | 20 |
| (iii) Promotional freight rates: | |
| (iv) Special freight rates: | |
| (v) The imposition of and changes to surcharges: | |
| (vi) Procedures for the supply of information by shippers in respect of cargo availability and the nature and volume of cargo to be shipped: | 25 |
| (vii) The introduction of new technology: | |
| (viii) Changes in the pattern of services: | |
| (f) To recognise that commercial relations between shippers and carriers should be self-regulating while there is a satisfactory balance of advantage between the parties. | 30 |

4. Unfair practices justifying use of Minister's powers to initiate investigations and give directions—(1) For the purposes of this Part of this Act, the term "unfair practice" means any practice or conduct engaged in, or any agreement entered into or arrived at, that has the purpose or has or is likely to have the effect of limiting, preventing, or reducing competition in outwards shipping services; and includes, in relation to outwards shipping services, the following:

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- (a) The abuse of a dominant position by any carrier or association of carriers:
- 5 (b) Any substantial failure on the part of a carrier to give reasonable notice (whether individually or to a representative body or by way of circular or notice appearing in any relevant trade journal or other appropriate publication) to any New Zealand shipper who will or is likely to be affected of impending changes to the terms and conditions upon which the carrier carries goods:
- 10 (c) Any unreasonable refusal or failure on the part of a carrier to enter into negotiations or consultations requested by any New Zealand shipper, relating to the terms and conditions upon which the carrier carries goods:
- 15 (d) The tendering by a carrier for the supply of outwards shipping services at prices, or on terms, agreed or arranged with any other carrier without the knowledge of the person inviting the tender, or the entering into or arriving at of any agreement with any other carrier or carriers that one or more of them will abstain from tendering for the supply of such services, where tenders for the supply of such services have been invited.
- 20 (2) In exercising the discretion to initiate an investigation into an unfair practice under **section 5 (1)** of this Act, or to issue directions under **section 7 (1)** of this Act, the Minister shall have regard to the following matters:
- 25 (a) The shipping policy objectives set out in **section 3** of this Act:
- 30 (b) The degree of any detriment or disadvantage caused or likely to be caused by the unfair practice:
- 35 (c) The possibility of stopping or preventing the carrier from engaging in the unfair practice, or of minimising any detriment or disadvantage caused or likely to be caused by the unfair practice, by means other than the powers conferred on the Minister by this Part of this Act.

5. Minister may investigate suspected unfair practices—

- 40 (1) Where the Minister believes on reasonable grounds that any unfair practice is being or has been engaged in by a carrier or carriers that has or is likely to have a detrimental effect on

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the interests of any New Zealand shipper, the Minister, following consultation with that carrier or those carriers, may investigate the matter or arrange for it to be investigated by some other person whom the Minister considers to be qualified to conduct such an investigation by reason of that person's experience in or knowledge of the shipping industry. 5

(2) Any person to whom any such matter is referred by the Minister under **subsection (1)** of this section shall have the same powers as the Minister has under **subsection (3)** of this section. 10

(3) The Minister shall, for the purposes of an investigation under this section, have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908.

(4) Section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908 shall apply to all persons involved in any capacity in an investigation under this section as if it were an inquiry conducted by a Commission under that Act. 15

(5) Any person who satisfies the Minister, or the person conducting the investigation where that person is not the Minister, that any evidence given in the investigation may adversely affect that person's interests, shall be given an opportunity during the investigation to be heard in respect of the matter to which the evidence relates. 20

(6) Where in the course of an investigation under this section it appears to the Minister, or to the person conducting the investigation where that person is not the Minister, that any adverse finding or comment is likely to be made in the report on the investigation relating to the conduct of any person, that person shall be given an opportunity to be heard in respect of that conduct. 25 30

(7) Every person entitled or given an opportunity to be heard in an investigation under this section may appear in person or be represented by counsel or an agent.

6. Report on investigation—(1) The person conducting an investigation under **section 5** of this Act shall prepare a written report on the results of the investigation, and, where that person is not the Minister, shall submit the report to the Minister. 35

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(2) Not later than 30 days after the completion of the report on an investigation conducted under **section 5** of this Act or, where the person conducting the investigation is not the Minister, not later than 30 days after the submission of the report to the Minister, the Minister shall,—

- (a) Subject to **subsection (3)** of this section, send a copy of the report to every person whose conduct has been the subject of investigation by the inquiry; and
- (b) Where the report reveals conduct on the part of any carrier that would reasonably justify the use of the Minister's power to issue directions to that carrier under **section 7** of this Act, notify that carrier accordingly and specify a date, being not earlier than 30 days after the date of the notification, before which the carrier may make representations to the Minister on the matter.

(3) The Minister—

- (a) May delete or omit from any copy of a report to be sent out under **subsection (2) (a)** of this section any part of the report that does not bear directly on the conduct of the person to whom the report is to be sent;
- (b) Shall delete or omit from such a copy any part of the report that contains confidential or sensitive commercial information supplied by any person other than the person to whom the report is to be sent.

(4) Subject to **subsection (5)** of this section, the Minister may cause the whole or any part of a report on an investigation under **section 5** of this Act to be published.

- (5) The Minister shall not publish any part of the report that contains confidential or sensitive commercial information unless the Minister is satisfied that in all the circumstances it is in the public interest to do so.

7. Minister may issue directions to carriers engaging in unfair practices—(1) Where, as a result of an investigation carried out under **section 5** of this Act, and following consideration by the Minister of any representations made by the carrier within the time allowed under **section 6 (2) (b)** of this Act, the Minister is satisfied that a carrier is engaging or has engaged in any unfair practice, and that the effect of the unfair practice has been or is likely to disadvantage in any substantial

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way the interests of any New Zealand shipper, the Minister may direct that carrier in writing to do all or any of the following:

- (a) Furnish to the Secretary for Transport particulars of all the terms and conditions of, and the names of all other parties to, each agreement relating to outwards shipping to which that carrier is or has been a party and which includes or included provision for any or all of the following matters:
 - (i) The fixing or regulation of freight rates: 5
 - (ii) The giving to or withholding from any New Zealand shipper of special rates or other special privileges or advantages, or the imposition of any detriment or disadvantage on any such shipper: 10
 - (iii) The allocation of ports to any particular vessel or carrier, or the restriction or other regulation of the number or character of sailings between ports: 15
 - (iv) The restriction or other regulation of the volume or character of goods to be carried: 20
- (b) Give reasonable notice, in such manner as may be specified in the direction, to any New Zealand shipper who will or is likely to be affected of impending changes to the terms and conditions upon which that carrier supplies outwards shipping services: 25
- (c) Provide such evidence as the Minister may require that, following a written request from a New Zealand shipper, the carrier has entered into reasonable consultations or negotiations or both with that shipper on such matters as may have been specified by the shipper in the request, being matters relating to the terms and conditions upon which the carrier supplies outwards shipping services, or to any proposed or possible changes to such terms and conditions. 30
- (a) Require the furnishing of particulars of any agreement entered into by the carrier after the date on which the direction was given: 35
- (b) Exempt from the ambit of the direction, in whole or in part, any agreement or class of agreements of which particulars are required to be furnished, whether by reference to— 40

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- (i) The identity or class of identity of any other party to the agreement or agreements; or
- 5 (ii) The subject-matter of the agreement or agreements; or
- (iii) The nature of any of the terms or conditions of the agreement or agreements; or
- (iv) The period within which any such agreement is or was entered into or in existence:
- 10 (c) Specify the period within which particulars of any agreement to which the direction relates must be furnished to the Secretary for Transport, and different periods may be specified in respect of agreements entered into or subsisting at different times:
- 15 (d) Specify any minimum period of notice that may be appropriate to a requirement imposed under **subsection (1) (b)** of this section.
- (3) Subject to **section 8 (2)** of this Act, a direction under this section may be issued at any time and may amend any prior
- 20 direction issued to the same carrier.
- (4) The Minister may at any time, by notice in writing to the carrier concerned, cancel a direction issued under this section.

8. Restrictions on directions—(1) No requirement shall be

25 imposed under any direction that is not related to the nature of the conduct that justified the issue of the direction.

(2) No direction shall be issued to a carrier later than 18 months after the date before which the carrier is entitled to make representations under **section 6 (2) (b)** of this Act.

30 **9. Period for which direction in force**—Every direction issued under **section 7** of this Act shall remain in force until—

- (a) It is cancelled by the Minister; or
- (b) The date 2 years after the date before which the carrier is entitled to make representations under **section**
- 35 **6 (2) (b)** of this Act,—
- whichever is the sooner, and shall then lapse.

9A. Minister's powers not to be delegated—Notwithstanding section 8 of the Ministry of Transport Act 1968, the Minister shall not delegate to any other person—

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- (a) The power conferred on the Minister by **section 5 (1)** of this Act to initiate an investigation:
- (b) Any of the powers conferred on the Minister by **section 7** of this Act.

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9B. Offences—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 who—

- (a) Refuses or fails without reasonable excuse to comply with any direction given under **section 7** of this Act; or 10
- (b) Furnishes any particulars of any agreement to which a direction made under **section 7** of this Act applies, knowing that the particulars are false or misleading; or
- (c) Fails without reasonable excuse to supply information 15 requested by a person carrying out an investigation under **section 5** of this Act for the purposes of that investigation.

(2) For the purposes of **paragraphs (a) and (c)** of **subsection (1)** of this section, it shall constitute a reasonable excuse if the person 20 charged can show that compliance with the direction or the supply of the information, as the case may be, would render that person liable to prosecution under the law of another country.

PART II

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INTER-GOVERNMENTAL SHIPPING RELATIONS

10. Regulations may be made for defence of New Zealand shipping or trading interests—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations for 30 all or any of the following purposes:

- (a) Regulating the carriage of goods in ships and the rates to be charged for such carriage:
- (b) Regulating the entry of ships into New Zealand and the departure of ships from New Zealand, and the cargo 35 carried in such ships:
- (c) Regulating the terms and conditions of agreements relating to shipping services, including charter parties:
- (d) Fixing and levying charges on ships that enter New Zealand ports: 40

(e) Prescribing penalties not exceeding \$10,000 for offences against regulations made under paragraphs (a) to (d) of this subsection:

5 (f) Providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

(2) The Minister shall not recommend that regulations be made under any of paragraphs (a) to (e) of subsection (1) of this section unless *(he)* the Minister is satisfied that a foreign
10 government or any agency of a foreign government has adopted or proposes to adopt any measure that damages or threatens to damage New Zealand shipping or trading interests by adversely affecting the access of New Zealand national flag carriers to seaborne cargo or of New Zealand shippers to the
15 services of carriers of their choice.

(3) Where the Minister recommends the making of regulations under this section in response to any measure adopted or proposed to be adopted by a foreign government or any agency of a foreign government, any regulations made
20 on that recommendation shall relate only to outwards shipping by ships controlled by—

(a) That foreign government or agency; or

(b) A national of the country of that government; or

25 (c) A body corporate having its principal place of business in that country.

11. Designation of national flag carriers—(1) For the purposes of shipping agreements concluded or to be concluded between the government of New Zealand and any foreign government, the national flag carriers shall be—

30 (a) All carriers who own a registered New Zealand ship; and

(b) All carriers who are entitled to own a registered New Zealand ship; and

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35 (c) All carriers designated as a national flag carrier by the Minister by notice in the *Gazette*.

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(c) All carriers designated as national flag carriers pursuant to subsection (2) of this section.

40 (2) The Minister may, following consultation with the principal New Zealand shippers likely to be affected by any such designation, by notice in the *Gazette*, designate any carrier as a national flag carrier.

PART III

MISCELLANEOUS PROVISIONS

12. Application of other Acts—~~(1)~~ Nothing in Parts II and IV of the Commerce Act 1975 shall apply to outwards shipping.

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(2) Nothing in this Act shall derogate from or affect any provision in any other Act that authorises any producer board, marketing board, or other similar body established by or under that Act or any other Act to make shipping arrangements for the export of goods produced in New Zealand.

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13. Overseas persons prohibited from acquiring shares in The Shipping Corporation of New Zealand Limited—

The Shipping Corporation of New Zealand Act 1973 is hereby amended by inserting, after section 3, the following section: 15

“3A. (1) Notwithstanding anything in the Companies Act 1955 or the Overseas Investment Act 1973 or in the articles of association of the company, it shall not be lawful for any of the following persons to subscribe for or otherwise acquire shares in the company: 20

“(a) Any person not ordinarily resident in New Zealand:

“(b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 that is for the purposes of that Act a subsidiary of any company or body corporate incorporated outside New Zealand: 25

“(c) Any company within the meaning of the Companies Act 1955 in which—

“(i) At least 25 percent of any class of shares is held by any person or company or body corporate to which **paragraph (a)** or **paragraph (b)** of this subsection relates; or 30

“(ii) The right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the company is held by a person or company or body corporate to which **paragraph (a)** or **paragraph (b)** of this subsection relates: 35

“(d) Any nominee of a person or company or body corporate to which **paragraph (a)** or **paragraph (b)** or **paragraph (c)** of this subsection relates. 40

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“**(2)** Every contract for the sale of any shares in the company to any person to whom **subsection (1)** of this section applies, and every transfer of any such shares to any such person, and
5 every other contract or arrangement, whether made orally or in writing, having the effect, in any way, whether directly or indirectly, of defeating, evading, or circumventing the operation of **subsection (1)** of this section, shall be unlawful and void.

“**(3)** The directors of the company shall refuse to register any
10 transfer of shares in the company if they have reasonable grounds to believe that the transfer is unlawful and void under **subsection (2)** of this section.”

14. Repeal and consequential amendments—(1) The Protection of British Shipping Act 1936 is hereby repealed.

15 (2) The Seventh Schedule to the Shipping and Seamen Act 1952 is hereby amended by omitting so much as relates to the Protection of British Shipping Act 1936.

(3) The First Schedule to the Ministry of Transport Act 1968 (as substituted by section 3 (1) of the Ministry of Transport
20 Amendment Act 1972) is hereby amended—

(a) By omitting from Part I the item relating to the Protection of British Shipping Act 1936:

(b) By adding to that Part (as amended by section 52 (5) of the Urban Transport Act 1980) the following item:

25 “**(1985) 1986, No. 00—The Shipping Act (1985) 1986.**”