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THE NEW WORLD ALLIANCE AGREEMENT
FMC Agreement No. 011960

A Space Charter and Sailing Agreement

Expiration Date: See Article 15



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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is The New World Alliance Agreement ("Agreement"). As used herein, "The New World Alliance" ("TNWA") refers to the Parties in their capacity as Parties to this Agreement.

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit each of the Parties to it to provide more frequent sailings and to achieve efficiencies and economies in their respective services covered by the Agreement, all to the benefit of the Parties and the shipping public. In order to maximize the benefits of the cooperation, the Parties intend and anticipate that their joint arrangements will include (as used in this Agreement, "include" and "including" mean "include without limitation" and "including without limitation") and support the following:

- (a) The operation of rationalized, market oriented and cost competitive services with the highest priority given to overall service quality and schedule reliability.
- (b) The establishment of a simple structure and operation of services with an administration as lean and efficient as possible, including through use of single operator loops.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to this Agreement ("Parties") are:

- (a) APL Co. Pte Ltd. ("APL Co.") of 456 Alexandra Road, #06-00 NOL Building, Singapore 119962, and American President Lines, Ltd. of 1111 Broadway, Oakland, California, USA (hereinafter referred to collectively as the Party "APL");

- (b) Mitsui O.S.K. Lines, Ltd. of 1-1 Toranomom, 2-chome, Minato-ku, Tokyo, Japan (hereinafter referred to as "MOL"); and
- (c) Hyundai Merchant Marine Co., Ltd. of 66, Jeokseon-dong, Jongno-gu, Seoul, 110-052, Korea (hereinafter referred to as "HMM").

The Parties are collectively referred to as The New World Alliance ("TNWA").

ARTICLE 4: SCOPE

A. Vessels That Call U.S. Ports: The Parties will cooperate with respect to services deployed in the trade lanes ("Trade Lanes") identified below with respect to vessels that operate on voyages that

- (1) call a port or ports in one or more of the following U.S. port ranges:
 - (a) U.S. Pacific Coast (including Alaska);
 - (b) U.S. Atlantic and Gulf Coasts (Maine through Brownsville, Texas, and Puerto Rico and the U.S. Virgin Islands);
- (2) and that also call a port or ports in one or more of the following non-U.S. port

ranges:

- (a) Far East, which is defined for purposes of this Agreement to include countries and portions thereof (other than the United States, its commonwealths, territories and possessions) bordered by the Western Pacific Ocean and nearby waters (including the Sea of Japan, the East China Sea, the South China Sea, the South Pacific and the Philippine Sea), and/or bordered by the Indian Ocean and nearby waters (including the Bay of Bengal, the Arabian Sea and the Red Sea and waters contiguous to the foregoing);
- (b) Northern Europe, which is defined to include Germany, the United Kingdom, Belgium, the Netherlands, and France;
- (c) Panama;
- (d) Mediterranean, which is defined to include Malta, Spain and Italy

(e) Canada Pacific Coast.

B. Vessels That Do Not Call U.S. Ports: The Parties also may cooperate with respect to vessels that operate on voyages that do not call a U.S. port, including vessels that operate on voyages within or between the Far East, Northern Europe and/or Mediterranean port ranges. Such vessel voyages may carry cargo which moves to or from the United States (on a through bill of lading or otherwise) and which has a prior or subsequent transshipment to or from a vessel that does call the United States. This Agreement authorizes cooperative activities and agreements, as provided herein, relating or incidental to transportation subject to the Shipping Act of 1984, as amended (the "Shipping Act") on such vessels that do not call U.S. ports.

C. Cargo. A Party may use its space on any vessel referenced in the preceding Paragraphs A and B (or referenced in Article 10 below concerning feeder vessels) to carry cargo without regard to its ultimate or intermediate origin or destination, whether inside or outside the port ranges defined in Paragraph A above and whether or not moving on a through bill of lading. Cargo carried on any such vessel may be moving between, on the one hand, any U.S. port range specified in Article 4.A(1) or any inland and coastal point served via such port range, and, on the other hand, any port in the rest of the world or any inland and coastal point served via such port.

D. Limitations on the scope of this Agreement.

1. This Agreement does not apply to services or activities that do not relate to transportation subject to the Shipping Act.
2. Subject to Articles 12.D and 12.E below, this Agreement does not apply to a vessel string calling the United States (i) that consists entirely of vessels provided by fewer than all Parties and on which fewer than all Parties have a basic slot allocation ("BSA") to or from the United States, or (ii) that includes one or more vessels provided by carrier(s) that are not party to this Agreement. To the extent that such vessel strings are utilized by

a Party or Parties, they will be covered by separate agreements which will, if legally required, be separately filed by the parties thereto under the Shipping Act.

3. This Agreement does not authorize the Parties to jointly enter into service contracts with shippers or to discuss or agree on rates or charges charged to shippers under tariffs or service contracts or on the terms of the Parties' individual service contracts. The preceding sentence does not, however, derogate from any authority the Parties may have to discuss or agree on such matters pursuant to any other agreements in effect under the Shipping Act, in accordance with the provisions of such other agreements.

ARTICLE 5: VESSELS, PORT ROTATIONS AND SCHEDULES

A. Provision of Vessels

1. A ship that, on the date this Agreement becomes effective, is being used in a service calling the United States pursuant to FMC Agreements Nos. 011618, 011623 and/or 011723 shall be deemed to be providing service under this Agreement as of its effective date.

2. (a.) As of the date this Agreement is filed with the Federal Maritime Commission under the Shipping Act of 1984, the Parties are operating a total of approximately 65 ships in services calling the United States pursuant to FMC Agreements Nos. 011618, 011623 and/or 011723, of which approximately 31 are provided by APL, 17 are provided by HMM, and 17 are provided by MOL. In aggregate, these vessels are providing, as of the date of filing this Agreement, approximately 2.7 million TEUs of nominal capacity on an annualized basis inbound to the United States and the same number outbound from the United States (all U.S. coasts combined).

- (b.) The Parties are authorized to change the number and/or size of vessels operated under this Agreement so as (i) to reduce the above-stated aggregate, annualized capacity figure by no more than 20 percent or (ii) to increase such capacity figure by no more

than 40 percent; provided, however, that the Parties may reduce or increase such capacity by greater percentages on a temporary basis (fewer than 90 days) in response to operational or market conditions.

(c.) Subject to the need to stay within the capacity range identified in the preceding sentence, the Parties are authorized to adjust the above-stated number of vessels provided by any particular Party under this Agreement.

3. (a.) Each Party has a prime responsibility for maintaining the number of ships provided by it under paragraph A.2 of this Article 5. Any change to this number can only be made with the express prior unanimous agreement of all Parties, subject to Article 13.A.3(ii).

(b.) A Party may substitute a ship while keeping its number of ships constant, in which event the Parties may agree, pursuant to Article 6 below concerning slot allocations, on the allocation of any increase or reduction in capacity, or of any increase or reduction in vessel operating costs, resulting from the substitution.

4. Each Party shall provide in each individual Trade Lane ships to satisfy its own capacity demand as closely as reasonably possible, based on the principle of demand equals supply over the long term. This is subject to the overriding objective of achieving cost competitive services, the desire to have loops operated by a single Party, and the option of the Parties to agree on the exchange of slots between different Trade Lanes pursuant to Article 6.A.

5. The Parties shall commit adequate investments in capital items, such as ships and equipment, to cater for the efficient operation of the services subject to this Agreement. It is understood that certain loops employ relatively less cost efficient ships and that plans will be put in place for the replacement of those by more efficient ships.

6. The Parties intend not to suffer liability for overage premiums in connection with cargo insurance. Unless otherwise agreed by the Parties, vessels will not be operated in linehaul services under this Agreement unless they are exempt from vessel-age related cargo surcharges

by the London Institute, the Cargo Reinsurance Association and any similar organization operating in Japan.

7. The Parties may exchange forecasts and other data, and may make projections and plans relating to future capacity under this Agreement. The provision and/or planning of capacity shall be made in the following manner:

- (a) The Parties agree to apply the following rules to plan which Party will be responsible for the provision of additional or replacement ships:
 - (i) For the upsizing of a single operator loop, or ships within such a loop, the operator of that loop will be responsible for the provision of the new ship or ships.
 - (ii) For the upsizing of existing mixed-operator loop, the Parties will either (i) share the providing responsibility on a loop BSA basis, or (ii) mutually agree on which of them will be responsible for providing the new tonnage, in which case the Parties must first mutually agree on capacity and BSA sharing ratio.
 - (iii) For the replacement of a ship in an existing mixed-operator loop, the current provider of that ship will be responsible for providing the replacement ship. By mutual agreement, the number of vessels operated by each operator may change.
 - (iv) Each loop shall be operated by a single operator across all Trade Lanes, unless otherwise mutually agreed; provided, that mixed-operator loops in existence on the date this Agreement becomes effective shall continue subject to further agreement of the Parties.
- (b) In the case of transition from mixed-operator loop(s) to single-operator loop(s), in accordance with the applicable provisions this Agreement, the Parties shall mutually

agree on the new loop structure, including transition period, tonnage cascading program, BSA ratio, and other matters mentioned in Articles 5.B and 6.A, as applicable.

(c) For an implementation of a new mixed-operator loop, the Parties shall agree on the duration for the mixed operation, allowing for an adequate succession plan.

(d) If a vessel used in a mixed-operator loop under this Agreement is determined to be in excess of the Agreement's requirements as a result of a decision made collectively by the Parties, the provider of the vessel has the options to take the vessel back or to charter the vessel to the Agreement Parties according to terms and conditions agreed by the Parties. Notwithstanding the foregoing, should any such vessel operated by a Party become surplus due to the independent actions of such Party, such surplus vessel and all associated costs shall remain the sole responsibility of that Party.

(e) It is understood that the foregoing provisions of this paragraph 7 are subject to the provisions of Article 13 concerning decision making.

B. Port Rotations and Schedules

1. The Parties' voyages calling U.S. ports pursuant to this Agreement will operate primarily between the following port ranges as defined in Article 4 above:

- i. between the Far East and the U.S. Pacific Coast (such voyages may also call the Canada Pacific Coast);
- ii. between the Far East and the U.S. Atlantic and/or Gulf Coasts, whether via the Panama Canal (such voyages may also call ports in Panama) or via the Suez Canal (such voyages may also call ports in the Mediterranean);
- iii. between Northern Europe and the U.S. Atlantic and/or Gulf Coasts.
- iv. Vessels may operate on extended port rotations that include participation in two or more such services and/or that call both the U.S. Pacific Coast and the U.S. Atlantic/Gulf Coasts.

2. Subject to the capacity range specified in Article 5.A above, the Parties are authorized to make and implement agreements on matters relating to port rotations and

scheduling of vessels subject to this Agreement, including: the port rotations for particular vessels, including decisions as to which vessels will be employed in particular loops; changes in the number or characteristics of vessels used in particular loops; the number of vessel loops and their port rotations, including the addition or discontinuation (on both a long-term or temporary or seasonal basis) of particular loops; standards (including performance standards) and specifications for deciding which vessels to use in particular port rotations; sailing schedules; service frequency; ports to be served; transit times; phasing of vessels into and out of loops and related arrangements for transshipment of cargo; procedures, rights and obligations (including with respect to costs and mitigating actions such as schedule adjustments) applicable to situations where adherence to schedules is affected (on a long-term or short-term basis) by factors such as vessel breakdown, casualty or loss, or failure of a vessel to meet performance standards; drydocking of vessels and related schedule and deployment changes; standards, criteria, principles and procedures for making and changing arrangements with respect to the foregoing matters; and all other matters related to the port rotations and scheduling of vessels. Any U.S. flag vessel may call at any U.S. port in connection with the carriage of U.S. military or other cargo reserved by law or contract with the United States of America for carriage by U.S. flag vessels.

3. Regular reviews of the Parties' services shall be conducted and changes shall be agreed where necessary, in order to maintain a high quality service covering the Parties' requirements in the most cost-effective manner.

4. The Parties shall agree on and implement a fair and equitable method of sharing the costs of providing and operating the ships employed in the port rotations under this Agreement, including through the terms of slot allocations, exchanges and sales (pursuant to

Article 6 below) and through other means as the Parties may agree. All deployment transition costs incurred on the introduction of vessels in services under this Agreement, including operating costs resulting from the cascading or substitution of ships between different port rotations or from the addition or withdrawal of ships or loops in port rotations, will be equitably shared by the Parties according to principles that will be agreed by the Parties. Plans will be put in place by the Parties to minimize these costs as much as possible.

5. The Parties must ensure reliable schedules with proactive management. Each Party has the obligation to provide ships and perform schedules as mutually agreed. If however, for any reason, the Party providing the ship is unable to maintain the agreed schedule, such Party must take immediate actions to rectify the situation, which may include operational measures such as increasing vessel speed or omitting a port on a particular voyage. The Parties may agree on rules for remedial actions and on principles, procedures, rights and obligations (including obligations for costs) relating to such remedial measures or to the non-performance of such measures.

6. The Parties agree that in certain Trade Lanes and subject to applicable law, benefits may be derived from cooperation with other carriers or alliances. Vessels covered by this Agreement may also be covered by agreements between one or more Parties and such third parties, subject to applicable law and filing requirements. The option of cooperation with other carriers or alliances will be considered when determining the best means of providing to a particular market a cost effective and high quality service.

ARTICLE 6: SLOT ALLOCATIONS, EXCHANGES AND SALES

A. Among the Parties

1. The Parties are authorized to make and implement agreements concerning all matters relating to the procedures, terms, and conditions of the allocation, exchange, sale and use of capacity, slots and associated equipment (including reefer plugs) on the vessels covered by Article 5 above.

- a. Such agreements, procedures, terms and conditions may include: the number of slots each Party commits to provide to the other Parties and the BSA which each Party is allocated and responsible to utilize on particular vessels, loops or loop segments; deadweight allocations and restrictions associated with slot allocations, including a fair and reasonable process for adjustments; principles, procedures, terms and conditions to govern the release, buying, selling and/or allocation to Parties of unused or excess slots within a Party's BSA or not included in the Parties' BSAs; monetary or other consideration for slots used and provided; principles and procedures for establishing and adjusting slot allocations; adjustments of BSAs and related matters during the phasing in or phasing out of a loop or substitution of ships, or in the event of operational contingencies including but not limited to vessel breakdown, casualty or loss, or an underperforming vessel; and accounting principles and procedures for determining and settling accounts related to slots provided, used, exchanged and sold.
- b. Such agreements, procedures, terms and conditions may be based, in whole or part as the Parties may agree, on the following factors (among others), which may be taken into account on an individual loop basis, an individual Trade Lane basis, and/or a multi-trade lane basis (e.g., two or more trade lanes which may include

non-U.S. trade lanes): (i) a Party's capacity contributions and needs over a time period; (ii) voyage expenses (including port charges, bunker and canal costs) of particular vessels or loops or in particular trade lanes; (iii) vessel capital costs associated with slots contributed and used by a Party; (iv) the need for a fair and equitable method of sharing the costs of providing and operating the ships employed in the services under this Agreement; and (v) the relative cost efficiency of particular loops and particular vessels in a loop and the equitable apportionment of the extra costs of relatively inefficient ships. The Parties may agree on the relative weights to be accorded such factors for particular loops, trade lanes and time periods.

2. It is the objective of the Parties that the container slots to be provided by each Party hereunder shall be in exchange for slots to be provided to it by the other Parties in accordance with the BSAs, without the payment of any slot charter hire by one Party to the other, to the extent each Party provides a number of slots equal to its BSA. Any discrepancy between the number of slots provided by any Party and the BSA of said Party shall be regarded as a slot sale or purchase, as the case may be, subject to such rates, terms and conditions as the Parties may agree pursuant to the preceding paragraph.

3. Except as otherwise provided herein, every Party is entitled to use freely the assets owned by it, including slots allocated to it. Every Party shall be entitled to use its slot allocation without any geographical restrictions. There shall be no priorities for full containers, empty containers, wayport/interport containers or breakbulk cargo, subject to maintaining deployment schedule profiles.

4. On such terms and subject to such operating limitations as the Parties may agree or as may be imposed by applicable law, each Party shall accept for transportation and transport any and all containerized cargo and equipment tendered to it by another Party, subject to the

right of the Party providing the vessel to adopt measures it reasonably deems necessary to protect the safety and security of the vessel and its cargoes, including measures relating to hazardous cargoes. As used in this Agreement, the term "equipment" includes containers owned or leased by the Parties, whether full, partially loaded or empty and other freight service equipment that the Parties mutually designate.

5. (a.) Notwithstanding any other provision of this Agreement, APL does not by this Agreement grant any right to any other Party to this Agreement to charter space on vessels operated by APL, if any, between any ports in the U.S. domestic trade; provided however, the grant of right by APL does extend to the carriage of empty containers or other equipment excepted under the sixth proviso of Section 27 of the U.S. Merchant Marine Act, 1920. (b.) Nothing in this Agreement shall be construed as granting a right on the part of any Party to carry aboard the vessel of any other Party any cargoes subject to cargo preference laws of the country of registry of such other Party's vessel or the country of citizenship of its owner. Pursuant to section 5(g) of the Shipping Act of 1984, it is agreed that HMM and MOL may not use or make available any space on any U.S.-flag vessels provided by APL for the carriage of cargo reserved by law for U.S.-flag vessels.

6. MOL and HMM hereby acknowledge and consent that the sub-charter or assignment of slots or space allocated hereunder from and to American President Lines, Ltd. and/or APL Co. Pte Ltd. as affiliates under common control is made jointly and severally, and each such affiliate may freely transfer its slots or space to the other affiliate.

B. With Third Parties

1. The Parties have agreed on the following provisions concerning sales or sub-charters to third parties of slots on vessels covered by this Agreement:

(a.) In the event that a Party has certain unused slots for any sailing on any voyage or portion thereof, and the other Parties have failed to exercise their first right of

refusal to charter those slots within a certain time frame and according to procedures mutually agreed by the Parties, then those unused slots within a Party's entitlement may be sold or sub-chartered on an ad hoc basis (which shall mean not more than one voyage at any one time) to any third party Ocean Common Carrier (which as used in this Agreement has the meaning defined in the Shipping Act), only after the other Parties have failed to exercise their above-mentioned first right of refusal.

- (b.) Slot sales or sub-charters, other than on an ad hoc basis pursuant to the preceding subparagraph (a), must be unanimously agreed, such agreement not to be unreasonably withheld, upon notice in advance by the Parties.
- (c.) Slot sales or sub-charters pursuant to the preceding subparagraphs (a) and (b) are subject to any applicable governmental filing requirement and to the provisions of Article 13 below concerning long-term sales of BSA to a third party; provided that, notwithstanding Article 13, no Party may slot-charter or sub-charter to any third party any space aboard vessels provided by another Party under this Agreement, without the consent of the Party providing the vessel. Any such sub-charter, assignment or sale shall be made upon the condition that the third party shall make no further sub-charter, assignment or sale of such space or slots without the prior written consent of all Parties hereto.

2. Other than slot sales and sub-charters covered by the preceding paragraph 1, the formation of an alliance or other cooperative arrangement in a Trade Lane within the scope of this Agreement is subject to the provisions of Article 13.

ARTICLE 7: CHARTER PARTY TERMS

The Parties are authorized to make and implement agreements concerning all matters relating to the terms and conditions of charter parties relating to the operation and use of vessels subject to this agreement and the use of slots that are allocated, exchanged or sold and the cargo carried therein, including terms and conditions concerning: compliance with applicable laws and government requirements; participation in voluntary government programs concerning security, safety or similar matters, such as the Customs-Trade Partnership Against Terrorism; vessel operation and maintenance; trading limits; Master's responsibility; permissible and restricted cargo; cargo operations; stowage planning; bills of lading; responsibility for loss, damage and claims, including with respect to cargo and equipment; insurance; vessel owner's responsibility; indemnity for cargo claims and other indemnities; treatment of hazardous cargoes; liens; salvage; war; force majeure; sequestration or requisition of all or portions of vessels, or other Flag State use of vessels, including pursuant to the U.S. Government's Voluntary Intermodal Sealift Agreement Program; general average; supercargo; victualing of pilots and government officials; damage notifications and reports; and protection clauses.

ARTICLE 8: U.S. – NORTHERN EUROPE TRADE LANES

- A. As of the date this Agreement is filed, the Parties' cooperation with respect to vessels operating between the U.S. Atlantic and Gulf Coasts and Northern Europe is undertaken in connection with FMC Agreement No. 011722 between the Parties and Maersk Line. Nothing in this Agreement shall affect the Parties' rights and obligations under FMC Agreement No. 011722, which shall continue in effect unless and until it is amended or terminated in accordance with its terms.
- B. The Parties have agreed to the following provisions in order to facilitate their participation, collectively and individually, in FMC Agreement No. 011722, as it may be

amended from time to time, and thereby to help achieve the purposes of that agreement and this Agreement.

1. The Parties are authorized collectively to undertake all of the rights, powers, obligations and liabilities of TNWA as a Party to FMC Agreement No. 011722, to the extent that FMC Agreement No. 011722 confers rights, powers, obligations or liabilities on TNWA as a group.
2. The Parties are authorized to discuss and agree on, and to develop joint positions and make joint decisions with respect to, any and all matters relating to the implementation of, or actions and decisions pursuant to, FMC Agreement No. 011722. This includes all matters on which the parties to FMC Agreement No. 011722 are authorized to discuss or agree pursuant to Article 5 of FMC Agreement No. 011722, and all actions or decisions (whether individual or joint) within the scope of Article 5 of FMC Agreement No. 011722.
3. With respect to all rights (including slot allocations), powers, obligations and/or liabilities that FMC Agreement No. 011722 confers on TNWA as a group, the Parties are authorized to discuss and agree on the allocation or apportionment of any such rights, powers, obligations and/or liabilities among themselves.

C. The provisions of this Article shall cease to be effective on such date as FMC Agreement No. 011722 between the Parties and Maersk Line may terminate; provided, however, that any Party retains the right to bring a claim against any other Party for any loss or damage for breach of or default under this Article, and any cessation of effectiveness of this Article shall be without prejudice to the Parties' respective liabilities and obligations to one another as of the date of cessation.

D. Nothing in this Article shall derogate from the agreements and authorities of the Parties under other Articles of this Agreement concerning the trade between the U.S. Atlantic and Gulf Coasts and North Europe.

ARTICLE 9: STEVEDORING, TERMINAL AND RELATED SERVICES

The Parties, individually or any two or more of them jointly, are authorized to make and implement agreements among themselves and with third parties concerning all matters relating to stevedoring, terminal and related services and equipment, including:

- A. Agreements relating to terminal operations, both generally and at particular ports, including with respect to: principles, terms and conditions relating to selection of marine terminals and to rationalization of terminal operations for the Parties' mutual benefit; principles, terms and conditions relating to the provision of terminal and stevedoring services at a port by a Party to one or more other Parties; the joint negotiation and contracting (or coordination in negotiating and contracting) with port authorities, stevedores, terminals, and other providers of terminal equipment, land, facilities or services; fair treatment of all Parties by such providers; individual or joint tonnage centers and container marshalling facilities; terminal security; and plans and strategies relating to the foregoing. However, this Agreement does not authorize joint operation of a marine terminal by the Parties in the United States.
- B. Agreements concerning administrative mechanisms and the terms and conditions relating to the exchange, interchange or lease of containers, chassis and other equipment at or in the vicinity of marine terminal facilities, including with respect to the establishment and operation of one or more common equipment (including chassis) pools in order to achieve synergies and cost savings through the shared

operation of equipment, respecting always the requirements of other pooling and equipment interchange agreements in which a Party may participate.

- C. Agreements with third parties reached pursuant to this Article remain subject to any applicable regulatory filing requirements.

ARTICLE 10: FEEDER AND OTHER ANCILLARY TRANSPORTATION SERVICES

A. The Parties, individually or any two or more of them jointly, are authorized to make and implement agreements concerning all matters relating to vessels that do not call U.S. ports but that carry cargo transshipped to or from any vessels referenced in Article 4.A above ("feeder vessels"), without restriction as to the ports or port regions called by such feeder vessels, including agreements relating to: rationalization of feeder vessel services; joint or individual operation of feeder vessels by a Party or Parties; joint or individual procurement of feeder vessel services from third parties; charges paid to third parties or between Parties for feeder vessel services; volume, space or slot guarantees relating to feeder vessels; terms of transshipment and the interchange, lease or storage of equipment used in connection with feeder vessels; utilization of feeder vessels; sailing schedules, service terms and frequency, ports to be served, and port rotations of feeder vessels; the number, type and capacity of feeder vessels to be operated or procured jointly; the terms and conditions under which the Parties shall share the capacity of feeder vessels; the addition or withdrawal of capacity for feeder services and the terms and conditions of such addition or withdrawal; transshipment to and from feeder vessels; and all other matters incidental to the transshipment of cargo at foreign ports.

B. The Parties may explore cooperation and establish the necessary infrastructure for implementing the sharing, to the extent permitted by law and subject to any applicable governmental filing requirements, of other activities ancillary to the vessel services under this Agreement, such as trucking, barging, etc., in order to achieve better service and cost savings.

C. Unless otherwise specifically provided, savings resulting from the synergies achieved from cooperation in other non-ocean related activities that are permitted by law, such as, but not limited to, towage, feeders, rail, barging, trucking, off dock, equipment interchanges, and joint purchasing, shall be shared in an equitable manner to the extent permitted by law and in accordance with the agreements between the Parties concerning such particular activities, which shall allocate the costs and liabilities pertaining thereto.

ARTICLE 11: RELATIONSHIP AMONG PARTIES

A. Each Party shall retain its own separate identity, shall have its own sales, pricing and marketing functions and organizations, and shall be responsible for marketing its own interests. Each Party will issue its own bills of lading, handle its own claims and will be fully and solely responsible for all expenses, obligations and liabilities applicable to it pursuant to this Agreement.

B. (a.) Each Party may advertise sailings by vessels of each operator on which the Party is allocated space pursuant to this Agreement. (b.) To the extent reasonably practicable, (i) the advertised closing time for any particular scheduled sailing (that is, the time publicly advertised as the latest time at which cargo for such sailing must be tendered at a port terminal commonly used by the Parties pursuant to Article 9), shall be jointly determined by the Parties, and (ii) each such Party shall publicly advertise the same schedule of vessel sailings and the same closing times at such terminals as the other Parties for any particular sailing as agreed by the Parties from time to time.

C. Neither TNWA nor any Party(ies) acting pursuant to this Agreement shall be construed as constituting a partnership or joint venture for any purpose or extent. Nor shall anything in this Agreement be construed to give rise to a partnership, joint venture, or joint service, or to permit the Parties to pool cargo or revenue except as may be permitted under a further agreement filed

under the Shipping Act. No Party shall be considered an agent of any other Party for any purpose unless expressly stated or constituted as such in writing.

ARTICLE 12: ADMINISTRATION, DISCUSSIONS, AND COORDINATION

A. There shall be an Executive Committee tasked with the implementation of this Agreement and the agreements made pursuant hereto, comprising one representative from each Party. The chairperson of the Executive Committee shall be appointed from among the representatives and rotated. The Parties may establish other committees, administrative structures, administrative and operational procedures and requirements, and communications practices between Parties (including informal discussions and written and electronic communications) in order to facilitate the efficient administration, operation, implementation and management of this Agreement and the services hereunder.

B. The Parties are authorized to make and implement agreements concerning all matters relating to administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, the terms and conditions for force majeure relief; insurance, liabilities, claims and indemnification; payment procedures; procedures for resolving disputes relating to cargo loss or damage; record-keeping; collection, collation and circulation of data, records and reports, including electronic data and data used in preparing governmental monitoring reports; forecasting; coordination of documentation systems, data systems, and communication systems as necessary and desirable for efficient operations and compliance with governmental requirements; procurement, maintenance or sharing of the costs of offices, administrative services, equipment and supplies; procedures for anticipating the Parties' space requirements; maintenance of books and records.

C. (1.) Any two or more Parties may discuss any matter within the scope of this Agreement.

(2.) Except to the extent that this Agreement provides otherwise, this Agreement does not provide authority for fewer than all Parties to make and implement any agreement that would otherwise be required to be filed under the Shipping Act.

D. Where fewer than all Parties to this Agreement are or may become the only parties to a separate agreement of the type referenced in Article 4.D.2.(i) above, the Parties (in their capacities as Parties to this Agreement and, as applicable, parties to the separate agreement) may make and implement agreements relating to the coordination of present and future operations under the two agreements, including with respect to vessels, scheduling, deployments, port calls and terminal use.

E. Where all Parties to this Agreement are or may become parties to a separate agreement of the type referenced in Article 4.D.2.(ii) above, the Parties may, in making and implementing agreements among themselves as authorized by this Agreement, take into account any impacts that present or future operations under one agreement may have on present or future operations under the other agreement, including with respect to vessels, scheduling, deployments, port calls and terminal use. The Parties may also develop joint positions and proposals concerning such matters, which they may discuss and/or agree on with the non-TNWA parties to the separate agreement to the extent permitted by that separate agreement.

ARTICLE 13: DECISION MAKING

A. All decisions to be made pursuant to this Agreement and under any agreements implementing this agreement which introduce changes to the Parties' product, services or BSAs under this Agreement shall be made in accordance with the procedures set forth in this Article.

1. Such changes shall include but not be limited to the following:

- (i) Change in deployment including addition or cancellation of agreed port calls;
 - (ii) Changes of vessels specifications; number of vessels deployed or material changes in the capacity of vessels in a loop;
 - (iii) Long term sales of BSA to third party for requirement within the trade where TNWA has capacity surplus and other Parties do not elect to subscribe;
 - (iv) Long term change in call at common users' terminals, consistent with Article 9;
 - (v) Long term port rotations changes for a loop;
 - (vi) Long term changes in the double berthing sequence;
 - (vii) Long term adjustments in the timing and length of port stays;
 - (viii) Adjustments to fixed BSAs between two or more Parties;
 - (ix) Long term purchase of BSA from third party for requirement within a Trade Lane where TNWA has capacity constraints;
 - (x) Introduction of a new loop in a Trade Lane.
2. All decisions within the scope of this paragraph A shall in the first instance be made by the agreement of all Parties using best endeavors and in good faith. If a decision cannot be reached at the levels of certain committees specified by agreement of the Parties, within time frames specified by agreement of the Parties, the matter will be elevated to the Presidents' level. The Presidents, or Presidents' nominee(s), shall have thirty (30) days to seek a mutually acceptable solution taking into account the implications to all Parties.
3. In the event a solution is not reached at the Presidents' level pursuant to the preceding subparagraph, the following shall apply:

(i) For mixed-operator loops wherein two or more of the Parties provide ships, the proposed change shall not take effect.

(ii) For single-operator loops, the Party seeking to introduce a change ("Introducing Party") shall have the right to proceed with the proposed change and the other Parties shall not object to the Introducing Party's proceeding with the proposed action. The other Parties may then take any of the following actions: (i) obtain space on an alternative service on the same terms and conditions as originally provided pursuant to this Agreement if offered by the Introducing Party, (ii) reduce its slot allocation for the change affected pro rata in accordance with its historical volumes, or (iii) introduce changes in accordance with this paragraph A.

B. Notwithstanding the above, the Parties agree that the following events shall require the unanimous approval of all Parties:

- (i) admission of additional parties to this Agreement (subject to any governmental filings or approvals, if required).
- (ii) formation of alliance/cooperation with party/parties outside this Agreement in a Trade Lane; except long term sales of BSA to third party for requirement within the Trade Lane as set forth in Article 13.A.1(iii) and long term purchase of BSA from third party for requirement within the trade as set forth in Article 13.A.1(ix).
- (iii) any alteration of the mechanism for financial settlements;
- (iv) joint investments incurring significant capital expenditure or commitment;
- (v) decision to terminate the membership of a Party which has experienced a change in ownership or control pursuant to Article 15 below (unanimity among Parties other than the Party whose ownership or control has changed);
- (vi) variation, modification or amendment of the terms in this Agreement.

C. If legally required, decisions made pursuant to paragraphs A and B, above, will be filed with appropriate regulatory bodies, including (if applicable) pursuant to the Shipping Act.

D. Decisions made pursuant to this agreement that are not within the scope of paragraphs A or B, above, may be made pursuant to procedures that the Parties may from time to time adopt.

ARTICLE 14: EFFECTIVE DATE AND PRIOR AGREEMENTS

A. This Agreement shall become effective on the date it becomes effective under the Shipping Act.

B. This Agreement replaces FMC Agreements Nos. 011618, 011623, and 011723 among the Parties, which are terminated as of the date this Agreement becomes effective. The Parties intend that there will be a seamless transition from those three Agreements to this Agreement. All agreements, decisions, understandings, consents, procedures, processes, administrative structures, services, operations, deployments, and other cooperative endeavors that are within the scope of this Agreement and that were in effect and being implemented by the Parties in connection with Agreements Nos. 011618, 011623, or 011723 at the time those Agreements are terminated shall (except to the extent they may be determined by the Parties to be superseded by or inconsistent with this Agreement) continue in effect under this Agreement as if made hereunder, without interruption or disruption, unless and until modified or terminated in accordance with their terms and/or with the terms of this Agreement.

C. Unless the context requires otherwise, references to Agreement Nos. 011618, 011623 or 011723 in agreements or related documents predating this Agreement shall, as of the effective date of this Agreement, be considered to refer to this Agreement.

D. The termination of Agreements Nos. 011618, 011623, and 011723 shall have no effect on the Parties' rights or obligations that previously accrued under those Agreements. Any

undischarged performance under such Agreements which a Party is obligated to perform shall continue as an obligation thereunder until discharged by full performance.

ARTICLE 15: TERMINATION AND WITHDRAWAL

A. This Agreement shall remain in effect through December 31, 2012 (the "Initial Term"). Any Party can withdraw from this Agreement by giving twelve (12) months notice to the other Parties; provided, however, that such notice cannot be given before December 31, 2011.

B. Upon the expiry of the Initial Term, i.e., December 31, 2012, this Agreement shall, unless otherwise agreed by the Parties, be automatically renewed for a further period of one (1) year upon the same terms, except that the notice to withdraw within such renewed period shall be only six (6) months.

C. Notwithstanding the above, with respect to a Trade Lane to and from a port range (as defined in Article 4 above) that includes port(s) in the European Union, a Party can withdraw from such Trade Lane upon a six (6) month notice. In the event of a Party's withdrawal from such a Trade Lane, the withdrawing Party and the remaining Parties shall, at any time within 30 days of the withdrawal notice being given, proceed in accordance with Article 13 to determine the terms of the withdrawing Party's participation in the other Trade Lanes subject to this Agreement. If the Parties should fail to reach an agreement within the time periods provided in Article 13 (such agreement not to be unreasonably withheld), the withdrawing Party's involvement in the other Trade Lanes shall continue on existing terms. The foregoing is without prejudice to the rights of any Party subsequently to take actions authorized by Article 13.

D. In the event of a material change in ownership or control of a Party, the other Parties shall have the right, to be exercised within twelve (12) months from the date of such change, to either:

- (a) unanimously agree to terminate that Party's participation in or pursuant to this Agreement and the agreements made or in effect pursuant hereto by giving not less than six (6) months written notice to that Party; or
- (b) individually withdraw from this Agreement and all agreements made or in effect pursuant hereto by giving not less than six (6) months written notice to the other Parties.
- (c) For the avoidance of doubt, it is hereby understood and agreed among the Parties that this paragraph D would not be triggered in the event that any of the signatories to this Agreement acquires a third party.

E. Any Party may, as hereinafter provided, and following demand to cure a claimed breach, withdraw from this Agreement for a breach by another Party of the withdrawing Party's rights under this Agreement which has a material adverse effect upon the withdrawing Party and which shall not be cured by any remedial action. The Parties shall, upon the giving of such demand for cure, promptly endeavor in good faith to resolve their differences or to cure such claimed breach. If, within sixty (60) days of such demand, the Parties, acting in good faith, shall fail to resolve their dispute, or there shall have been no cure effected, the Party having made demand for cure may withdraw from this Agreement upon not less than ninety (90) days prior written notice given after expiry of such sixty (60) day cure period.

F. For purposes of the immediately preceding paragraph E, a breach of a Party's obligations under this Agreement having a material adverse effect on another Party shall include a failure to comply with agreed capacity, operational and/or financial commitments that results in a material reduction in the benefits that the other Party could reasonably have expected to achieve from this Agreement. Provided, however, that unilateral action by a Party permitted under Article 13 shall not be deemed a material breach for this purpose.

G. (1.) No Party shall be deemed responsible for its failure to perform an obligation under this Agreement with respect to the provision or operation of vessels if such failure is due to an event beyond its reasonable control ("force majeure event"), such as war, hostilities or belligerent acts; piracy; riots; civil disturbances; acts of God; blockades or interdict or prohibition of or restriction on commerce or trading; governmental action including quarantine, sanitary or similar restrictions; governmental (including international organization acting with the force of law) regulations or requirements concerning security; strikes, lockouts or other labor troubles, whether or not involving employees of any Party; shortage or obstacles of labor or facilities for loading, discharge, delivery or other handling of cargo; epidemics; unforeseeable breakdown or latent defects in the vessel's hull, equipment or machinery; obstacles in navigation or haulage; and unusual severe weather which causes operational hindrance. (2.) Any Party claiming a force majeure event shall immediately notify all other Parties and shall promptly take all reasonable measures to remedy the consequences of such event, and shall continue to perform all of its obligations under this Agreement that are not precluded by the event. Upon the termination of such event, the Party shall as soon as possible resume the performance of its obligations. (3.) If the force majeure continues for a period longer than 30 days, the Parties shall promptly meet for the purpose of agreeing on adjustments concerning the affected vessels or operations.

H. The right to withdraw as provided in paragraphs E and F above shall not be the exclusive remedy. Any withdrawing Party shall be free to pursue any rights or remedies it may have by operation of law against any defaulting Party.

I. This Agreement may be terminated at any time by written unanimous agreement of all Parties or upon the withdrawal of all but one of the Parties pursuant to the provisions of this Article.

J. In the event of termination or withdrawal of a Party or Parties from this Agreement, the arrangements in effect pursuant to this Agreement will continue as between the remaining Parties subject to their agreement on relevant adjustments of their rights and obligations.

K. The termination of this Agreement, or the termination or withdrawal of a Party, shall not affect any rights or obligations of any Party to any other Party that accrued prior to such termination or withdrawal. If a Party that withdraws from this Agreement has financial obligations to the other Parties that are unsatisfied as of the date that the withdrawal becomes effective, these obligations survive the withdrawal and satisfaction of the obligations shall be secured by the withdrawing Party providing adequate security or other guarantee of payment of such obligations in a form and manner reasonably satisfactory to the other Parties.

L. Notice of any termination of this Agreement shall be sent to any governmental agencies as may be required.

ARTICLE 16: ADDITIONAL LEGAL COMPLIANCE

A. Notwithstanding anything to the contrary in this Agreement, the Parties agree that prior to undertaking any of the following activities pursuant to this Agreement within the European Union, they will conduct a self-assessment to ensure that their activities are compliant with the exemption criteria of Article 81(3) of the Treaty establishing the European Community and make any filings that may be required at the Federal Maritime Commission and other authorities wherever required:

- (a) Inland transport services outside of ports, including inland haulage of any form, trucking, barging, and stacktrain services, and the joint purchase thereof;
- (b) Joint purchase of maritime feeder and inland services;
- (c) Joint activities with other "consortia" (as defined for purposes of relevant European Union law or regulations);

- (d) Any capacity regulation exercise amounting to more than temporary capacity adjustments within the meaning of Article 3(2)(b) of Regulation 823/2000 as such may be modified from time to time;
- (e) Multilateral equipment exchange agreements including provisions relating to the price at which the equipment is exchanged.

B. Consistent with other terms of this Agreement, the Parties intend this Agreement to be in conformity with all applicable laws, including the U.S. Shipping Act and European Union competition regulations (in particular, European Commission Regulation (EC) No 823/2000 as such may be modified from time to time). The Parties intend to monitor the terms and implementation of this Agreement and intend to take all reasonable steps to ensure that such conformity is maintained. In particular, the Parties intend, with respect to the Trade Lanes that include ports in the European Union, to take all reasonable steps to ensure:

1. that any exercise of the authority in Article 5.A.2.(b) that involves a change in capacity in such Trade Lanes is effected in such a manner as to amount, insofar as such Trade Lanes are concerned, to a "temporary capacity adjustment" within the meaning of Article 3(2)(b) of Regulation 823/2000, as such may be modified from time to time;
2. that consents referenced in Article 6.B.1.(c) are not unreasonably withheld; and
3. that each Party is permitted to offer, on the basis of an individual contract, its own "Service Arrangements" (as defined in European Commission Regulation (EC) No 823/2000, as such may be modified from time to time).

ARTICLE 17: MEMBERSHIP

Participation in this Agreement is limited to the Parties originally subscribing hereto, except that additional Ocean Common Carriers offering regular service in the Agreement trades may be admitted by unanimous agreement of the Parties and by amendment of this Agreement

pursuant to the Shipping Act, and subject to any other government filings or approvals, if required.

ARTICLE 18: ASSIGNMENT

Except as provided in Article 6 above, and unless otherwise unanimously agreed in writing by the Parties, no Party shall assign its rights or delegate its obligations under or pursuant to this Agreement to any other person or entity, or sublet slots allocated to it under the BSAs under this Agreement.

ARTICLE 19: CONFIDENTIALITY

Each of the Parties for itself and on behalf of its employees, agents and subcontractors hereby undertakes to the others, during the currency of this Agreement, as well as after its termination or expiry, to keep confidential the contents of all information (written or oral, except for information already in its possession other than as a result of a breach of this Article, or in the public domain) concerning the business and affairs of the others that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement, subject to applicable governmental or court requirements.

ARTICLE 20: INVALIDITY AND SEVERABILITY

Each term and provision of this Agreement shall be valid and enforceable to the full extent provided by law. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable

provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

ARTICLE 21: GOVERNING LAW AND ARBITRATION

A. Except to the extent the Parties may otherwise provide in and for any implementing agreement hereunder, the interpretation, construction and enforcement of this Agreement, and all rights and obligations between the Parties under this Agreement, shall be governed by English Law, but always subject to the application of the Shipping Act and any other applicable U.S. regulatory law.

B. Except to the extent the Parties may otherwise provide in and for any implementing agreement hereunder, any dispute or claim arising out of or in connection with this Agreement shall be referred to arbitration in London (unless varied at the unanimous agreement of all of the parties involved in the dispute) in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Article.

1. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced, and the tribunal shall consist of a single arbitrator familiar with corporate and/or maritime matters and the type of business conducted by the Parties who shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. The arbitrator shall be appointed by unanimous agreement of all of the parties involved in the arbitration,

failing which such arbitrator shall be appointed by the President of the LMAA.

2. In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties to the arbitration may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

3. The arbitrator's decision, including his written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction; the arbitrator may allocate the cost of arbitration to one or more participating Parties in a manner consistent with the award; the arbitrator may not award exemplary or punitive damages.

ARTICLE 22: INTEGRATION/SUPERSESSION

To the extent possible, all agreements, decisions, understandings, procedures and other arrangements made prior or pursuant to this Agreement (or that are continued under this Agreement pursuant to Article 14) shall be read in conjunction with and interpreted as consistent with this Agreement. In the event of any conflict or inconsistencies, the terms of this Agreement shall always prevail and be paramount.

ARTICLE 23: AMENDMENT AND EMBODIMENT

This Agreement may not be amended, modified, or rescinded except in writing and duly signed by authorized signatories of each of the Parties, and subject to any applicable governmental filing requirements. Any amendment, addendum and appendix so signed shall constitute part and parcel of this Agreement.

ARTICLE 24: DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials, and any subsequent amendments to this Agreement, with the Federal Maritime Commission: (i) Any authorized officer of each of the Parties; and (ii) legal counsel for each of the Parties:

ARTICLE 25: NOTICES

All notices pertaining to this Agreement, except as the Parties may otherwise agree, shall be sent by personal delivery, email with confirmed receipt, or confirmed facsimile transmission, and shall be confirmed by first class mail, postpaid, to the following persons and addresses:

APL

Dennis CC Yee
Director, Alliance Management
Network Planning & Analysis
APL Co. Pte Ltd.
456 Alexandra Road
#06-00 NOL Building
Singapore 119962,
Dennis_CC_Yee@APL.Com (email)
65-6371-5210 (phone)
65-6371-6410 (fax)

HMM

Mr. J.I. Chung
General Manager
Liner Strategy & Planning Department
Hyundai Merchant Marine Co., Ltd.
66 Jeoksensong, Jongno-gu
Seoul 110-052, Korea
pccji@hmm.co.kr (email)
82-2-3706-5474 (phone)
822-732-8482 (fax)

MOL

General Manager
Strategic Planning & Asset Management Group
Liner Division
Mitsui O.S.K. Lines, Ltd.
2-1-1 Toranomom, Minato-ku
Tokyo, Japan 105-8688
3-3587-7796 (fax)

ARTICLE 26: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

ARTICLE 27: HEADINGS AND REFERENCES

The headings and titles contained in this Agreement and its Table of Contents are for convenience and reference only, and in no way define, limit, extend or affect the scope, meaning or intent of any provision of this Agreement. Unless otherwise specified, all references in this Agreement to Articles are references to Articles of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers or agents.

Eric R. Swett
AMERICAN PRESIDENT LINES, LTD.

Name: *Eric R. Swett*
Title: *Asst Secretary*
Date: *May 12, 2006*

Eric R. Swett
APL CO. PTE LTD

Name: *Eric R. Swett*
Title: *Authorized Signatory*
Date: *May 12, 2006*

HYUNDAI MERCHANT MARINE CO., LTD.

Name:
Title:
Date:

MITSUI O.S.K. LINES. LTD.

Name:
Title:
Date:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers or agents.

AMERICAN PRESIDENT LINES, LTD.

Name:

Title:

Date:

APL CO. PTE LTD.

Name:

Title:

Date:

Eliot J. Halperin

HYUNDAI MERCHANT MARINE CO., LTD.

Name: Eliot J. Halperin

Title: Attorney-in-fact

Date: 05/16/06

MITSUI O.S.K. LINES. LTD.

Name:

Title:

Date:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers or agents.

AMERICAN PRESIDENT LINES, LTD.

Name:

Title:

Date:

APL CO. PTE LTD.

Name:

Title:

Date:

HYUNDAI MERCHANT MARINE CO., LTD.

Name:

Title:

Date:

Robert B. Yoshitomi

MITSUI O.S.K. LINES, LTD.

Name: Robert B. Yoshitomi

Title: Legal Counsel

Date: May 16, 2006

203-011602

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THE GRAND ALLIANCE AGREEMENT II

FMC AGREEMENT NO. _____
(A Cooperative Working Arrangement)

Expiration Date: December 31, 2007

This Agreement has not been published previously

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The Grand Alliance Agreement II
FMC Agreement No.
Original Page No. 1

This AGREEMENT, entered into this 17th day of December, 1997 by and between the undernoted parties,

WITNESSETH

WHEREAS, Hapag-Lloyd Container Linie GmbH, Nippon Yusen Kaisha, P&O Nedlloyd Limited, P&O Nedlloyd B.V. (P&O Nedlloyd Limited and P&O Nedlloyd B.V. shall be treated as a single party for all purposes under this AGREEMENT), Orient Overseas Container Line Inc. and Orient Overseas Container Line (UK) Limited (Orient Overseas Container Line Inc. and Orient Overseas Container Line (UK) Limited shall be treated as a single party for all purposes under this AGREEMENT), the parties hereto, are each vessel operating common carriers which operate or intend to operate in various U.S. foreign trades, and

WHEREAS, the parties desire to rationalize their services in such trades,

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties, it is hereby agreed as follows:

ARTICLE 1: NAME OF THE AGREEMENT

This AGREEMENT shall be named the "The Grand Alliance Agreement II," and shall be referred to herein as "AGREEMENT."

ARTICLE 2. PURPOSE OF THE AGREEMENT

The purpose of this AGREEMENT is to provide legal authority for the chartering and exchange of space on the parties' vessels and for related rationalization, coordination and cooperative activities with respect to the parties' ocean and intermodal services and operations in the Trade.

ARTICLE 3. PARTIES TO THE AGREEMENT

The parties to the AGREEMENT are:

HAPAG-LLOYD CONTAINER LINE GMBH ("HL")

Address: Ballindamm 25
20095 Hamburg, Germany

NIPPON W S E N KAISHA ("NYK")

Address: 3-2, Marunouchi 2-chome
Chiyoda-ku, Tokyo 100, Japan

P & O NEDLLOYD LIMITED and P&O NEDLLOYD B.V. (P&O Nedlloyd Limited and P&O Nedlloyd B.V. shall be treated as a single party hereunder, referred to as "PONL").

Address: Beagle House, Braham Street
London E1 8EP
England

ORIENT OVERSEAS CONTAINER LINE INC., ORIENT OVERSEAS CONTAINER LINE LIMITED, and ORIENT OVERSEAS CONTAINER LINE (EUROPE) LIMITED (all of the foregoing shall be treated as a single party hereunder referred to as "OOCL")

Address: 31st Floor, Harbour Centre
25 Harbour Road
Wanchai, Hong Kong

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ARTICLE 4. GEOGRAPHIC SCOPE OF THE AGREEMENT

A. The Trade. The geographic scope of this AGREEMENT shall include all ports in the countries listed in Appendix A hereto and all inland and coastal points via such ports, on the one hand, and all ports on the U.S. Atlantic and Gulf Coasts (Portland, Maine to and including **Brownsville**, Texas range and **Puerto Rico**) and U.S. Pacific Coast (also including Alaska), and inland and coastal points via such ports, on the other hand (collectively referred to in this AGREEMENT as "the Trade").

B. Additional Scope. Other U.S. foreign trades not covered by Article 4.A. hereof shall be covered with respect to Article 5.1 only.

ARTICLE 5. AGREEMENT AUTHORITY

A. General Authority. Two or more of the parties are authorized to meet together, discuss, reach agreement and take all actions deemed necessary or appropriate by the parties to implement or effectuate any agreement regarding chartering or exchange of space, rationalization and related coordination and cooperative activities pertaining to their carrier operations and services, and related equipment, vessels and facilities in the Trade. In furtherance of the foregoing, the parties are authorized to engage in the following activities:

1. Vessels.

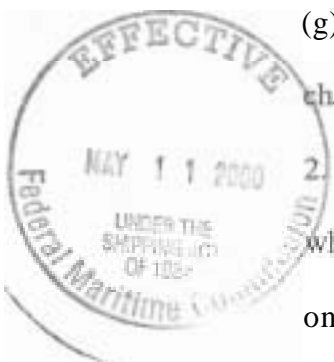
(a) Agree upon the type, capacity, speed, and total number of vessels to be used hereunder, the type, capacity, speed, and number of vessels to be contributed by each party, and the terms, conditions and operational details pertaining thereto; provided that the maximum number of **linehaul** vessels to be contributed for operations hereunder shall be eighty (80), such vessels to have

The Grand Alliance Agreement II
FMC Agreement No. 203-011602-001
First Revised Page No. 4

standard operating capacities not to exceed 8000 TEU's.

- (b) Agree upon the sailing patterns, ports to be called, vessel itineraries, the number, frequency, and character of sailings at ports, transit times, and all other matters related to the scheduling and coordination of vessels;
- (c) Agree upon the chartering, hiring, establishment, use, scheduling and coordination of transshipment, barge and feeder services, in conjunction with linehaul vessel operations hereunder;
- (d) Agree upon the chartering of vessels by one or more parties for use in operations hereunder, or the chartering of vessels among the parties;
- (e) Coordinate and agree to provide advance notice and agree upon other terms and conditions with respect to a party's withdrawal of a vessel(s) or its introduction of substitute or replacement vessels or newbuildings in the Trade;
- (f) Consult and agree upon the building of new vessels and/or the acquisition of existing vessels by a party or parties and the characteristics (e.g., size, space/revenue capacity, speed, configuration, delivery date) of vessel newbuildings or vessels acquired from third parties; and
- (g) Agree to provide or charter vessel(s) jointly and to nominate one of the parties to charter and/or operate each such vessel.

2. Cross Chartering. Agree to ship loaded or empty containers (including containers which they own, lease, control or receive from third parties) and noncontainerized cargo, on their own vessels and on each other's vessels, or on the vessels of third parties from which one or more of the parties charter space. In furtherance of this, the parties are authorized to exchange or allocate space, expressed in numbers of container



equivalents, or as a percentage of vessel or vessel string capacity, or to otherwise charter and subcharter space to and/or from each other, on terms as they may agree from time to time. Under this paragraph, the parties are authorized to charter up to the maximum available space (as may be agreed by the parties) on their vessels operated hereunder, including space beyond standard operating capacities, when operating conditions permit.

3. Excess Space. (a) If on any given sailing a party has unused space in any trade lane, such space shall be made available to other parties needing more space for cross-chartering, subject to the prior consent of the party with such excess space. which consent shall not be unreasonably withheld. If the other parties choose not to utilize a party's excess space, after consulting with the other parties, the party having such excess space may subcharter space on an ad hoc basis to non-party vessel operating common carriers (VOCC's), subject to any requirements or prohibitions mandatorily applicable to such subchartering arrangement under the U.S. Shipping Act of 1984, as amended, or under any conference or other multi-carrier agreement applicable to any of the parties hereto. Subchartering arrangements of a more permanent and significant nature to non-party VOCC's shall be subject to the unanimous consent of the other parties (which shall not be unreasonably withheld).

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(b) If a party needs additional space but excess space is not available from the other parties, the party needing additional space may charter space, on an ad hoc basis, on a non-party VOCC's sailing in the Trade, provided that arrangements of a more permanent and significant nature to charter space from non-parties shall be subject to the unanimous consent of the other parties (which shall not be unreasonably withheld).

4. Accounting. Except as otherwise agreed, each party shall bear all expenses for the vessels it operates in the Trade. The parties may periodically render accounts to each other on terms and with such adjustments as they may agree for services, space, equipment, and facilities provided or exchanged hereunder.

5. Expenses. The parties may share, on such terms as they may from time to time agree, taking into account the amount of vessel space provided and/or utilized by each of them, expenses related to the following:

- (a) Administration, personnel, legal, advertising, insurance, accounting, and overhead expenses;
- (b) Operational expenses not borne by the party operating the vessel; and
- (c) Other matters for which joint charter, lease, or purchase is authorized hereunder.

6. Advertisements. Place joint advertisements and notices pertaining to facilities and services provided or coordinated hereunder. The parties may utilize a common trade name to refer to their cooperative and rationalization activities hereunder, but the parties' operations shall not be held out to the

public as a joint service.

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7. Transshipment and Feeder Arrangements. Load or discharge cargo on
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or from vessels employed in the Trade irrespective of the cargoes' origin or

destination outside the Trade. The parties are authorized to cooperate in the
INTERNATIONAL MARITIME COMM
TRADE
selection and operation of feeder vessels to and from the Trade when used in
conjunction with the carriage of cargo in the Trade, including the scheduling
and coordinating of sailings of feeder vessels, chartering and subchartering of
space on such feeder vessels and accounting therefor, the sharing of related
operational expenses, and the joint chartering of feeder vessels, on such terms
as they may agree from time to time, taking into account the amount of vessel
space provided and/or utilized by each of them.

8. Inland Matters and Equipment Interchange. Establish and operate pools
of empty containers, chassis and/or related equipment, and interchange such
equipment under such terms (e.g., per diem, insurance, maintenance and repair)
and such volumes and types as the circumstances and conditions of the Trade
may warrant. Subject to any restrictions in the Shipping Act of 1984, as
amended, the parties may also discuss and agree upon joint purchase or lease or
operation of equipment, facilities or inland transportation services (land, water,
or rail).

9. Terminal Arrangements. Jointly contract for port terminal facilities, terminal services, and stevedoring services in the Trade with marine terminals, port authorities, and stevedores (also including arrangements for terminal facilities, terminal services, and stevedoring services at terminals leased, owned or operated by any party or affiliate thereof), and may agree to use common terminal(s) or stevedore(s) in given ports; provided that nothing herein, shall authorize the parties to jointly operate a marine terminal in the U.S. The parties are also authorized to jointly contract for, lease, establish, operate or purchase inland terminals, equipment depots, warehouses, container yards, and container freight stations.

10. Other Agreements. Agree to join or not join conferences, rate agreements, discussion agreements, stabilization agreements or similar carrier agreements in the Trade where legally permissible; provided, however, that nothing contained herein shall require any party to join or remain a member of any such carrier agreement.

11. Contracts. To the extent not prohibited by any conference agreement of which they are parties and subject to the provisions of this Article 5.A.11, two or more of the parties are also authorized to discuss, solicit, negotiate, agree upon and enter into service or other contracts for the movement of cargo in the Trade or any portion thereof with any shipper, consignee

or shipper group. The parties may agree upon rates, charges, routings, duration, cargo volumes, service offerings, liability terms, and all other terms for such contracts.

Service contracts entered into pursuant to this Article 5.A.11 shall be published in the individual essential terms publications of the parties, and the parties are authorized to aggregate the volume of cargo shipped with each of them for purposes of such service contracts. The authority contained in this Article 5.A.11 shall not apply in those Trades referred to in Article 4(a) of this AGREEMENT covering routes to or from countries belonging to the European Union.

12. Liability and Indemnity. Agree on their respective rights, liabilities, damages, insurances, and indemnities for activities under this AGREEMENT, including, without limitation, matters pertaining to cargo damage, accidents, hazardous cargoes, damage to persons or property, failure to perform, and force majeure.

13. Equipment Standards. Agree on common standards for containers, chassis, and other intermodal equipment used in the Trade.

14. Rates. Discuss and agree on a voluntary adherence basis as to common positions with respect to ocean, inland and intermodal rates, charges, classifications, rules and related terms for the movement of cargo in the Trade, the terms and conditions of brokerage and forwarder compensation, and the terms under which credit will be made available to shippers or consignees. On a voluntary adherence basis and

subject to the terms and conditions of any conference, rate, discussion or other agreement to which any party may subscribe from time to time, discuss and agree upon any rates, terms and conditions of service contracts or tariffs maintained or contemplated by any party or by a conference on their behalf in any portion of the Trade. The authority contained in this Article 5.A.14 shall not apply in those trades referred to in Article 4.A of the AGREEMENT covering routes to and from countries belonging to the European Union. The parties may jointly exercise any voting rights held by the AGREEMENT in any conference within which the parties operate, in so far as the vote being jointly exercised concerns the AGREEMENT's activities as such.

15. Subchartering. Any space chartering arrangement with a non-party VOCC provided for herein, other than an ad hoc or emergency subcharter, shall not be implemented until it has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, if such filing is legally required.

16. Market Growth. Aspiration of the parties to pursue individual growth in excess of the natural market growth must not be irresponsible and should be discussed frankly. The parties are authorized to discuss their respective growth aspirations.

17. Suspension of Rate/Contract Authority. The authority contained in Articles 5.A.11 and 5.A.14 above is suspended as of the effective date of the amendment adding this Article 5.A.17 and such authority shall not be exercised again hereunder until such time as this Article 5.A.17 is deleted by an amendment which has been filed with the Federal Maritime Commission and become effective pursuant to the Shipping Act of 1984, as amended.

B. Cargoes. Without limitation, the cargoes subject to this AGREEMENT include containerized cargo (whether moving in dry, reefer, open top or other containers) and noncontainerized cargo for shipment on the parties' vessels, whether such cargoes are moving in all-water or intermodal service, whether moving by direct, feeder, relay or transshipment service, and whether moving under a through bill of lading or otherwise.

C. Force Maieure. The parties are authorized to agree upon force majeure terms which will excuse performance hereunder.

D. Bills of Lading and Tariffs. Each party shall issue its own bills of lading, handle its own shippers' claims, and issue and maintain its own tariffs when it is not a participant in a conference tariff.

E. No Joint Service or Agency Arrangement. The parties shall not be deemed to be a joint service and shall maintain separate sales organizations. In addition, the parties shall be independent contractors in relation to one another and, except as any two or more parties may agree, no party shall be deemed to be the agent of another.

F. Implementation and Interstitial Agreements. The parties are authorized to enter into implementing and interstitial arrangements, writings, understandings, procedures and documents within the scope of the authorities set forth in this Article 5 in order to carry out the authorities and purpose hereof; provided, however, that pursuant to 46 C.F.R. §572.407, any further specific agreements that do not provide operational or administrative implementation of such authorities shall be filed with the FMC to the extent legally required under the Shipping Act of 1984.

G. Information Exchange. In furtherance of the authority contained in this AGREEMENT, the parties are authorized to obtain, compile, maintain and exchange among themselves, information related to any aspect of operations in the Trade, including the parties' joint or individual operations therein, whether past, current or anticipated. Such information may include records, statistics, studies, compilations, projections, costs, cargo carryings, marketing and market

share information, statistical data, and documents of any kind or nature, whether prepared by a party or parties, or obtained from outside sources relating to matters authorized by this Article 5. The parties are also authorized to agree upon confidentiality requirements.

H. Administration. The parties are authorized to establish such committees, as they deem necessary, to consider, review, make, and implement administrative, operational and policy decisions relating to matters within the scope of this AGREEMENT, or to establish and maintain one or more joint coordination centers to perform such functions, including, but not limited to, scheduling, allocating space, forecasting, terminal operations, equipment and intermodal activities, cargo acceptance policy, hazardous cargo procedures, and stowage planning.

I. Cooperation in Other Trades. If a party is **operating** in a trade covered by Article 4.B hereof, and a second party is considering entry into such trade, prior to entry into such trade the second party shall consult with the party already in such trade (which may include the Information Exchange activities of Article 5.G with respect to such trade) to determine if any of the arrangements hereunder in the Trade should be expanded to such additional trade.

J. Exclusivity. Except as otherwise provided herein or as the parties may otherwise agree, no party shall engage in space chartering or other rationalization of vessels or ocean terminals with any non-party VOCC in the Trade; provided, however, that if a party desires to develop further services in the Trade it may do so (subject to the agreement of all other parties, not to be unreasonably withheld) on the condition that it offers all the other parties the opportunity of participation on terms as set out herein; notwithstanding the foregoing proviso or Article 5.A hereof, a party may develop and implement existing or new arrangements in the trade to and from Europe outside of this Agreement until such time as satisfactory arrangements for said **service** to and from Europe may become available hereunder. Except as otherwise agreed, any party that operates an

existing service that covers all or part of the Trade at the time this AGREEMENT becomes effective may continue to do so and may modify said service from time to time.

K. Phase-In. Except as may be otherwise agreed, P&O Nedlloyd B.V. and OOCL will withdraw from the alliance agreements in the trans-Pacific trades to which they are currently parties. The parties will coordinate the introduction of their vessels into the services under this AGREEMENT with the withdrawal of the Neptune Orient Line vessels utilized under the Grand Alliance Agreement in order to provide continuity of service to the shipping public. In order to ensure the orderly introduction of vessels without disruption of service, the parties are also authorized to discuss issues relating to the introduction of vessels, and to share costs associated therewith, with the members of the Grand Alliance Agreement, the APL/MOL/HMM Reciprocal Slot Exchange Agreement, the APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, the APL/MOL/NLL/OOCL Asia-Atlantic Alliance Agreement and the APL/MOL/OOCL Asia-Pacific Alliance Agreement.

ARTICLE 6: DELEGATION OF AUTHORITY

The following persons shall have authority to sign and file this AGREEMENT, any subsequent modifications thereto, and any supporting information with the Federal Maritime Commission or any other governmental entities with mandatory jurisdiction over this AGREEMENT and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

1. A designated senior executive of each Party; or
2. Legal counsel for each Party.

This AGREEMENT and any subsequent modification hereto may be executed in writing by separate counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

A. Any party may withdraw from this AGREEMENT without cause by giving one (1) year's prior written notice to the other parties; provided that such notice shall not be given prior to December 31, 2006. The Federal Maritime Commission shall be notified promptly of any such withdrawal.

B. Notwithstanding Article 7.A hereof, the agreements for those services to or from Europe will have an initial period of thirty (30) months, after which six months notice of withdrawal may be given. Any party giving notice of withdrawal from any trade lane within the scope of this AGREEMENT (including without limitation under the foregoing sentence) must give the same notice with respect to all other trade lanes.

C. Notwithstanding any other provision of this Article 7, if at any time during the term of this AGREEMENT there shall be a change in the control or a material change in the ownership of any one party (the party so affected being referred to in this Article 7.C only as the Affected Party) and the other parties are unanimously of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the services, then the other parties may unanimously within six months of the coming into effect of such change give not less

than twelve month's notice in writing to the Affected Party terminating the period of the AGREEMENT in relation to the Affected Party.

D. Notwithstanding any other provision of this Article 7, if at any time during the term of this AGREEMENT any party should become **bankrupt** or declare insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the party (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other parties), or any event similar to any of the above shall occur under the laws of the party's country of incorporation (the party so affected being referred to in this Article **7.D** only as the Affected Party) and **the** other parties are unanimously of the opinion that the result may be materially detrimental to the services, or that sums may be owed by the Affected Party to any other party or parties may not be paid in full or their payment may be delayed, then, by unanimous decision of the other parties, any further participation of the Affected Party in the AGREEMENT or any part thereof may, with immediate effect, either be terminated or suspended for such period as the other parties, in their sole discretion, deem appropriate.

E. In the event of termination of this AGREEMENT or withdrawal **herefrom** or termination of participation herein for whatever cause in relation to one or more parties, the parties shall continue to be liable to one another in respect to all liabilities and obligations accrued or due prior to termination or withdrawal, and in such other respects as the parties may determine to be fair as between the parties in relation to the completion of all contracts of carriage outstanding at the date of

termination or withdrawal. In the event of any party withdrawing or being suspended or excluded from the AGREEMENT, the AGREEMENT shall remain in force in relation to the other parties, who shall consult to amend any aspects of the AGREEMENT necessitated thereby.

F. New parties may be added only by unanimous agreement of the parties.

ARTICLE 8. VOTING

A. Decisions on major issues concerning the membership of the AGREEMENT, the scope of service provided hereunder, the employment of ships, pro-forma schedule patterns, allocation shares in a trade lane or financial settlement shall be reached by unanimous agreement of the parties; provided that a party's voting rights shall be limited to matters in those portions of the Trade in which it participates and that agreement on strategic membership decisions should not be unreasonably withheld. On routine operational matters, a simple majority shall decide the course of action, with each party having one vote and no right of veto. However, if any party believes that a decision on a routine operation matter will cause it material commercial hardship, then all parties will endeavor to find an equitable solution to such problem.

B. The parties may meet, from time-to-time and at such places as they may decide, for the purpose of implementing this AGREEMENT. Actions under this AGREEMENT may also be taken pursuant to telephone, facsimile or other electronic or written polls of the parties.

ARTICLE 9: DURATION AND TERMINATION

This AGREEMENT shall continue in effect until December 31, 2007 unless the parties agree by unanimous vote to extend or terminate the AGREEMENT. In the event of termination, the conditions of Article 7.E of the AGREEMENT shall apply.

ARTICLE 10: MODIFICATIONS

The terms of this AGREEMENT may be modified upon the unanimous agreement in writing of the parties. Copies of such modifications shall be promptly filed with the appropriate governmental authorities prior to implementation thereof.

ARTICLE 11: NOTICE

Each notice required to be given to a party hereunder shall be in writing.

ARTICLE 12: NON-ASSIGNMENT

No party hereto shall assign or transfer this AGREEMENT or all, or any part of, its rights or liabilities hereunder to any person, entity or corporation (except subsidiaries, parent companies or fellow subsidiaries) without the prior unanimous written consent of the other parties. Each party shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to another party without the unanimous written consent of the other parties.

ARTICLE 13: GOVERNING LAW AND ARBITRATION

This AGREEMENT shall be subject to the U.S. Shipping Act of 1984, as amended, but shall otherwise be governed by and interpreted under English law. Each party hereby submits to the jurisdiction of the English courts. Any dispute between the parties arising out of, or in connection with, this AGREEMENT shall, if amicable settlement is not possible, be referred to arbitration in London, England in accordance with the Arbitration Act 1996 together with LMAA (London Maritime Arbitration Association) terms. The parties agree to appoint a **single/sole** arbitrator, having appropriate commercial and consortia experience, within 21 days of any party seeking an appointment. If any party should so request, a panel of three (3) arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the LMAA President will appoint a **single/sole** arbitrator (or panel of three arbitrators, as appropriate) at the request of any party. When the amount in dispute is \$200,000 or less, arbitration will proceed on documents and written submissions only; provided, however, that oral evidence will be allowed exceptionally and at the discretion of the **arbitrator(s)**. The parties agree that any awards made pursuant to this provision in respect of any dispute or difference relating to a portion of the Trade to or from a country belonging to the European Union shall be notified to the European Commission.

ARTICLE 14: LANGUAGE

This AGREEMENT and any and all notices made pursuant to this AGREEMENT shall be written in the English language. None of the parties shall be obligated to translate such matter into any other language, and the wording and the meaning of any such matters in the English language shall prevail.

ARTICLE 15: SEVERABILITY

Should any term or provision in this AGREEMENT be held invalid, illegal or unenforceable, the remainder of this AGREEMENT, and the application of such term or provision to persons or circumstances other than those as to which it is invalid, illegal or unenforceable, shall not be affected thereby; and each term or provision of this AGREEMENT shall be valid and enforceable to the full extent permitted by law.

APPENDIX A

The following countries are within the **geographic** scope of the AGREEMENT:

| | |
|-------------------|----------------------------|
| Albania | Morocco |
| Algeria | Myanmar |
| Bahrain | Netherlands |
| Bangladesh | North Korea |
| Belgium | Norway |
| Brunei | Oman |
| Bulgaria | Pakistan |
| Canada | Panama |
| Cyprus | People's Republic of China |
| Denmark | Philippines |
| Djibouti | Poland |
| Egypt | Portugal |
| Eritrea | Qatar |
| Estonia | Romania |
| Finland | Russia |
| Former Yugoslavia | Saudi Arabia ¹ |
| France | Singapore |
| Georgia | South Korea |
| Germany | Spain |
| Greece | Sri Lanka |
| Hong Kong | Sweden |
| Iceland | Syria |
| India | Taiwan |
| Indonesia | Thailand |
| Iran | Tunisia |
| Iraq | Turkey |
| Ireland | Ukraine |
| Israel | United Arab Emirates |
| Italy | United Kingdom |
| Japan | Vietnam |
| Jordania | Yemen |
| Kuwait | |
| Latvia | |
| Lebanon | |
| Libya | |
| Lithuania | |
| Macao | |
| Malaysia | |
| Malta | |
| Mexico | |
| Moldova | |

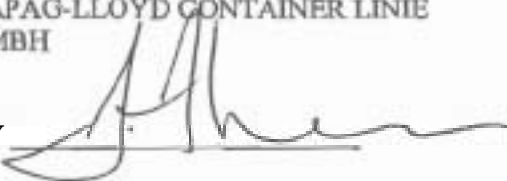
The Grand Alliance Agreement 11
FMC Agreement No. 203-011602-005

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereby agree this 30th day of December, 2004, to amend this Agreement as per the attached pages and to file same with the U.S. Federal Maritime Commission

HAPAG-LLOYD CONTAINER LINE
GMBH

BY

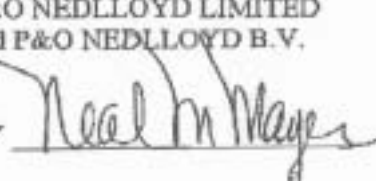


Name Jeffrey F. Lawrence

Title Attorney-in-fact

P&O NEDLLOYD LIMITED
and P&O NEDLLOYD B.V.

BY



Name Neal M. Mayer

Title Attorney-in-fact

NIPPON YUSEN KAISHA

BY



Name Jeffrey F. Lawrence

Title Attorney-in-fact

ORIENT OVERSEAS CONTAINER LINE
INC., ORIENT OVERSEAS CONTAINER
LINE LIMITED and ORIENT OVERSEAS
CONTAINER LINE (EUROPE) LIMITED

BY



Name Jeffrey F. Lawrence

Title Attorney-in-fact

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HAPAG-LLOYD CONTAINER LINE
GMBH

P&O NEDLLOYD LIMITED
and P&O NEDLLOYD B.V.

BY _____

BY  _____

Name Jeffrey F. Lawrence

Name Neal M. Maver ^a

Title Attorney-in-fact

Title Attorney-in-fact

NIPPON YUSEN KAISHA

ORIENT OVERSEAS CONTAINER LINE
INC., ORIENT OVERSEAS CONTAINER
LINE LIMITED and ORIENT OVERSEAS
CONTAINER LINE (EUROPE) LIMITED

BY _____

BY _____

Name Jeffrey F. Lawrence

Name Jeffrey F. Lawrence

Title Attorney-in-fact

Title Attorney-in-fact

**THE COSCON/KL/YMUK/HANJIN/SENATOR
WORLDWIDE
SLOT ALLOCATION AND SAILING AGREEMENT**

FMC AGREEMENT NO. 011794-001

Second Edition

**Classification: Cooperative Working Agreement,
Slot Allocation Agreement and Sailing Agreement**

Original Effective Date: April 28,2002

Expiration Date: None



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FEDERAL MARITIME COMM

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BEFORE THE
FEDERAL MARITIME COMMISSION
FMC AGREEMENT NO. **011794-001**

THIS AGREEMENT is entered into this 12th day of November, among COSCO CONTAINER LINES COMPANY, LIMITED ("COSCON"), KAWASAKI KISEN KAISHA, Ltd. ("KL"), YANGMING (UK) LTD. ("YMUK"), HANJIN SHIPPING CO., LTD. ("HJS") and SENATOR LINES GMBH ("SEN") referred to individually as "Party" and collectively herein as "the Parties".

WHEREAS, the Parties desire to cooperate with each other in containerized trades worldwide to obtain optimum efficiency of fleet operation and to maximize Slot utilization through Slot allocation, so as to offer improved services to the shipping public.

NOW, THEREFORE in consideration of the premises and of the mutual undertakings of the Parties, it is hereby agreed as follows:

1. NAME OF THE AGREEMENT

This AGREEMENT shall be referred to as "the COSCON/KL/YMUK/HANJIN/SENATOR WORLDWIDE SLOT ALLOCATION AND SAILING AGREEMENT."

2. PURPOSE OF THE AGREEMENT

2.1 The purpose of the Agreement is to permit the Parties to achieve efficiencies and economies in their respective services offered in the Trade covered by the Agreement. This Agreement does not authorize discussion of or agreement on rates or charges, thus no joint tariff shall be filed by the Parties under this Agreement.

2.2 EC Law: the Parties intend this Agreement to be in conformity with European Community law and, in particular, in conformity with Regulation 17/62, Regulation 1017168, Regulation 4056186 and Regulation 82312000. The Parties agree to monitor the terms and implementation of this Agreement and to take such measures as may be necessary in order to ensure such conformity is maintained.

3. PARTIES TO THE AGREEMENT

The Parties to this Agreement are:

(1) COSCO CONTAINER LINES COMPANY, LIMITED ("COSCON")

378, Da Ming Road (East), Shanghai, the People's Republic of China

(2) KAWASAKI KISEN KAISHA, LTD. ("KL")

Hibiya Central Bldg., 2-9, Nishi-Shinbashi 1 Chome, Minato-Ku, Tokyo 105, Japan

(3) YANGMING (UK) LTD. ("YMUK")

2nd Floor, Valentines House, 51-69 Ilford Hill, Ilford, Essex, IG1 2DG. U.K.

(4) HANJIN SHIPPING CO., LTD. ("HJS")

Hanjin Shipping Building 25-11, Yoido-dong, Youngdeungpo-ku Seoul, Korea

(5) SENATOR LINES GMBH ("SEN")

Martinistrasse 62-66

D-28195 Bremen, Germany

4. GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement shall cover all worldwide trades including inland and coastal points, subject to the limitations on joint activities set forth in Article 5. The

foregoing geographic scope is hereinafter referred to as the "Trade"

5. AGREEMENT AUTHORITY

5.1 Coordination of Sailings

5.1.1 The Parties may consult and agree upon the deployment and utilization of Container Ships ("Vessels") in the Trade including, without limitation, sailing schedules, service frequency, ports to be served, port rotations, type and size of Vessels to be utilized, feeder arrangements, including the sale or exchange of feeder slots among them, the addition or withdrawal of capacity from the Trade and the terms and conditions of any such addition or withdrawal.

5.1.2. The Parties may consult, agree on and implement temporary capacity adjustments in the Trade.

5.1.3. The Parties shall not consult, agree on or implement the joint purchasing of feeder services to or from ports in Europe.

5.2 Reciprocal Slot Allocation

5.2.1 On such terms and conditions as the Parties may agree, the Parties may (a) exchange Slots on their respective Vessels with the other Parties **and/or** on Vessels on which they have chartered space, and (b) agree on the number of Slots to be exchanged.

5.2.2 On such terms and subject to such operating limitations as (a) the Parties may agree, or (b) may be imposed by applicable law, each Party shall accept for transportation and transport any and all containerized cargo and equipment tendered to it by another Party up to its allocation. **As** used in this Agreement, the term "equipment" includes, but is not limited to, containers owned or leased by the Parties, whether full, partially loaded or empty and other freight service equipment that the Parties may agree upon.

5.2.3 Each Slot Charterer and any slot sub-charterer may advertise sailings by Vessels on which the Slot Charterer is allocated Slots under this Agreement.

5.2.4 A Slot Provider who fails to faithfully **perform** its obligations hereunder shall hold the other Parties harmless **from** and indemnify the other Parties against any losses, claims or damage arising from such failure, including but not limited to such losses, etc. from cargo **owners/insurers**, including attorney's fees and expenses. The details of apportionment **and/or** extent of the liability for loss or damage shall be agreed between the Parties in an implementing agreement.

5.3 Space

The Slot Provider will make available to the Slot Charterer in the trade the agreed number of slots or weighted deadweight tons per vessel, whichever is reached first, both Eastbound and Westbound, on vessels operated in the trade on terms and conditions to be agreed by the Parties.

The Slot Charterer shall pay the Slot Provider for the slots, used or not used, at rates and terms to be agreed between the Parties. Slot **and** cargo weight allocation including allocation of reefer slots may be adjusted from time to time subject to mutual agreement of the Parties. The Slot Provider is authorized to sell to the Slot Charterer additional slots over and above each allocation under this Agreement on such **terms** as the Parties may from time to time agree.

Initially the Slot Provider shall make available the following maximum number of slots on average per month on the Slot Provider's services in the Trade, with specific allocations on specific vessels as the Parties may decide from time to time.

COSCON shall make available to KL: 15,500 slots

COSCON shall make available to YMUK: 15,500 slots

COSCON shall make available to HJS: 16,000 slots

KL shall make available to COSCON: 15,500 slots

KL shall make available to YMUK: 29,500 slots

KL shall make available to HJS: 16,000 slots

YMUK shall make available to COSCON: 15,500 slots

YMUK shall make available to KL: 24,000 slots

YMUK shall make available to HJS: 17,000 slots

YMUK shall make available to SEN: 2,000 slots

HJS shall make available to COSCON: 16,000 slots

HJS shall make available to KL: 16,000 slots

HJS shall make available to YMUK: 17,000 slots

SEN shall make available to YMUK: 2,000 slots

These maxima may be adjusted further, subject to unanimous agreement of the Parties and filing with the Federal Maritime Commission as appropriate.

5.4 Efficient Use of Equipment, Terminals, Stevedores, Ports and Suppliers

5.4.1 Subject to Article 5.4.2, the Parties may interchange, cross lease or sublease empty containers, chassis and/or related equipment to provide for the efficient use of such equipment on such terms as they may agree, provided that the Parties obtain all necessary regulatory approvals from the Commission of the European Communities for related activities in Europe. The Parties may also jointly contract with or coordinate in contracting with stevedores, terminals, ports and suppliers of equipment, land or services or may designate a Party to provide such services on the designating Parties' behalf. This Agreement does not authorize joint operation of any marine terminal by the Parties in the United States.

5.4.2 As regards the European Union, the Parties shall only have such authority as per Article 5.4.1 hereof insofar as inland or land-side operations are concerned to the extent permitted under applicable law, provided the Parties take all necessary steps to comply with the

requirements of Regulation 17/62 and Regulation 1017/68 applicable to such operations.

5.4.3 For the avoidance of doubt, any cross-lease will be agreed between the two parties thereto on a case by case basis.

5.5 No Joint Service, Pooling

The reciprocal Slot allocation, coordination of sailings and Vessels, and cooperative use of equipment, terminals, stevedores, ports and suppliers to the extent provided hereunder do not create a joint service or permit the Parties to pool cargo or revenue. Each Party shall utilize and maintain its own marketing and sales organizations and operate and manage its own Vessels. Each Party shall issue its own bills of lading regardless of whether the Party is acting as Slot Provider or Slot Charterer.

5.6 Documentation, Data Systems

The Parties may discuss and agree on terms and conditions of joint development, implementation, and interchange of documentation, data systems, information and data, other operating systems, and computerization and joint communication, including any joint negotiations, leasing or contracting relating thereto.

5.7 Foreign Operations

5.7.1 Subject to Article 5.7.2, the Parties may discuss and agree on use and rationalization of one another's feeder, port, terminal and intermodal operations within and between foreign countries. The Parties do not intend to bring foreign-to-foreign transportation under the jurisdiction of the U.S. Federal Maritime Commission, or to expand antitrust immunity beyond the scope of immunity granted by the Shipping Act of 1984, as amended.

5.7.2 As regards the European Union, the parties shall only have such authority insofar as inland or land-side operations are concerned to the extent permitted under applicable law,

provided the Parties take all necessary steps to comply with the requirements of Regulation 17/62 and Regulation 1017168 applicable to such operations.

5.8 Miscellaneous

The Parties may also discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties, accounting procedures, procedures for weight and Slot allocations, allocation of reefer Slots, forecasting, terminal operations, stowage planning, schedule adjustments, record-keeping, responsibility for loss or damage, the establishment and operation of individual or joint tonnage centers, the terms and conditions for force majeure relief, insurance, liabilities, claims, indemnification, consequences for delays, and treatment of hazardous and dangerous cargoes.

5.9 Availability of conditions (Regulation 82312000, Article 9(3))

The conditions concerning the maritime transport services provided by the Parties and each Party, including those relating to the quality of such services and all relevant modifications, shall be made available on request to Transport Users at reasonable cost and shall be available for examination without cost at the offices of each Party and its agents.

5.10 Service Arrangements (Regulation 82312000, Article 8(a))

Each party shall offer its own Service Arrangements.

5.11 No detriment (Regulation 82312000, Article 8(d))

No Party shall, within the Common Market, cause detriment to certain ports, Transport Users or carriers by applying to the carriage of the same goods and in the area covered by this Agreement, rates and conditions of carriage which differ according to the country of origin or destination, or port of loading or discharge, unless such rates or conditions can be economically

justified.

6. AUTHORIZED REPRESENTATIVE

The following person shall have authority to sign and file this Agreement or any modification to this Agreement, and to respond to any requests for information from the U.S. Federal Maritime Commission and to delegate such authority to other persons.

- (a) The Chief Executive, or a Vice President for a Party, or
- (b) Legal counsel for a Party.

7. MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

See Article 9.7.

8. VOTING

All matters decided under this Agreement, including amendments hereto, shall be by unanimous vote of the Parties. The Parties may meet wherever they decide for the purpose of implementing this Agreement; however, actions in implementation of this Agreement may also be taken pursuant to telephone polls of the Parties. A quorum shall exist if the authorized representatives of all Parties are present in person or by telephone contact.

9. DURATION AND TERMINATION

9.1 Unless otherwise agreed by the Parties, this Agreement shall be effective upon the date this Agreement becomes effective under the Shipping Act of **1984**, as amended, but this Agreement and all modifications hereto shall be subject to all required approvals by **government** authorities, including the U.S. Federal Maritime Commission and the Commission of the European Communities. No cooperative working arrangement shall be **carried** out among the Parties hereto in regard to the Trade except as authorized herein. Failure of a Party to this Agreement to obtain approval of any authority, for any reason, shall not provide the basis for any

recourse, liability or damages whatsoever.

9.2 Subject to Article 9.1 above, operations under this Agreement shall commence on January 1, 2003 and shall remain in force for a period of one year, unless terminated earlier by unanimous agreement of the Parties. Notwithstanding the above, this Agreement shall be automatically extended indefinitely after the expiration of the initial one year period unless terminated by the Parties or by operation of law.

9.3 Any Party may withdraw from this Agreement at any time by giving six months prior written notice to the other Parties of its intention to do so provided that the earliest such notice can be given is six months **after** January 1, 2003.

9.4 Notwithstanding the above provisions, this agreement may be terminated at any time by mutual consent of the parties.

9.5 If any Party becomes involved in any one of the following situations, any of the other Parties has the right, by giving written notice, to withdraw from the Agreement immediately without prejudice to any already accrued rights and obligations:

- (a) Commencement of dissolution procedure;
- (b) Filing of any **bankruptcy** or insolvency procedure involving any party;
- (c) Making a general assignment or composition with its creditors.

9.6 Notwithstanding any other provision of this Agreement, in the event it is terminated or a Party withdraws it shall remain in force until each Vessel operated pursuant to this Agreement shall have completed discharging at the last port on the last leg of her final complete voyage which commenced prior to the effectiveness of such termination or withdrawal, and all accounts among the Parties under this Agreement are settled.

9.7 By a majority vote, the Parties may expel a Party at any time if such Party is in a condition of serious financial distress adversely affecting its financial viability or is substantially unable to **perform** its obligations under this Agreement.

10. DEFINITIONS

10.1 Slot Charterer: the Party which obtains Slots on the **services** operated by another Party as Slot Provider under this Agreement.

10.2 Slot Provider: the Party which operates a Vessel owned or chartered by it and makes Slots available to the other Parties as Slot Charterers under this Agreement.

10.3 Slot: a cell designed to take a 20' type container conforming to **ISO** specifications.

10.4 Service arrangement: a contractual arrangement concluded between one or more Transport Users and a Party or the Parties under which, in return for an undertaking to commission the transportation of a certain quantity of goods over a given period of time, a Transport User receives an individual undertaking from the Party or the Parties to provide an individualized service which is of a given quality and specially tailored to its needs.

10.5 Transport User: any undertaking (such as shipper, consignee, forwarder (to the extent permitted under the applicable laws of the United States of America and other countries), NVOCC) which has entered into, or demonstrated an intention to enter into, a contractual agreement with the Parties (or Party) for the shipment of goods, or any association of shippers.

10.6 Regulation 17/62: Council Regulation (EEC) No 17 of 21st February 1962, First Regulation implementing Articles 85 and 86 of the Treaty, or any re-enactment or modification thereof for the time being in force.

10.7 Regulation 82312000: Commission Regulation (**EC**) No 82312000 of 19th April 2000 on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) or any re-

enactment or modification thereof for the time being in force.

10.8 Regulation 1017/68: Council Regulation (EEC) No 1017/68 of 19th July 1968 applying rules of competition to transport by rail, road and inland waterway or any re-enactment or modification thereof for the time being in force.

10.9 Regulation 4056/86: Council Regulation (EEC) No 4056/86 of 22nd December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport or any re-enactment or modification thereof for the time being in force.

11. VESSEL ALIGNMENT AND PROVISION

11.1 The current provision of vessels and their TEU capacities for each Party are set forth as below

COSCON will provide 50 vessels of approximately 209,527 TEU capacity.
KL will provide 36 vessels of approximately 148,420 TEU capacity.
YMUK will provide 35 vessels of approximately 121,614 TEU capacity.
HJS will provide 63 vessels of approximately 283,212 TEU capacity
SEN will provide 2 vessels of approximately 5,322 TEU capacity.

A Party may not permanently (meaning for more than 90 calendar days) increase or decrease its number of vessels and/or TEU capacity by more than fifteen percent unless this Article 11.1 is amended and effective under the Shipping Act to reflect such increase or decrease; provided that SEN may change the number of its vessels by up to two and the number of its TEU by up to 6,000 without such amendment. The Parties will submit to the FMC Quarterly Reports stating the current services, vessels and TEU capacities under this Agreement and any anticipated cancellation of vessel strings.

The Parties shall consult and agree on the number, size and type of Vessels to be provided by each party hereunder and operated in the Trade. The Parties shall consult prior to employment in the Trade of any tonnage in excess of that previously scheduled. The Vessels may be owned, demised, or time-chartered by the Slot Provider.

11.2 The Vessel alignment and provision for all services shall be as agreed from time to time. The Slot Provider may replace any of the Vessels in the services with a comparable one which shall be in the same or better condition in terms of its service performance, which includes speed and transit time in the Trade. All extra expenses resulting from such replacement shall be for the account of the Slot Provider.

11.3 Slot Hire: Slot hire shall be as agreed upon from time to time.

11.4 Total Loss, Constructive Total Loss

11.4.1 In case of a Vessel being declared an actual or constructive total loss, the Slot Provider shall provide a substitute vessel within two months, provided that such substitute vessel is, in terms of capacity and speed, reasonably comparable with or better than the remaining Vessels in the service.

11.4.2 The Slot Provider of the lost Vessel shall give the other Parties a written notice immediately from the date of an actual total loss or constructive total loss.

11.4.3 The other Parties shall have the option to declare off-hire for the allocated Slots of a lost Vessel until the substitute Vessel has been placed into **service**.

12. MARKETING AND DOCUMENTATION

Each Party shall retain its separate identity and market its own service with its own independent marketing organization, and shall make information as to the services available to all customers.

13. HARDSHIP

13.1 Notwithstanding Article 9, during the effective period of this Agreement, if the consequences of any Force Majeure described in Article 14, or boycott against one flag or a political ban against one Party to this Agreement, causes substantial frustration of the objectives of the Agreement, then the Parties shall meet in a spirit of goodwill and are bound to adapt the terms of this Agreement to these circumstances. If the Parties fail to reach an agreement within sixty (60) days, any Party may withdraw from this Agreement immediately upon written notice.

13.2 In the event one of the Parties is merged with or sold to a third party which continues to operate in the Trade covered by this Agreement, then such other party shall be

bound by the terms of this Agreement and continue to provide Slots under the terms of this Agreement to the Parties who were not subject to the merger. The merging Party shall include in the merger agreement a clause requiring the merged entity to honor this Agreement and give prior written notice to the other Parties of such merger or sale. Any of the non-merging Parties shall have the right to withdraw from this Agreement on ninety (90) days written notice.

14. FORCE MAJEURE

Performance under this Agreement shall be excused to the extent it is **frustrated** by the existence or apprehension of war (declared or undeclared), hostilities, warlike or belligerent acts or operations, riots, civil commotion, terrorism or other disturbances; closure of, obstacle in or danger to any canal, blockage of port or place or interdict or prohibition condition or restriction of any kind on calls by any Party's vessel at **any** port, which result in such vessel's practical inability to call at such port, or any restriction on commerce or trading; governmental action, including but not limited to quarantine, sanitary or other similar regulations or restrictions; strikes, lockouts or other labor troubles whether partial or general and whether or not involving employees of a Party or his sub-contractors; **congestion** of port, wharf, sea terminal or any other place; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of cargo; epidemics or disease; bad weather, shallow water, ice, landslide or other obstacle to navigation or haulage.

15. SUPERSESION

Should any document, such **as** a relevant charter party, contain clauses **and/or** provisions that are or could be interpreted as being contrary to the terms of this Agreement, the terms of this Agreement shall prevail.

16. NON-ASSIGNMENT

16.1 Except as provided in 13.2 or 16.2 no Party shall assign, transfer, subcontract, change, or otherwise dispose of any rights and duties in this Agreement to any person, firm, or corporation without the prior written consent of the other Parties.

Nevertheless, the Slot Provider is authorized to release Slots on its owned service to the third Party without consent of the Slot Charterer. The Slot Charterer is authorized to release Slots to the third Party subject to prior written consent of the Slot Provider.

16.2 Notwithstanding the provisions of 16.1 supra., re-allocation of Slots to Yang Ming Marine Transport Corporation ("YML") by YMUK of slots on COSCON, KL and HJS/SEN services is authorized.

16.3 The Slot Charterer shall not be authorized to enter into any other agreement on behalf of the Slot Provider whether relating to navigation, operation or management of the Vessel or otherwise.

17. LANGUAGE

This Agreement and all notices, communications or other written documents related to this Agreement shall be in the English language. If any document related to the Agreement cannot be in the English language, it shall be accompanied by an English translation.

18. ARBITRATION AND GOVERNING LAW

18.1 The interpretation of the Agreement and all rights and obligations shall be governed by the Laws of England

18.2 Any dispute or claim arising under this Agreement which cannot be amicably resolved by the Parties shall be referred to arbitration, in London. Unless the Parties agree upon a sole arbitrator, one arbitrator shall be appointed by each Party. In case of an arbitration on documents, if the two arbitrators so appointed are in agreement their decision shall be final. In all other cases the arbitrator so appointed shall appoint a third arbitrator and the references shall be to the three-man tribunal thus constituted. If either of the appointed arbitrators refuses to act or is incapable of acting, the Party who appointed him shall appoint a new arbitrator in his place. If

one Party fails to appoint an arbitrator, whether originally or by way of substitution for two weeks after the other Party, having appointed his arbitrator, has (by telex, fax or letter) called upon the defaulting Party to make the appointment, the President for the time being of the London Maritime Arbitrators Association shall, upon application of the other Party, appoint an arbitrator on behalf of the defaulting Party and that arbitrator shall have the like power to act in the reference and make an award and, if the case so requires, the like duty in relation to the appointment of the third arbitrator as if he had been appointed in accordance with the terms of the Agreement. This Agreement is governed by English Law and there shall apply to all proceedings under this clause the terms of the London Maritime Arbitrators Association current at the time when arbitration proceedings were commenced. All appointees shall be members of the Association.

18.3 Provided that where the amount in dispute does not exceed the sum of US\$50,000 (or such sum as the Parties may agree) any dispute shall be resolved in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

19. IMPLEMENTATION DATE

The implementation date of this Amendment 001 is January 1, 2003. During the phase in period, each Party will deploy its vessels and TEU capacity in Article 11.1 and plans to be at full deployment by April 1, 2003.

20. SENATOR'S RIGHTS

Senator has the contractual rights and obligations provided by this Agreement but is not an ocean common carrier as defined in the Shipping Act of 1984, as amended, and has no antitrust immunity based on said Act.

IN WITNESS WHEREOF, the Parties have caused this amendment to the Agreement to be executed by their respective duly authorized representatives or attorneys in fact as witnessed below:

COSCO CONTAINER LINES COMPANY, LIMITED

By: Robert B. Johnston

KAWASAKI KISEN KAISHA, LTD

By: Robert B. Johnston

YANGMING (UK) LTD.

By: Robert B. Johnston

HANJIN SHIPPING CO., LTD.

By: Robert B. Johnston

SENATOR LINES GMBH

By: Robert B. Johnston

Date: September 9 2005

FILED
AUG 10 11 41 AM '05
FEDERAL MARITIME COMMISSION

Original Title Page

FMC Agreement No. 011705-004

**Grand Alliance – CP Ships
Atlantic Agreement**

between

Party A

- 1. Hapag-Lloyd Container Linie GmbH (HL)
- 2. Nippon Yusen Kaisha (NYK)
- 3. Orient Overseas Container Line Limited,
Orient Overseas Container Line Inc. and
Orient Overseas Container Line (Europe) Limited
(acting as one party) (OOCL)
- 4. P&O Nedlloyd Limited/P&O Nedlloyd BV (as one party) (PONL)

(collectively referred to as the "Grand Alliance Lines" or individually as a "Grand Alliance Line")

and

Party B

CP Ships USA LLC (CP Ships)



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Whereas

(A) The Grand Alliance Lines co-operate on the major east/west routes through the operation of a number of end-to-end and pendulum loops, the contribution of vessels on a global basis and the allocation of slots and deadweight in accordance with calculated shares for each loop.

For the avoidance of doubt Malaysian International Shipping Corporation Berhad (MISC), a member of the Grand Alliance, does not participate in these arrangements and all references to Grand Alliance Lines shall exclude any reference to MISC.

(B) The Grand Alliance Lines and CP Ships now intend to co-operate in a service and slot exchange arrangement covering trade between North Europe and North America, the geographical scope of the service being further defined in detail below.

(C) This Agreement sets out the terms under which the Grand Alliance Lines and CP Ships will provide separate Loops designed to operate in a combined service pattern to cover the geographical scope of the trade. The Grand Alliance Lines and CP Ships will exchange Slots according to agreed procedures on the basis of their respective demand for space adjusted by mutual agreement to match the space made available on the Vessels employed in each Loop.

The PAX service and the GASS service will continue to be operated by the Grand Alliance Lines and CP Ships respectively. The new Butterfly Loop service and the Gumex service will be jointly operated by the Grand Alliance Lines and CP Ships.

(D) HL exchanges space with Atlantic Container Line (FMC No 213-010955) which arrangement shall continue within this agreement. Slots required by ACL will be covered out of HL's allocation.

It is agreed as follows

1 Definitions

| | | |
|------------------------------------|-------|--|
| Agreement | means | This Agreement |
| Container Operator | means | In respect of cargo, the Line which is the Principal Carrier and which charters space from the Line operating the Vessel on behalf of the Vessel Operator to carry that cargo. |
| Excess Slots | means | The Slots on a Vessel which are not counting towards the Standard Slot capacity of the Vessel as described in Clause 11 |
| Operational Implementing Agreement | means | The working arrangements which govern the relationship, communication and responsibilities of the Parties in the operation of the Service including liabilities, cross charterparty, and joint working procedures described in Clauses 2.1, 8.2, 9.6 and 15.5. |
| Line/Lines | means | Individually one of the Grand Alliance Lines or CP Ships and Lines shall refer Grand Alliance Lines. |

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| | | |
|------------------------|-------|---|
| Loop | means | One of the component sailing schedule rotations in the Service as described in Clause 6, or as otherwise agreed. |
| Loop Allocation Share | means | The shares by which the Slots and, where appropriate, other capacity allocations on each Vessel in the relevant Loop will be allocated and by which total allowances for Slot provision and voyage costs will be shared in accordance with Clause 12. Loop Allocation shares are calculated according to the provisions of Clause 9 |
| Owner | means | The Line being the owner, disponent owner or charterer of a Vessel being provided to the Service on behalf of a Party. |
| Party/ies | means | HL, NYK, OOCL and PONL acting jointly as Party (A) and/or CP Ships (Party (B)). Party A and Party B collectively referred to as the "Parties" or individually as a "Party". |
| Principal Carrier | means | the Line which is the carrier under the bill of lading or other contract of carriage to a third party in respect of goods carried in the Service |
| Service | means | the services operated by Parties pursuant to this Agreement consisting of a number of Loops as agreed. |
| Slot | means | The space on any Vessel or any other vessel for the stowage of containers. Each Slot shall be the space required for the carriage of one standard ISO Twenty Foot Equivalent Unit (TEU) |
| Slot days | means | In respect of the financial settlement relating to a Vessel, the measurement unit of one Slot per calendar day. |
| Standard Slot Capacity | means | The agreed Slots on a Vessel |

| | | |
|-----------------|-------|---|
| Vessel | means | Any vessel employed by a Party and committed to the Service in accordance with the provisions of this Agreement |
| Vessel Operator | means | The Party in which a component Line is the owner, disponent owner or charterer of the Vessel and is operating that Vessel in the Service. |

2 Interpretation

- 2.1 The Parties will complete detailed arrangements including, but not limited to, the pro-forma schedules, performance requirements, financial adjustments as required. These detailed arrangements will be included in an Operational Implementing Agreement.
- 2.2 Headings in this Agreement are used for reference only and shall not be taken into account for the legal interpretation of the respective clauses.
- 2.3 The Appendices to this Agreement shall be considered as an integral part of the Agreement. In case of conflict between the terms and conditions as laid down in the various clauses of this Agreement and the Appendices attached thereto, the conditions and terms of this Agreement shall prevail.
- 2.4 The Lines hereby jointly agree that this Agreement represents the full understanding between the Parties in respect of their co-operation on the proposed Atlantic service and the matters set out herein may not be altered, varied or modified except by written instrument signed by the duly authorised representatives of all the Lines hereto and filed with the Federal Maritime Commission. For the avoidance of doubt the Parties and respective Lines specifically agree that unless a matter is dealt with expressly by the Terms of this Agreement then the liability of any Line shall be several and the individual liability of the Line in default and the other Lines which are in the same Party with the Line in default shall not in any way be held jointly liable with the Line in default.

3 Condition precedent

- 3.1 The provisions of this Agreement, to the extent applicable to ocean common carrier services and operations in the foreign commerce of the United States, will not be implemented with respect thereto, until the Parties have complied with the provisions of the United States Shipping Act of 1984, as amended, or any successor statute and Lines will do everything necessary to comply with requirements of any other regulatory and governmental bodies, agencies and institutions.

- 4 Duration/termination
- 4.1 This Agreement will take effect when effective in accordance with the provisions of the Shipping Act of 1984, as amended.
- 4.2 This Agreement shall run indefinitely. However, either Party may give 6 months' notice of termination of the Agreement.
- 4.3 For the avoidance of doubt, each Grand Alliance Line has the right to withdraw from the Grand Alliance Agreement II (FMC No 203-011602) at any time after 1st January, 2001 on giving six months' written notice of withdrawal.
- 4.4 Intentionally Left Blank.
- 4.5 If at any time during the term of this Agreement there shall be any change in the membership of either the Grand Alliance or of CP Ships as a result of any one of its constituent members (defined as an Affected Line for the purposes of this Clause) being subject to
- (a) a change in control or material change in ownership, or
 - (b) becoming bankrupt, insolvent or have a receiving order made against it, suspending payments, or continuing its business under a receiver for the benefit of any of its creditors or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken for the winding up of the Affected Line, or any event similar to any of the above shall occur under the laws of the Affected Line's country of incorporation

and the other Party is of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the Service, then that other Party may within three months of the coming into effect of such change give not less than six months' notice in writing to the other Party terminating the Agreement.

- 4.6 Notwithstanding Clause 4.5, if there is no change in the membership of a Party as a result of a change in control or a material change in ownership of a constituent member of that Party (defined as an Affected Line for the purposes of this Clause) but nevertheless the other Lines are of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the Service, then the other Lines may within three months of the coming into effect of such change unanimously agree to give not less than six months' notice in writing excluding the Affected Line from the Agreement.
- 4.7 Notwithstanding Clause 4.5, even if there is no change in the membership of a Party as a result of the bankruptcy (or any similar event as set out in clause 4.5(b) above) of a constituent member of that Party (Affected Line) then the other Lines may nevertheless unanimously agree to exclude the Affected Line from the Agreement by giving notice of 30 days
- 4.8 In the event that a Line is excluded from the Agreement by application of Clause 4.6 or Clause 4.7 above, the Line(s) belonging to the excluded Line's Party shall be released from any obligation to perform the excluded Line's obligations under this Agreement from the date of exclusion. Notwithstanding this, all remaining Lines will urgently discuss whether in the circumstances the Agreement can be continued and, if so, whether the terms and conditions need to be amended to reflect the changed circumstances. No Line will be obliged to accept any amended terms and conditions and may then, if no other solution can be found, withdraw from the Agreement by giving 30 days notice.

5 Trade/geographical scope

- 5.1 The scope of this Agreement covers the North Europe-United States and vice versa Trade Lane, whereby United States means
- (a) the East Coast of the United States, and
 - (b) the Gulf Coast of the United States
 - (c) the West Coast of the United States
 - (d) In addition, in connection with the foregoing, the Parties may serve the trades between the United States, on the one hand, and ports in Mexico and/or Canada, on the other hand.

5.2 Where a Line being a constituent member of either Party wishes to introduce a new service falling within the scope of this Agreement it may do so subject to:-

- (i) the agreement of all other Lines, not to be unreasonably withheld
- (ii) offering all other Lines (being constituent members of either Party) the opportunity of participating on terms as set out in this Agreement

6 Service description

The service structure will consist of the following Loops:-.

- (a) Atlantic Butterfly Loop North Wing (ATN):
A butterfly loop with cross-over in North Europe. The north wing connecting ports in North Europe with ports on the U.S. East Coast.
- (b) Atlantic Butterfly Loop South Wing (ATS):
The south wing of the butterfly loop connecting ports in North Europe with ports on the U.S. East Coast and U.S. Gulf Coast.
- (c) PAX:
The Atlantic sector of the Grand Alliance PAX service connecting ports in North Europe with ports on the U.S. East Coast and ports on the U.S. West Coast.
- (d) GASS
A service connecting ports in North Europe with ports on the U.S. East Coast and U.S. Gulf Coast.
- (e) Gumex
A service connecting ports in North Europe with ports on the U.S. East Coast, U.S. Gulf Coast and Mexico.

7 Provision and operation of Loops/Ships

7.1 Each Party will be responsible for the provision and operation of Vessels to be employed on each of the Loops as follows:-

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| Loop | | Party | No. of Vessels |
|------|--|-------|----------------|
|------|--|-------|----------------|

| | | | |
|----------------------|---|----------------|---|
| Butterfly North wing | } | Grand Alliance | 7 |
| Butterfly South wing | | CP Ships | 1 |
| PAX | | Grand Alliance | currently 13 Vessels employed on the Loop |
| GASS | | CP Ships | 5 |
| Gumex | } | Grand Alliance | 2 |
| | | CP Ships | 3 |

The Parties are authorized to operate up to a maximum of forty (40) vessels hereunder without further amendment. For the avoidance of doubt it is agreed that the Parties shall provide Vessels and capacity that as closely as possible satisfy their share of their overall space requirement over all Loops. The Parties may by mutual agreement from time to time modify the Loops, ports or port rotations, Vessel sizes or Vessel provision.

- 7.2 Each Party anticipates that Vessels introduced to the Service shall have suitable characteristics with regard to size, speed, configuration, power points (for temperature controlled units), etc. and shall only be introduced after agreement with the other Party, such agreement not to be unreasonably withheld. However, so long as each Party is able to provide Slots to the other Party (including the provision of power points and the provision of an adequate 20’/40’ configuration) pursuant to the terms of this Agreement and that the pro-forma schedules are maintained, either Party may introduce, withdraw or substitute Vessels on the Loops they control as they see fit, subject to providing a minimum of 90 days notice of change or, if not practical, then as soon as possible thereafter and in any case no later than 30 days prior to the intended substitution.
- 7.3 It is agreed that OOCL shall name and have their logo on two Ships in the Butterfly Loop.
- 7.4 The Lines will agree a Standard Slot Capacity for each Vessel employed on each Loop. The Standard Slot Capacity provides:-
- (a) the basis on which each Parties’ rights to allocations of Slots on each Vessel are calculated.
 - (b) the basis for payment by the Parties as users of Slots for:-

- (i) provision of space
- (ii) sharing the costs of operation of the Loop.

Any Slots, which are available for use on any Vessel over and above the Standard Slot Capacity, shall be referred to as Excess Slots.

7.5 The use and trading of Excess Slots shall be accounted for according to the following rules:-

- (a) If each Party has fully utilised their allocations of Standard Slots then Excess Slots may be used by or traded by the Vessel Operator. Excess Slots sold to another Party shall be paid for according to the payment terms for ad hoc Slots.
- (b) If a Party has vacant Slots within their allocation of Standard Slots then any Slots required by another Party must be purchased from the Party having such vacant Slots before using any Excess Slots they may have on their own Vessels.

7.6 Employment of US flag ships

7.6.1 Notwithstanding any other provision of this Agreement, CP Ships shall retain authority to determine the routes, schedules and space availability of its U.S.-flag vessels covered under this Agreement as may be required to fulfil its obligations under its contracts with the United States government; provided, however, that CP Ships shall to the extent practicable provide the Grand Alliance Lines with prompt notice of any change in U.S.-flag vessel routes, schedules or space availability and advise and consult with the other Lines regarding such routes, schedules and space availability. Furthermore, in the event that any U.S.-flag vessel(s) covered by this Agreement and employed by CP Ships or space on such vessel(s) is activated under any stage of the Voluntary Intermodal Sealift Agreement ("VISA") and contracts implementing VISA, CP Ships may make such vessel(s) or space thereon available to the U.S. government without liability to any Line hereunder, notwithstanding any other provision of this Agreement.

7.6.2 In the event CP Ships effectively withdraws capacity utilised under this Agreement as a result of the exercise of the provisions in the previous paragraph concerning its U.S.-flag vessels, the normal non-performance rules to be developed pursuant to clause 8.2 will apply. The Parties shall promptly agree on revised allocations, Loops, vessel provision and similar terms, taking into consideration CP Ships reduced vessel provision. In the event the Parties are unable to reach agreement, then the Grand

Alliance Lines may terminate this Agreement upon 60 days' prior written notice to CP Ships.

- 7.6.3 No U.S.-flag vessel employed by CP Ships and covered by this Agreement, or space on such vessel, shall be used, other than by CP Ships, for the carriage of cargoes reserved to U.S.-flag vessels pursuant to the cargo preference laws of the United States (including, but not limited to, Public Resolution Number 17, sections 901(b) and 901b of the Merchant Marine Act, 1936, as amended, and the Military Cargo Preference Act of 1904); provided, however, that nothing herein shall prevent the Lines from using CP Ships' U.S.-flag vessels or space thereon for the carriage of that portion of preference cargoes that is not reserved to U.S.-flag vessels.

8 Vessel Scheduling and Performance

- 8.1 Parties shall agree on a long term pro-forma schedule for the Service. Such schedule may be changed from time to time as the Parties mutually agree and shall incorporate periods required for programmed maintenance and repair including periodical dry docking which shall be advised at least six months in advance.
- 8.2 The Vessel Operator shall maintain the long term sailing schedule and shall use maximum efforts to remedy any failure to comply. Detailed rules for remedial actions and financial consequences in cases of non-performance will be defined in the Operational Implementing Agreement (not to be applied before the end of the phase-in period). The principle for these rules will be that the Vessel Operator is responsible for costs arising in case of non-performance for which it is responsible. For cases of non-performance for which the Parties are jointly responsible, the Parties will agree on appropriate cost sharing mechanisms.

9 Allocations

- 9.1 Loop Allocation Shares shall be used to determine
- (a) the allocation of Standard Slots and deadweight at 10.5 tonnes per Slot on each Vessel, and
 - (b) each Party's share of the provision and operating costs of all Vessels sailing on each Loop.
- 9.2 The Loop Allocation Shares for each Party on an individual Loop shall be the proportion of that Party's demand to the total demand of all Parties on that Loop.
- 9.3 Unless there is a change in the Standard Slot capacity of the vessels operating on a Loop as a result of upgrading or downgrading the size of the

fleet or changing the agreed structure of the Loops, the Loop Allocation Shares will remain fixed until 31st December, 2001, unless otherwise agreed. Thereafter the Parties will reassess their demands and new Loop Allocation Shares will be determined in accordance with the principles set out in this Clause 9.

9.4 In the event that at any time during the period of the Agreement there is a change in the Standard Slot Capacity of the Vessels operating in a Loop as a result of upgrading or downgrading the size of the fleet the Loop Allocation Shares will be adjusted as follows:-

- (a) Demands for Slots will be reassessed in the light of the changes in the capacity available
- (b) New Loop Allocation Shares will be determined in accordance with the principles set out in this Clause 9.

For the avoidance of doubt a substitution of one or more individual Vessels, albeit of different capacity, will not trigger this clause unless the Parties agree that such substitution is indeed part of an upgrade/downgrade in the size of the fleet.

9.5 On any review of Loop Allocation Shares (i.e., in circumstances of either clauses 9.3 or 9.4 above) the following principles shall apply:-

- (a) if demands increase in such a way that the Standard Slot capacity of the Loop is insufficient to cover the Parties' demand then each Party shall be entitled to require that its current Loop Allocation Share shall be protected and not artificially reduced as a result of any other Party increasing their demand beyond the ability of the Service to accommodate the requirement.
- (b) If one or more Parties reduce demands resulting in a surplus or an increase in the surplus Standard Slot capacity available on the Loop then each Party shall be entitled to require that their current Loop Allocation Share shall be protected and shall not be artificially increased as a result of any other Party reducing their demand.

9.6 Each Party shall receive an allocation of reefer plugs, 45' space, minimum 20' or maximum 40' capacity equivalent to its Loop Allocation Share in line with the relevant characteristics of the Vessels and in accordance with any operational constraints as set out in the Operational Implementing Agreement.

9.7 Subject to actual Vessel operational requirements, the use of Slots allocated to CP Ships on PAX shall be limited along the US eastern seaboard according to the following rules:-

- (a) On the voyage leg between Europe and New York, CP Ships may lift up to their Loop Allocation Share of the full capacity of the PAX Vessels including any slots available to/from Halifax so long as the deadweight does not exceed their Loop Allocation Share of the New York Slot limit at 10.5 tonnes per Slot.
- (b) In respect of space required for Europe to/from Norfolk, CP Ships may lift up to a maximum of 2/3rd of the number of Slots calculated by applying their Loop Allocation Share to the New York Slot limit of each Vessel, or deadweight of 10.5 tonnes for each Slot so, calculated, whichever is reached first.
- (c) In respect of space required for Europe to/from Savannah, CP Ships may lift up to a maximum of 1/3rd of the number of Slots calculated by applying their Loop Allocation Share to the New York Slot limit of each Vessel, or deadweight of 10.5 tonnes for each Slot so calculated, whichever is reached first.

9.8 In addition to the space allocated to CP Ships pursuant to clause 9.1 to 9.7 above, will also receive an allocation of 50 Slots used/not used per week on the PAX Loop between the US East Coast and the US West Coast to enable them to lift Europe to US West Coast cargo. Such cargo will be lifted in space allocated under the Loop Allocation Share mechanism on the passage between Europe and the US East Coast.

CP Ships will pay an additional fee for the passage between US East Coast and US West Coast.

10 Co-operation with other parties and/or additional members

10.1 The present slot swap arrangement between HL and ACL will remain a bilateral arrangement between those parties. ACL will have access to all Loops (under HL allocation) but load/discharge rights will be limited to ports currently covered in the present slot swap arrangements between HL and ACL. Other Grand Alliance Lines and CP Ships shall be free, subject to regulatory requirements, to make other arrangements equivalent to HL's arrangement with ACL if they so wish, including slot purchasing from ACL.

11 Use of Space

- 11.1 Each Party shall be entitled to use its Slot allocation without any geographical restrictions regarding the origin or destination of the cargo. There shall be no priorities for either full, empty, wayport/interport or breakbulk cargo.
- 11.2 To promote efficiency in the utilisation of space onboard of Vessels, the following rules shall apply to the purchase/sale of allocations of Standard Slots.
- (a) If on any sailing a Party is unable to utilise its allocation of Standard Slots, such allocation may be made available to the other Party. Consent to Slot allocation release requests should not be unreasonably withheld. The Party to whom the allocation has been transferred shall commit to the payment for the Slots at rates reflecting both provision and voyage costs on a used/not used basis.
 - (b) A Party utilising Standard Slots in excess of its allocation, shall (subject to the provisions of Clause 7.5 above) reimburse the Party providing the Slots in accordance with agreed rates.
 - (c) A Party utilising Standard Slots in excess of its allocation on a coastal passage shall be entitled to use such Slots at no additional cost but must immediately return the Slots to the other Party on demand at any subsequent port. This right shall not be abused and operational restrictions may be introduced to ensure that the Vessels meet their pro-forma voyage schedules. If by lifting cargo at a U.S. port in Slots which are in excess of its allocation, a Party cannot return the Slot on the demand of the other Party without contravening the provisions of the Merchant Marine Act 1920 whereby such cargo cannot be landed in U.S ports, then it shall limit its use of Slots in excess of its allocation on that coastal passage to ensure that it can return Slots as demanded.
 - (d) In the event that no surplus Standard Slots are available to sell but the Vessel Operator has Excess Slots available then the Vessel Operator may sell such Excess Slots to a Party requiring Slots In accordance with agreed rates.
- 11.3 Any unused Slots within a Party's entitlement may be sold or sub-chartered ad hoc to any vessel operating common carrier (V.O.C.C.) third party(ies), always provided that there is prior consultation with the other Party, and that the other Party will have first refusal of such unused Slots. The Party with unused Slots may sell space to third parties only on an ad hoc basis if

the other Party has failed to exercise their "first refusal" option within 24 hours (within a week before the intended sailing). An ad hoc sale shall be deemed to be a sale of Slots on a single voyage leg

- 11.4 A Party requiring additional Slots should first approach the other Party to ascertain whether they have unused Slots to sell. If however the other Party is unable to fulfil such requirements or if there is insufficient time to consult with the other Party without losing other opportunities to ship cargo, then Slots may be acquired from third parties on an ad hoc basis or on a limited structural basis (up to 100 TEUs per week)
- 11.5 Except as provided in Clause 10, Slot sales to (or Slot purchases from) third parties of a larger and more permanent and significant nature must be discussed and unanimously agreed upon in advance by the Parties. Such agreement shall not be unreasonably withheld.
- 11.6 Ad hoc sales/purchases within a Party are unrestricted for the purposes of this Agreement.
- 11.7 All sales of space under this Clause 11 shall be subject to the Parties to such sales meeting all applicable regulatory requirements prior to implementation.

12 Financial Arrangements

- 12.1 A financial settlement will be made each month to settle the various financial provisions of this agreement in accordance with such terms as the Parties may from time to time agree.

13 Liabilities

- 13.1 The Parties shall agree on provisions relating to liability within in the Operational Implementing Agreement.

14 Separate marketing

- 14.1 Each Line shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Line shall issue its own Bills of Lading.

15 Administration

- 15.1 The Parties will develop procedures to handle the day-to-day operational requirements of the Service.
- 15.2 Decisions on major issues concerning the membership of the Agreement , the scope of the Service, allocations or financial settlement shall be reached by agreement by both Parties.

- 15.3 In respect of the PAX and GASS Loops the Parties will consult with each other with regard to any changes proposed to the pro forma schedule of any Loop. The relevant Party operating these Loops will endeavour to ensure that any such change in the Loop schedule is acceptable to the other Party. If changes are made to pro-forma schedule of any Loop which materially and adversely affects the ports of call, days of week, frequency or transit times with regard to the other Party's use of the Loop then the other Party will have the right to shift allocations from that Loop to other Loops in the Service and the Party making the change shall use reasonable efforts to facilitate such change.
- 15.4 Subject to the above on PAX and GASS and in any case in respect of the Butterfly Loop and Gumex, the Parties will so far as is practicable discuss and agree the course of action to be taken on routine operational issues. In the event of disagreement or where time is of the essence in making a quick decision then the Party operating the Vessel shall have the deciding vote and take the operational decision as relevant always taking into account views expressed by the Parties in any preceding discussions.
- 15.5 The communication channels, systems and procedures as well as other general items dealing with the day-to-day work for operation pertaining to the Service and so far not being covered under this Agreement, shall be specified in separate joint working procedures. This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties to enable them to effectuate the purposes of this Agreement including the establishment and operation of such joint operating or management centres as they may deem necessary. The Parties are further authorised to obtain, compile maintain and exchange information related to any aspect of operations in the Trade, subject to the confidentiality obligations of any Line.
- 15.6 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate the same:
- (a) any authorized officer or representative of a Line, and
 - (b) legal counsel for each of the Lines.
- 15.7 Except for matters within the scope of 46 C.F.R. Section 535.408(b), the Parties will file amendments to this Agreement prior to implementation thereof.

16 Terminal selection

- 16.1 Subject to such criteria as the Parties may from time to time agree, the Parties shall work towards the use of one ocean terminal at each port of call. The Parties are authorised to jointly negotiate terminal and stevedoring agreements.
- 16.2 Provided that the criteria agreed upon by the Parties are satisfied, preference will be given to terminals owned by Lines.
- 16.3 Consideration to be given to fulfilment of Line's existing terminal contracts.
- 16.4 The Parties will form a Terminal Committee (or two separate Terminal Committees, one in Europe and one in the USA), in which all Lines have a right to be represented.

17 Non-Assignment

- 17.1 The rights and obligations of each Line under the Agreement herein shall not be assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior unanimous agreement of all Lines. Each Line shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to another party.

18 Confidentiality

- 18.1 Except as required by law this Agreement shall be regarded as confidential to the Lines hereto and no Line shall divulge details of the contents hereof to any third party without the prior written approval of the other Lines.

19 Force Majeure

- 19.1 Except where otherwise provided, in circumstances such as but not limited to the event of war, whether declared or not, hostilities or the imminence thereof, act of public enemies, restraint of princes, rulers or people, or compliance with any compulsorily applicable law or governmental directive, boycott against flag, political ban or other events which render the Agreement wholly or substantially impracticable, the Agreement shall not thereby be terminated, but (subject always to the various provisions for termination of this Agreement as set out in Clause 4) the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension. Should the Agreement be wholly suspended for a period exceeding six (6) calendar months from the date of commencement of such suspension the Agreement shall terminate.
- 19.2 In the event that a Line considers that any cause, happening or event not within its control substantially impairs its ability to enjoy its rights or carry

out its, or other Lines', obligations under this Agreement then, at its request, the Lines shall meet together with all reasonable dispatch in order to consider such adjustment of the terms hereof as may be mutually acceptable.

20 Language

20.1 This Agreement and all notices, communications or other writing shall be in the English language and no Line shall have any obligation to translate such matter into any other language. The wording in the English language shall prevail.

21 Notices

21.1 Any notice or other communication which one Line or Party hereto may require to give or to make to the other Lines or Party under the Agreement shall, unless otherwise specifically provided herein, be written in English and sent by mail or facsimile with copy by mail, to the points of entry and addresses of each of the other Lines as set out in the working procedures.

22 Disclaimer of Partnership

22.1 This Agreement does not create and shall not be interpreted as creating any partnership, joint venture or agency relationship among the Parties, or any joint liability under the law of any jurisdiction.

23 Law and Arbitration

23.1 This Agreement shall be governed by and construed in accordance with the laws of England and each Line hereby submits to the jurisdiction of the English Courts.

23.2 All disputes or differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in England in accordance with the Arbitration Act 1996 together with LMAA (London Maritime Arbitration Association) terms.

23.3 The Lines agree to appoint a single/sole arbitrator, having appropriate commercial and consortia experience, within 21 days of any Line seeking an appointment. If any Line should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the LMAA President will appoint a single/sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of any Line.

23.4 The Lines further agree:-

- (a) Where the amount in dispute is US\$ 200,000 or less, the arbitration will proceed on a documents and written submission

basis only. However, oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s).

- (b) that any awards given under this Clause in respect of any dispute or difference relating to this Agreement shall be notified to the European Commission.

24 Severability

24.1 If any provision of this Agreement, as presently stated or later amended is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

25 Equipment

25.1 The Parties are authorised to discuss and agree upon standards for, and may interchange, purchase, pool, lease, sublease, maintain and repair, or otherwise co-operate in connection with containers, chassis and other equipment utilised in the Trade as between themselves, or individually, among or between on or more of CP Ships lines and one or more of the Grand Alliance Lines, from or with another person, on such terms as they may from time to time agree.

26 Inland Arrangements in the United States

26.1 To the extent permitted by the Shipping Act of 1984, as amended, the Parties are authorised to jointly negotiate and agree with one or more motor carriers and/or railroads with respect to rates, terms, conditions and services charges or provided by such inland carriers to the Parties in the United States.

27 Additional Authority

27.1 The Parties are authorised to discuss and agree on the following matters::

- (a) The charter of Vessels from one another or jointly from third parties.
- (b) The operation of feeder and transshipment vessels as may be required.
- (c) The establishment of joint container and chassis pools, depots, container yards and container freight stations.
- (d) Membership in, or withdrawal from, conferences, rate agreements or other agreements in the Trade; provided, however, that nothing herein shall require any Line to join such an agreement or preclude it from withdrawing from such an agreement.

Grand Alliance-CP Ships Atlantic Agreement
FMC Agreement No. 011705-004
(2nd Edition)
Original Page No. 21

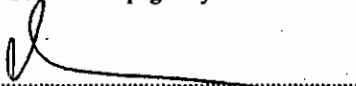
- (e) The terms and conditions of the Lines respective bills of lading or of any memorandum bills of lading that they may issue to one another or to any sub-charterer.

Grand Alliance-CP Ships Atlantic Agreement
FMC Agreement No. 011705-004
(2nd Edition)

Signature Page

In Witness Whereof, the Parties have agreed as of this 13 day of ^{MAY} April, 2005, to amend and restate this Agreement and 7 and to file same with the U.S. Federal Maritime Commission.

For and on behalf of Hapag-Lloyd Container Linie GmbH


.....
Name: CLAUJ NORDHART
Title: DIRECTOR SHIP OPERATIONS

For and on behalf of Nippon Yusen Kaisha

.....
Name:
Title:

For and on behalf of Orient Overseas Container Line Ltd for all carriers operating under the trade name, Orient Overseas Container Line (as one party)

.....
Name:
Title:

For and on behalf of P&O Nedlloyd Limited/P&O Nedlloyd BV (as one party)

.....
Name:
Title:

For and on behalf of Lykes Lines Limited, L.L.C.

.....
Name:
Title:

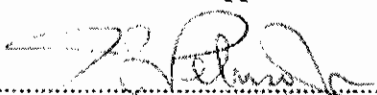
Signature Page

In Witness Whereof, the Parties have agreed as of this 13TH day of ~~April~~ May 2005, to amend and restate this Agreement and 7 and to file same with the U.S. Federal Maritime Commission.

For and on behalf of Hapag-Lloyd Container Linie GmbH

.....
Name:
Title:

For and on behalf of Nippon Yusen Kaisha


.....
Name: J. L. PELUSA JR
Title: MARKETING DIRECTOR, ATLANTIC TRADE

For and on behalf of Orient Overseas Container Line Ltd for all carriers operating under the trade name, Orient Overseas Container Line (as one party)

.....
Name:
Title:

For and on behalf of P&O Nedlloyd Limited/P&O Nedlloyd BV (as one party)

.....
Name:
Title:

For and on behalf of Lykes Lines Limited, L.L.C.

.....
Name:
Title:

Grand Alliance-CP Ships Atlantic Agreement
FMC Agreement No. 011705-004
(2nd Edition)

Signature Page

In Witness Whereof, the Parties have agreed as of this 13th day of April, 2005, to amend and restate this Agreement and 7 and to file same with the U.S. Federal Maritime Commission.

For and on behalf of Hapag-Lloyd Container Linie GmbH

.....
Name:
Title:

For and on behalf of Nippon Yusen Kaisha

.....
Name:
Title:


For and on behalf of Orient Overseas Container Line Ltd for all carriers operating under the trade name, Orient Overseas Container Line (as one party)


.....
Name:
Title:

For and on behalf of P&O Nedlloyd Limited/P&O Nedlloyd BV (as one party)

.....
Name:
Title:

For and on behalf of Lykes Lines Limited, L.L.C.


.....
Name: Juan Manuel Gonzalez
Title: Executive Vice President

Grand Alliance-CP Ships Atlantic Agreement
FMC Agreement No. 011705-004
(2nd Edition)

Signature Page

In Witness Whereof, the Parties have agreed as of this 18th day of May 2005, to amend and restate this Agreement and 7 and to file same with the U.S. Federal Maritime Commission.

For and on behalf of Hapag-Lloyd Container Linie GmbH

.....
Name:
Title:

For and on behalf of Nippon Yusen Kaisha

.....
Name:
Title:

For and on behalf of Orient Overseas Container Line Ltd for all carriers operating under the trade name, Orient Overseas Container Line (as one party)

.....
Name:
Title:

For and on behalf of P&O Nedlloyd Limited/P&O Nedlloyd BV (as one party)


.....
Name: NEAL M. MAYER
Title: ATTORNEY-IN-FACT

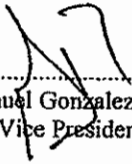
For and on behalf of Lykes Lines Limited, L.L.C.

.....
Name:
Title:

Grand Alliance-CP Ships Atlantic Agreement
FMC Agreement No. 011705-004
(2nd Edition)

Signature Page (continued)

For and on behalf of TMM Lines Limited, LLC


.....
Name: Juan Manuel Gonzalez ✓
Title: Executive Vice President

APPENDIX 1

Initial Port Rotations of Loops

| TransAtlantic | | | | |
|---------------|-------------|-------------|-------------|-------------|
| Butterfly | | | | |
| North Wing | South Wing | GASS | GUMEX | PAX |
| Bremerhaven | Southampton | Antwerp | Antwerp | Antwerp |
| Rotterdam | Le Havre | Thamesport | Thamesport | UK port |
| Antwerp | Rotterdam | Bremerhaven | Bremerhaven | Bremerhaven |
| Southampton | Bremerhaven | Charleston | Le Havre | Rotterdam |
| New York | Charleston | Houston | Houston | Le Havre |
| Norfolk | Miami | New Orleans | Vera Cruz | Halifax |
| Charleston | Houston | Charleston | Altamira | New York |
| New York | Charleston | Norfolk | Charleston | Norfolk |
| Southampton | Bremerhaven | Antwerp | Antwerp | Savannah |
| | | | | |
| | | | | |
| | | | | Savannah |
| | | | | Norfolk |
| | | | | New York |
| | | | | Halifax |
| | | | | Antwerp |
| | | | | |

Indicative Standard Capacity and Speed

| | | | |
|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|
| 8 vessels 2750 TEUs 19.7 knots | 5 Vessels 2800 TEUs 17.4 knots | 5 Vessels 2520 TEUs 18.1 knots | 13 Vessels 3950 TEUs 19.3 knots |
|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|

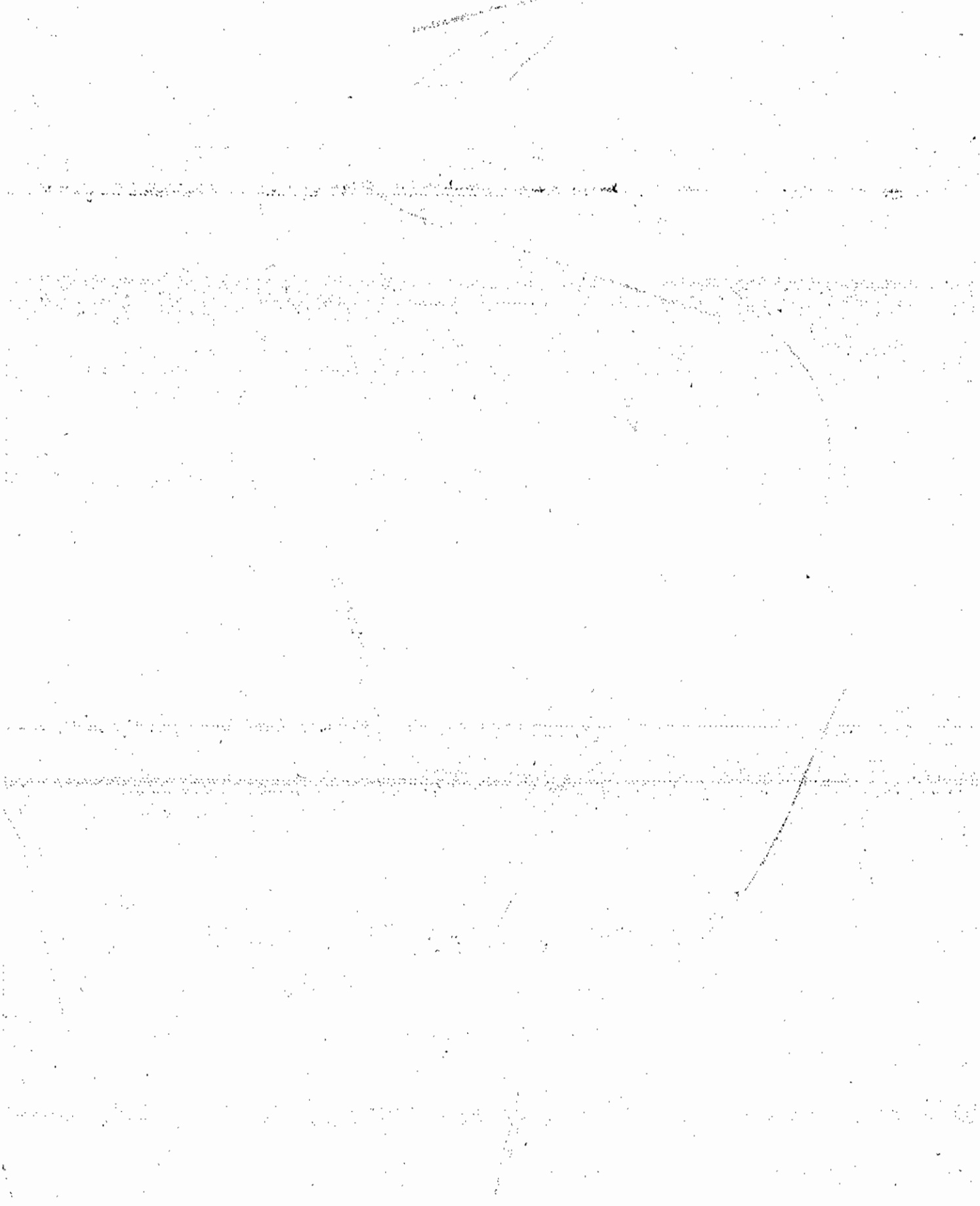
Note: The above port rotations and operational capacities are agreed subject to the outcome of terminal negotiations with respect to berth arrangements and the final choice of ports in the UK and Germany

APPENDIX 2

Initial Loop Allocation Shares

| Loop Allocation Shares | Grand Alliance | CP Ships | | Totals |
|------------------------|----------------|----------|--|---------|
| N.Butterfly | 82.222% | 17.778% | | 100.00% |
| S.Butterfly | 85.242% | 14.758% | | 100.00% |
| PAX | 94.695% | 5.305% | | 100.00% |
| GASS | 33.962% | 66.038% | | 100.00% |
| Gumex | 31.746% | 68.254% | | 100.00% |

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Contship/P&O Nedlloyd -CMA CGM/Marfret Agreement

A Vessel Sharing Agreement

Termination: See Article 3

First Publication

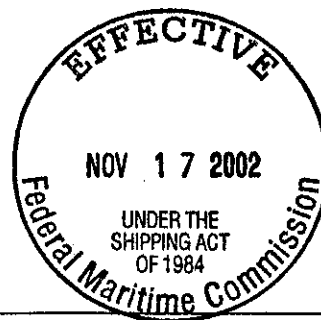


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This Agreement is made the day of September, 2002 between the following:

Parties

Party A:

The parties to the Contship/P&O Nedlloyd Vessel Sharing Agreement, FMC Agreement No. 01181_:

1. P&O Nedlloyd Limited/P&O Nedlloyd B.V. (as one party) ("PONL")
Beagle House
Braham Street,
London E1 8EP
England

2. Contship Containerlines, a division of CP Ships (UK) Limited ("Contship")
Waterfront House,
Wherry Quay,
Ipswich IP4 1AS,
England;

(Acting collectively as one Party)

and

Party B

1. CMA CGM S.A and CMA CGM (UK) Limited (acting as one entity)
4, Quai d'Arenc
13002 Marseille
France (CMA CGM)

and

2. Compagnie Maritime Marfret S.A.
13, Quai de la Joliette
13002 Marseille
France (Marfret)

(Acting collectively as one Party)

1. Definitions

| | | |
|-------------|-------|--|
| Conferences | means | Various conference and discussion agreements as listed in Appendix 4 |
|-------------|-------|--|

| | | |
|---|-------|---|
| Core Trades | means | The trades (i) Europe to Australia/New Zealand/South Pacific Islands, (ii) Australia/New Zealand to Europe (iii) United States East Coast to Australia/New Zealand/South Pacific Islands and (iv) Australia/New Zealand to United States East Coast. |
| Eastabout Loop | means | One Loop of the Service sailing eastabout around the world with trading scope set out in Clause 3.1. |
| Agreement | means | This Agreement including Appendices hereto |
| Line | means | A member of one of the Parties. |
| Overall Service Group Line(s) ("OSG Line(s)") | means | The Lines together with other ocean common carriers entering into an arrangement to operate and/or use the Service under this Agreement and other agreements filed and effective under the Shipping Act of 1984, as amended, and under legislation in other applicable jurisdictions. |
| Loop | means | One of the component sailing schedule rotations of the Service as set out in Clause 3.1 |
| Minimum Service Level | means | The minimum levels of service which the OSG Lines agree to provide pursuant to this Agreement and other filed agreements with respect to frequency of service, ports of call and ship capacity as set out in Appendix 1 |
| Operating Agreement | means | An agreement that will be prepared pursuant to this Agreement prior to the start of the Service setting out further details of the day to day operational and financial mechanisms of the co-operation between the Parties. |
| Sector | means | Part of a round voyage of either an Eastabout or Westabout sailing as set out in Appendix 5 |
| Service/New Service | means | The service consisting of 2 Loops as envisaged to be operated by the Parties pursuant to this Agreement and as set out in Clause 3.1 |
| Ship Operator | means | The OSG Line which is the owner, disponent owner or time charterer of the Ship and is operating that Ship in the Service on behalf of the Party to which it is a member. |

| | | |
|-----------------------|-------|--|
| Ship(s) | means | A ship deployed in the Service pursuant to Clause 5. |
| Slot(s) | means | The space on any Ship or any other ship for the stowage of containers. Each slot shall be the space required for the carriage of one standard ISO twenty foot equivalent unit (TEU). |
| Westabout Loop | means | One Loop of the Service sailing westabout round the world with trading scope set out in Clause 3.1. |
| South Pacific Islands | means | Tahiti, New Caledonia and Vanuatu |

2 Commencement, Duration and Termination

2.1 The phase in under this Agreement shall begin on or about November 2002 provided that this Agreement shall have become effective under the Shipping Act of 1984, as amended and all other regulatory requirements in Europe and Australia have been met. The Agreement will continue indefinitely but either Party may give notice to terminate the Agreement without penalty on 6 months' written notice; such notice not to be given until 18 months have elapsed from the date when co-operation commences to come into effect so that termination can be effective no earlier than 24 months after the date when co-operation commences.

2.2 Notwithstanding Clause 2.1, if at any time during the term of the Agreement any Line should become bankrupt or declares insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the Line (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other Lines), or any event similar to any of the above shall occur under the laws of the Line's country of incorporation (the Line so affected being referred to in this sub-clause only as the Affected Line) then

- (a) The Affected Line is a member of Party A then the members of Party B may by unanimous agreement terminate the Agreement with immediate effect.
- (b) If the Affected Line is a member of Party B then the members of Party A may by unanimous agreement terminate the Agreement with immediate effect

2.3 Notwithstanding Clause 2.1 above, if at any time during the term of the Agreement there shall be a change in the control or a material change in the ownership of any one Line (the Line so affected being referred to in this sub-clause only as the Affected Line) then

- (a) If the Affected Line is a member of Party A and the members of Party B are unanimously of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the Service, then Party B may within three months of the coming into effect of such change give not less than three months' notice in writing to terminate the Agreement.
- (b) If the Affected Line is a member of Party B and the members of Party A are unanimously of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the Service, then Party A may within three months of the coming into effect of such change give not less than three months' notice in writing to terminate the Agreement.

For the purposes of this Clause a change in the control or material change in the ownership of a Line or of the holding company of that Line shall not include any public offering of shares in that Line or its holding company, or existing shareholders changing their relative shareholdings, or the acquisition by a third party of a minority shareholding in that Line or its holding company.

- 2.4 This Agreement shall terminate if the Contship/P&O Nedlloyd VSA terminates, provided that Party A shall provide Party B with six (6) months prior written notice.
- 2.5 This Agreement may be terminated at any time by mutual agreement.
- 2.6 In respect of services provided under this agreement, previous agreements or other Conferences, the Parties may agree where necessary to phase out steps leading to the operational change, variation, or termination of, those agreements and phase-in steps for the introduction of complementary or additional services to be provided under the terms of this Agreement or any future agreements.

3. Scope of the Service

- 3.1 The Parties hereby agree to inaugurate a 2 Loop Service as follows:-
 - (a) "Westabout" a service employing 12 geared ships on a weekly rotation covering North Europe – USEC - Panama - S. Pacific - New Zealand – Australia - S E Asia – Jeddah - Mediterranean – North Europe. This Loop will be operated by both Parties
 - (b) "Eastabout" a weekly service employing 10 Ships on a rotation covering North Europe – Mediterranean – Australia – New Zealand – Panama - USEC – North Europe. This Loop will be operated by Party A.

3.2 This Agreement provides for a Vessel Sharing Agreement (VSA) between the Parties whereby each Party provides Ships to one or both Loops. Slots are allocated in accordance with Clause 6.

3.3 The Parties anticipate that the Eastabout and Westabout Loops will be fully inaugurated no later than February 2003.

4. Core Trades¹

4.1 The Service shall provide the total space requirements for the Parties in the Core Trades and the Parties will not set up any other competing direct service(s) in the Core Trades other than by prior mutual agreement.

4.2 Agreement to use other services for Core Trades will not be unreasonably withheld if the Party or a Line within a Party wishing to use such other services continues, by so doing, to abide by Clause 8.2, as applicable to non-U.S. trades.

5. Ship Provision and Schedule

5.1 The Parties will operate with 2 Service loops, as follows:

(a) The Westabout Service Loop will consist of 12 Ships; each of which will conform to the minimum specification set out in Appendix 2. Ships will be provided by

| | |
|---------|---------|
| Party A | 7 Ships |
| Party B | 5 Ships |

Parties do not rule out the possibility of increasing the number of Ships to be employed in the Service.

The Parties will agree the capacity of each Ship introduced into the Service for the purpose of financial settlement.

(b) The Eastabout Loop will be operated by Party A. The Eastabout Loop will operate 10 ships.

Party B will have access to Eastabout Loop Slots northbound as set out in Appendix 5.

5.2 Eastabout and Westabout Schedules

The proposed port rotations are set out in Appendix 1 to this Agreement. The precise ports of call within each such main area are subject to amendment and/or addition, with the over-riding

¹ Notwithstanding that the vessels operated hereunder will be engaged in providing service between ports in non-U.S. trades, the scope of this Agreement as filed with the Federal Maritime Commission is limited to services to/from U.S. ports and the parties understand that no immunity from U.S. antitrust laws attaches to the agreement with respect to that part of this Agreement that covers trades other than the U.S. trade by virtue of the inclusion of such trades in this Agreement.

requirement of maintaining a regular, reliable, cost effective and competitive schedule

- (a) Westabout Loop - During the period of the Agreement periodic reviews of the Westabout Loop rotation will continue to be made with any changes subject to unanimous agreement.
- (b) Eastabout Loop - the ports of call will be determined by Party A after consultation with Party B and Party A will use reasonable endeavours to cover Party B's requirements on this Loop.

For both Loops the over-riding requirement will be to maintain a regular, reliable, cost effective and competitive schedule.

5.3 Party B's provision of Ships to the Westabout Loop will be fixed for a minimum of two years from the start of the Service. Notwithstanding this the Parties will conduct regular annual reviews of the capacity requirements for the Service as a whole and provision of Ships for the Westabout Loop so as to ensure that the service can continue to cover each Party's demand for space.

5.4 The Parties intend that the Operating Agreement will contain clauses to cover the implications of any change in the provision of Ships during the term of this Agreement, particularly in respect of:-

- (a) Rules for substitution in the event that one Party wishes to replace a Ship provided to the Service with another for whatever reason.
- (b) Provision for regular reviews of the Service to determine, inter alia, whether the Ships provided continued to be the most suitable for the trade.
- (c) Mechanisms for amending Slot allocations in the event of changes in the number or size of Ships provided.
- (d) Rules for determining which Party(ies) should adjust their provision in the event of changes to the structure of the Service and in particular to changes in the number of Ships required for the Service.
- (e) Sharing of costs associated with the phasing-in /phasing-out of Ships in the event of changes in provision of Ships.

5.5 Vessel Scheduling and Performance

The Parties are authorized to discuss and agree, together with the other OSG Lines, on the schedules of the Ships and maintenance of such schedule. In so doing, due consideration shall be given for programmed maintenance and repairs of Ships. The Parties and the other OSG Lines also are authorized to discuss and agree on remedial measures to be taken to bring Ships back on schedule and financial responsibility for same. Costs and savings associated with

bringing a Ship back on schedule will be shared between the Parties as they may agree from time to time.

6. Space entitlement

6.1 The principles for allocation of slots and deadweight to each OSG Line are set out in Appendix 5. The Slots and deadweight allocated to Party B on each Sector of each Service are also set out in detail in Appendix 5. Subject to the terms of this Agreement, the members of Party B may divide the Party B space allocation between them as they may agree from time to time.

Slots allocated are on a used/not used FIO basis.

6.2 In the event that the Slot or deadweight capacity of a Ship is reduced as a result of exceptional or unpredictable events such as temporary draught or other navigational restriction (for instance Panama Canal) then the allocation of Slots to both Parties shall be reduced pro-rata to the allocation on that Ship for the relevant voyage leg or Sector. Such reduction in Slot or deadweight capacity shall not affect the financial arrangements as regards settlement of structural imbalances or purchases/sales of ad hoc Slots.

6.3 Allocation of reefer plugs on the Westabout Loop will be determined in proportion to the provision of reefer plugs between the Parties.

Any under/over provision of plugs, or *ad hoc* usage, will be compensated pursuant to a Reefer Plug Premium, which is to take into account monitoring, fuel and any incremental reefer plant capital costs.

7. Use of Space

7.1 Except as specified in Clause 6 and Appendix 5, each Party shall be entitled to use its Slot allocation without any geographical restrictions regarding the origin or destination of the cargo. There shall be no priorities for either full, empty, wayport/interport or uncontainerised cargo.

7.2 To promote efficiency in the utilisation of space onboard of Ships allocations of Slots and deadweight may be transferred between the OSG Lines. The detailed rules for such purchase and sale together with the Sectorial Slot rates applicable shall be agreed in the Operating Agreement.

7.3 Any unused Slots within a Party's entitlement may be sold or sub-chartered *ad hoc* to any approved third party, always provided that the other Party will have first refusal of such unused Slots; such first refusal to be exercised within 48 hours of offer. An *ad hoc* sale shall be deemed to be a sale of Slots on a single voyage leg or Sector.

7.4 Slot sales to (or Slot purchases from) third parties of a larger and more permanent and significant nature must be discussed and

unanimously agreed upon in advance by the Parties. Such agreement shall not be unreasonably withheld.

7.5 *Ad hoc* sales/purchases within a Party are unrestricted for the purposes of this Agreement.

7.6 All sales of space under this Clause 7 shall be subject to the Parties to such sales meeting all applicable regulatory requirements prior to implementation.

8. Marketing and Conference Membership

8.1 The Parties will maintain separate marketing in all areas covered by this Agreement.

8.2 To the extent that the Parties or Lines participate in the above Core Trades it is intended that they become or remain members of the respective Conferences or Agreements covering those Core Trades as set out in Appendix 4 provided however that nothing contained herein shall require any Line to join or remain a member of any such agreement.

9. Port Terminals

9.1 The Parties agree to contract with a single terminal operator in each port of call unless it is agreed otherwise.

9.2 Party A reserves the right to decide the terminal operator in each port on the Eastabout Loop although it will consult with Party B and will take account of their views. Selection of terminal operators on the Westabout Loop will be by mutual agreement.

9.3 Ocean terminals shall be selected on the basis of the following criteria:-

- (a) High gross productivity in comparison with directly competing ports.
- (b) Competitive costs within the region with direct competing ports/terminals.
- (c) Berthing guarantee as per each service/loops commercial requirement.
- (d) Most favoured user treatment within the region with directly competing ports/terminals.
- (e) Parties' hubbing requirements

9.4 Provided that the above criteria are satisfied, preference will be given to terminals owned by or in which a Line has an interest.

9.5 On a regular basis the Parties shall review the terminal selection to reassess whether alternative facilities exist in the port which would offer a more cost effective solution or better performance for the Service. Such a review should take place as soon as possible after

any significant change in arrangements such as a new facility becoming available or where a Line acquires an interest in an existing facility in the port. In any case a review should take place at least once in every calendar year.

The ownership of the incumbent terminal operator shall not prejudice the selection of an alternative terminal operator if the review so warrants.

- 9.6 To the extent this Clause 9 relates to outwards or inward liner cargo shipping services in Australia, it is limited to the extent permitted under Part X of the Trade Practices Act (Cth) 1974.

10. Financial arrangements

- 10.1 Detailed arrangements for the financial settlement of the allocation of space within the service shall be agreed between members of the OSG and included in Operating Agreements.

- 10.2 The Parties agree to share costs of providing and operating the Ships on the basis of the following principles:-

- (a) Ship Operators will be responsible for the actual costs of providing and operating the Ships they provide to the Service.
- (b) Standard round voyage reference costs (consisting of a Ship provision element, a bunker element and a port/canal cost element) will be separately determined for each Sector on the basis of agreed reference prices and will be allocated to each Sector of the round voyage by reference to the pro-forma Sector voyage time, or as otherwise agreed. In addition, the Parties may take into consideration such administrative costs to be allocated to each Sector of the round voyage. This calculation is to be performed separately for each Loop.
- (c) The amount so determined will be payable to the Ship Operator to offset the actual costs of provision and operation and will be payable on a used/not used basis by the Parties and other OSG Lines in proportion to their respective allocation of space on that Sector.

- 10.3 Reefer plug allocations will be agreed between the Parties. Allowances will be payable by the Lines using the plugs to the Ship Operator for the use of reefer plugs and will include elements to cover fuel, monitoring and capital element.

- 10.4 The Parties will agree the settlement of costs related to *ad hoc* exchange of Slots on individual sailings.

11. Liability

- 11.1 It is anticipated that the Lines will sign a comprehensive liability agreement.

11.2 The liability agreement will provide that Slots are taken by each OSG Line (acting as a Slot charterer) from the Ship Operator under the terms of a slot charterparty and will also set out the undertakings and liabilities of each OSG Line other than the Ship Operator in its relations with other OSG Lines (other than the Ship Operator).

11.3 For the avoidance of doubt the obligations, responsibilities and liabilities of each Party under this Agreement shall be joint and several except in respect of the obligations, responsibilities and liabilities covered under the Liability Agreement referred to in Clause 11.1 above where Lines will be individually liable for the performance thereof.

12. Administration

12.1 Decisions on major issues concerning the membership of the Agreement, permanent sales of space to slot charterers, the scope of the Service, permanent modifications to the schedule of either Loop, allocations, or financial settlement shall be reached by unanimous agreement.

12.2 The Parties will use their best endeavours to consult with and reach agreement on the course of action to be taken on routine operational issues. In the event of emergency the Ship Operator shall have the right to take action subject to the provisions of the rules on non-performance to be developed in the Operating Agreement on the basis set out in Clause 5.5.

12.3 The communication channels, systems and procedures as well as other general items dealing with the day-to-day work for operation pertaining to the Service and so far not being covered under the Agreement, shall be specified in separate working procedures.

12.4 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate the same:

- (a) any authorized officer or representative of a Line, and
- (b) legal counsel for each of the Lines.

12.5 Except for routine operational and administrative matters, the Parties will in accordance with 46 C.F.R. Section 535.407 file amendments to this Agreement prior to implementation thereof.

13. Non Assignment

13.1 The rights and obligations of each Party under this Agreement shall not be assignable except by mutual consent.

14. Force Majeure

14.1 In such circumstances as the event of war, Act of God, civil commotion, act of public enemies, arrest or restraint of princes, rulers and peoples or any other event whatsoever which cannot be

avoided or guarded against and which renders the performance of this Agreement wholly or substantially impracticable, this Agreement shall not thereby be terminated, but the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension.

14.2 Should this Agreement be wholly suspended for a period exceeding three calendar months from the date of the commencement of such suspension or partially suspended for a period exceeding six (6) calendar months this Agreement shall terminate.

15. Hardship

15.1 In the event either Party considers that any cause happening or event not within its control substantially impairs its ability to enjoy its rights or carry out its obligations or successfully trade under the terms of this Agreement, then, at its request, the Parties shall meet together with all reasonable dispatch in order to consider such adjustments of the terms hereof as may be mutually acceptable.

16. Enforceability

16.1 If any provisions of any clause in this Agreement, as presently stated or later amended or adopted, shall be held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational, then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

17. Law and Arbitration

17.1 Except where Article 18 applies, this Agreement shall be governed by and construed in accordance with the laws of England.

17.2 All disputes or differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in England in accordance with the Arbitration Act 1996 together with LMAA (London Maritime Arbitration Association) terms in use at the time of the dispute or difference.

17.3 The Parties to agree to appoint a single/sole arbitrator, having appropriate commercial and consortia experience, within 21 days of either Party seeking an appointment. If either Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the LMAA President will appoint a single/sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of either Party.

17.4 The Parties further agree:-

(a) The right of appeal to the Courts is excluded, and immediately following the appointment of the arbitrator(s)

each Party shall send to the arbitrator(s) a letter confirming that such right of appeal is excluded.

- (b) Where the amount in dispute is US\$ 200,000 or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s).
- (c) For all disputes or differences whatever the amount claimed, there shall be no discovery, but, if in the opinion of the arbitrator(s) a Party has failed to produce any relevant document(s), he may order the production of such document(s) and may indicate to the Party to whom the order is directed that if, without adequate explanation, he fails to produce the document(s) it will not favour that Party's case.
- (d) The term "relevant document" includes all documents relevant to the dispute of difference, whether or not favourable to the Party holding them. It includes witness statements, expert reports and the like on which the Party intends to rely, but does not include documents which are not legally disclosable.
- (e) Both Parties agree that any awards given under this Clause shall be notified to the European Commission.
- (f) Any interest awarded under this Clause shall be simple interest only.

18. Law and Arbitration – Certain Sectors

- 18.1 The Parties acknowledge that section 10.06 of the Trade Practices Act 1974 (Cth) requires that questions under an agreement in relation to an outwards liner cargo shipping service must be determined in Australia in accordance with Australian law, and that Westabout – Sector 3 and Eastabout – Sector 2 are outwards liner cargo shipping services within the meaning of the Trade Practices Act 1974 (Cth) ("Outwards Services"). Accordingly, the parties agree that any question arising under the Agreement solely in relation to Outwards Services shall be determined in Australia in accordance with the laws of New South Wales, Australia.
- 18.2 All questions arising under this Agreement relating solely to Outwards Services which cannot be amicably resolved shall be referred to arbitration in Sydney Australia in accordance with and subject to the Commercial Arbitration Act 1984 (NSW) and UNCITRAL Arbitration Rules .
- 18.3 The Parties to agree to appoint a single/sole arbitrator, having appropriate commercial and consortia experience, within 21 days of either Party seeking an appointment. If either Party should so

request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the Australian Chamber of Shipping President (or equivalent) will appoint a single/sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of either Party.

18.4 The Parties further agree:-

- (a) The right of appeal to the Courts, including any right under Part VI of the Commercial Arbitration Act 1984 (NSW), is excluded, and immediately following the appointment of the arbitrator(s) each Party shall send to the arbitrator(s) a letter confirming that such right of appeal is excluded.
- (b) Where the amount in dispute is US\$ 200,000 or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s).
- (c) For all disputes or differences whatever the amount claimed, there shall be no discovery, but, if in the opinion of the arbitrator(s) a Party has failed to produce any relevant document(s), he may order the production of such document(s) and may indicate to the Party to whom the order is directed that if, without adequate explanation, he fails to produce the document(s) it will not favour that Party's case.
- (d) The term "relevant document" includes all documents relevant to the dispute of difference, whether or not favourable to the Party holding them. It includes witness statements, expert reports and the like on which the Party intends to rely, but does not include documents which are not legally disclosable.
- (e) Any interest awarded under this Article shall be simple interest only.

19. Notices

- 19.1 Any notice or other communication which one Party hereto may require to give or to make to the other Party under the Agreement shall, unless otherwise specifically provided herein, be written in English and sent by mail or facsimile with copy by mail, to the points of entry and addresses of each Line within the other Party as set out in this Agreement.

Signature Page

For and on behalf of
Contship Containerlines, a division of CP Ships (UK) Limited,

By Wayne R. Ronde
Name: WAYNE R. RONDE
Title: ATTORNEY-IN-FACT

For and on behalf of
P & O Nedlloyd Limited/P & O Nedlloyd BV,
(acting as one party),

By Neal M. Mayer
Name: NEAL M. MAYER
Title: ATTORNEY-IN-FACT

For and on behalf of
CMA CGM S.A.,

By _____
Name :
Title :

For and on behalf of
Compagnie Maritime Marfret S.A.

By _____
Name:
Title:

Contship/PONL-CMA CGM/Marfret
Vessel Sharing Agreement

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Signature Page

For and on behalf of
Contship Containerlines, a division of CP Ships (UK) Limited,

By _____
Name:
Title:

For and on behalf of
P & O Nedlloyd Limited/P & O Nedlloyd BV,
(acting as one party),

By _____
Name:
Title:

For and on behalf of
CMA CGM S.A.,

By Paul M. Keane
Name: PAUL M. KEANE
Title: ATTORNEY IN FACT

For and on behalf of
Compagnie Maritime Marfret S.A.

By _____
Name:
Title:

Minimum Service Levels

Frequency of sailings

1. The Parties intend that the Service will provide a minimum of (52) sailings per year, subject to accident, breakdown, maintenance and repair, in each of the following trades
 - (a) Europe - Australia

Signature Page

For and on behalf of
Contship Containerlines, a division of CP Ships (UK) Limited,

By _____
Name:
Title:

For and on behalf of
P. & O Nedlloyd Limited/P & O Nedlloyd BV,
(acting as one party),

By _____
Name:
Title:

For and on behalf of
CMA CGM S.A.,

By _____
Name:
Title:

For and on behalf of
Compagnie Maritime Marfrer S.A.

By *Joanne Latham*
Name: JOANNE LATHAM
Title: OWNER'S REPRESENTATIVE

Minimum Service Levels

Frequency of sailings

1. The Parties intend that the Service will provide a minimum of (52) sailings per year, subject to accident, breakdown, maintenance and repair, in each of the following trades

- (a) Europe - Australia
- (b) Australia - Europe
- (c) United States East Coast - Australia
- (d) Australia - United States East Coast

2. Ports of call

(a) The port rotation of the Eastabout Loop will be

Tilbury - Hamburg - Rotterdam - La Spezia - Damietta - Suez - Fremantle - Melbourne - Sydney - Brisbane - Auckland - Napier - Port Chalmers - Panama - Manzanillo - Savannah - Philadelphia - New York - Zeebrugge - Tilbury

(b) The port rotation of the Westabout Loop will be

Tilbury - Hamburg - Antwerp - Le Havre - New York - Norfolk - Savannah - Manzanillo - Panama - Papeete - Auckland - Noumea - Sydney - Melbourne - Adelaide - Fremantle - Singapore - Jeddah - Suez - Damietta - Malta - La Spezia - Tilbury

[Comment: These port rotations are not yet finalised so there may be some changes to be made]

3. Minimum Capacities

(a) Eastabout Loop

The Eastabout Loop will be served by 10 new Ships with minimum capacities of

| | Usable TEU Capacity (note 1) | | Tonnes | Reefer Plugs (note 2) |
|-------------------------|------------------------------|-------|--------|-----------------------|
| | Full | Empty | | |
| Europe-Australia | 3000 | 1100 | 37,500 | 1100 |
| Australia - USEC/Europe | 2486 | 1500 | 43500 | 1100 |

(b) Westabout Loop

The Westabout Loop will be served by 12 ships with minimum capacities of

Appendix 1

| | Usable TEU Capacity (note 1) | | Tonnes | Reefer Plugs (note 2) |
|-----------------------|------------------------------|-------|--------|-----------------------|
| | Full | Empty | | |
| Europe/USEC-Australia | 1850 | 300 | 24,700 | 300 |
| Australia - Europe | 1540 | 650 | 27,000 | 300 |

Notes:

1. Ships' capacities will be limited on all sectors by deadweight considerations. TEU capacities are therefore approximate and will vary from voyage to voyage.
2. Capacity as measured in tonnes is dependent on a number of factors relating to average weight of cargo, 20'/40' mix of containers, stowage factors, depth of water considerations in certain ports and other operational matters. Capacity can vary between southbound and northbound voyage legs.
3. Reefer plug capacity represents the maximum number of plugs that can be supported on a sustained basis over a full voyage from Australia to Europe (or vice versa).

[Comment: these figures are still subject to confirmation]

Appendix 2 - Minimum Specification Criteria of Ships for the Westabout Loop

Type:- Fully Cellular Containership - Geared

It is agreed that Ships of the CSBC2226 Class and La Tour/Utrillo type will meet the required specification

Size:- TEU Intake 2200 TEU nominal
2050 TEU through Panama Canal
Cargo Deadweight 24700 tonnes on SB voyage
24000 tonnes via Papeete
27000 tonnes on NB voyage
Reefer Capacity 300 Useable Plugs/slots
40ftdv Intake Unrestricted

Speed:- 20.0 knots at Design Draft (90% mcr. with 15% sea margin)

Bunker To give endurance of approx. 13800 nautical miles

Intake:

Design:- Panamax Design: Breadth not to exceed 32.2 metres
LOA not to exceed 294.4 metres
Air Draft: Capable of negotiating all ports of call
Pile Weights: Under Deck 20ft Containers at 24.0 tonnes gross each
minimums Deck 40ft Containers at 30.0 tonnes gross each
On Deck 20ft Stacks - 75 tonnes in total
Deck 40ft Stacks - 96 tonnes in total

Appendix 3 - Minimum Specification Criteria of Ships for the Eastabout Loop

Type:- Fully Cellular Containership - Gearless

Size:- TEU Intake 4100 TEU nominal
4000 TEU through Panama Canal
Cargo Deadweight 37500 tonnes on southbound voyage
43500 tonnes on northbound voy
Reefer Capacity 1300 plugs of which 1100 shall be continuously
sustainable
40ftdv Intake Unrestricted

Speed:- 24.9 knots at Scantling Draft (90% mcr. with 20% sea margin)

Design:- Panamax Design: LOA not to exceed 294.4 metres
Breadth not to exceed 32.2 metres

Air Draft: Capable of negotiating all ports of call

Bunker Intake: to give endurance of approx. 23000
nautical miles

Pile Weights: Under Deck 20ft Containers at 30 tonnes gross each
40ft Containers at 35 tonnes gross each
On Deck 20ft Stacks - 90 tonnes in total
40ft Stacks - 120 tonnes in total

GRT: Design configured to minimise Suez Tonnage Dues with minimising fuel in
double bottom tanks

Appendix 4 - Conferences

1. Various Conference agreements relating to the trade between Europe and Australia/New Zealand/Pacific Islands
 - (1) Europe to Australia and New Zealand Conference;
 - (2) The Australia/New Zealand to Europe Liner Association Constitution;
 - (3) Euroceania

2. Various Conference and Discussion Agreements relating to the trade between USEC and Australia/New Zealand
 - (1) United States Australasia Agreement (202-011677)
 - (2) United States/Australasia Interconference and Carrier Discussion Agreement (203-011117-011)
 - (3) Australia/United States Containerline Association (202-011407)
 - (4) Australia/United States Discussion Agreement (203-011275)
 - (5) New Zealand/United States Container Line Association (202-009831)
 - (6) New Zealand/United States Interconference and Carrier Discussion Agreement (203-011268-005)

3. Trade Participation Agreements
 - (1) Southbound Trade Participation Agreement (Europe to Australian and New Zealand Conference)
 - (2) Northbound Trade Participation Agreement (The Australia/New Zealand to Europe Liner Association)

Principles of Slot and deadweight allocation to members of the OSG - Sector Allocation Shares

1 Sector Allocation Shares (SAS's)

- (a) Allocations will be made for each member of the Overall Service Group on each Sector according to the following principles.
- (b) The Sectors shall be

| | | |
|-----------|----------|----------------------|
| Eastabout | Sector 1 | Europe-ANZ |
| | Sector 2 | ANZ-USA |
| | Sector 3 | USA - Europe |
| Westabout | Sector 1 | Europe - USA |
| | Sector 2 | USA - ANZ |
| | Sector 3 | ANZ-Singapore/Europe |

- (c) Sector Allocation Shares (SAS) shall be determined as follows:-

In recognition that the Trade in each Sector is a "weight" trade, it is understood that within each Sector and for each OSG Line the SAS shall be determined by comparing the agreed deadweight allocation with the standard deadweight capacity of the Ship within that Sector.

- (d) The Slot Allocation shall be determined as follows:-

- (i) In certain Sectors a specific agreement has been reached between the Parties for a pre-determined Slot allocation.
- (ii) When there is no pre-determined Slot allocation, each Party shall receive their SAS share, as set forth below, based on the Full Slot, Empty Slot or deadweight capacity of the ship, whichever is applicable.

- 2. Each Line's Sector Allocation Shares will change from one Sector to the next. The Lines will agree changes in allocation from port to port along the common coast on a pragmatic basis and as set out in the Working Procedures to ensure that all Lines may use their allocation to the mutual best advantage.
- 3. The Sector Allocation Shares for Party A and Party B under this agreement, and consequently certain Slot Allocations, will be subject to adjustment in the light of changes in standard capacity and in the agreed deadweight allocation which may be adjusted over the course of time. Slot Allocation Shares for Party A and Party B will be in the range

| | | Party A | Party B |
|-----------|----------|---------|---------|
| Eastabout | Sector 1 | 100% | 0% |
| | Sector 2 | 100% | 0% |
| | Sector 3 | 100% | 0% |
| Westabout | Sector 1 | 63%-65% | 35%-37% |
| | Sector 2 | 62%-65% | 35%-38% |
| | Sector 3 | 62%-64% | 36%-38% |

Eastabout Loop - Party B will be allocated 154 Slots at 15 tonnes per TEU deadweight including a maximum of 20 reefer plugs on each northbound sailing; each Slot taken will reduce Party B's allocation on the northbound Westabout Loop by the same amount.

Slots allocated to Party B on the Eastabout Loop can be used on all sectors with the exception of ANZ-USEC. However CMA CGM may use up to a maximum of 25 slots (final number to be agreed) from the Party B allocation on the Eastabout Loop for the carriage of cargo from ANZ to USEC.

PONL may use up to a maximum of 25 slots (final number to agree with above) from the Party A allocation on the Westabout Loop for the carriage of cargo from Europe to S. Pacific Islands.

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CMA CGM/CP SHIPS/MARFRET VESSEL SHARING AGREEMENT

FMC AGREEMENT NO. 011931



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ARTICLE 1: NAME OF THE AGREEMENT

The name of this Agreement is the CMA CGM/CP Ships/Marfret Vessel Sharing Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the Parties to achieve efficiencies and economies in the trades covered by the Agreement through their joint cooperation and coordination of their vessels and related services in such trades.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter referred to individually as "Party" and jointly as "Parties") are:

CP Ships (UK) Limited (hereinafter referred to as "CPS")
Address: 2 City Place
Beehive Ring Road
Gatwick, West Sussex RH6 OPA
England

CMA CGM S.A. and CMA CGM (UK) Limited (hereinafter referred to as "CMA CGM")
Address: 4, Quai D'Arenc
P.O. Box 2409
13215 Marseilles Cedex
France

Compagnie Maritime Marfret S.A. (hereinafter referred to as "Marfret")
Address: 13 Quai de la Joliette
13002 Marseille
France

Hapag-Lloyd Container Linie GmbH¹
Address: Ballindamm 25
20095 Hamburg
Germany

ARTICLE 4: GEOGRAPHIC SCOPE

This Agreement covers the trades between ports on the U.S. Atlantic Coast, on the one hand, and ports in North Europe, the South Pacific Islands, and Australia and New Zealand, on the other hand. All of the foregoing is hereinafter referred to as the "Trade."

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Vessels. The Parties are authorized to discuss and agree upon the number, size and characteristics of vessels to be deployed hereunder, and to operate a service of up to ten (10) vessels with a nominal capacity of up to 3,000 TEUs each. Pursuant to and without limitation of the foregoing, the Parties hereby agree as follows:

(a) Initially, the Parties shall operate six (6) vessels with a nominal capacity of between 2000-2500 TEUs each. CPS will provide two (2) vessels, CMA CGM will provide three (3) vessels, and Marfret will provide one (1) vessel.

(b) All vessels deployed hereunder will be geared and have a minimum intake of 1650 TEUs at 14T homogeneous and a maximum intake of 1950 TEUs at 14T homogeneous. Vessels will be required to perform a service speed of 19.5 knots. All vessels will be capable of supplying 300 reefer plugs, but the Parties acknowledge that as a result of differing configuration of vessels, it may be

¹ Hapag-Lloyd is a party to this Agreement for purposes of Articles 10, 11 and 12 only,

necessary to agree on specific 20ft/40ft ratios on a case by case basis.

(c) Each Party shall be responsible for the operation of the vessels that it provides for the service hereunder, and shall pay all associated vessel costs, such as, but not limited to, daily charter hire, port costs, Panama Canal charges, bunkers and insurance.

(d) A Party shall have the right to replace and/or substitute vessels throughout the life of the Agreement, providing the substitute ship meets the minimum specifications set out in Article 5.1(b) and provided that all additional vessel and cargo expenses are for the account of the Party substituting the vessel. The Parties may mutually agree to waive the minimum specification rule from time to time if suitable replacement vessels cannot be found and where not having a replacement vessel would be detrimental to the overall service product integrity.

(e) Each Party shall be at liberty to withdraw its vessels from service for routine maintenance and repairs including dry-dock, with reasonable provision of notice to the other Parties of at least 90 days. In such cases, the vessel providing Party must pay due regard to schedule requirements and take into account the requirements of the other Parties. The vessel providing Party must either provide alternative slot capacity to the other Parties and/or additional capacity on subsequent voyages, or accept reasonable incremental cargo associated costs of the other Parties (as defined by the Parties). The Party whose vessel is so withdrawn from service shall also be responsible for reasonable

and shall have no vote hereunder.

related schedule rectification costs.

5.2 Service and Schedule.

(a) The Parties agree to maintain a reliable fixed day fortnightly frequency of service in accordance with a schedule to be agreed. The Parties are authorized to discuss and agree upon criteria to measure adherence to the agreed-upon schedule and remedial actions/consequences in the event of non-adherence. The Parties agree that CMA will assume responsibility for the schedule coordination and management of this Service.

(b) Following commencement of the service, the Parties agree to undertake a periodic operational review in order to assess the schedule integrity of the service, and to make adjustments to the schedule if necessary. It is acknowledged that such adjustments could ultimately involve amongst other solutions, removal of a port, or ports of call, if absolutely necessary, in order to attain schedule reliability. Such action shall only be taken after all other possible alternative remedial actions have been fully explored to the satisfaction of all Parties. Conversely, provided that schedule integrity is sufficiently robust, consideration shall also be given as to the practicality of adding a port, or ports of call, if so suggested by any of the Parties. Subject to the above criteria, it is agreed that priority should be afforded to the addition of Napier as a second port call in New Zealand, or alternatively, to an additional call at a New Zealand South Island port. The initial review of performance shall be conducted within a timescale of three months from commencement of the service.

5.3 Space Allocation.

(a) Slot and deadweight allocation on each southbound and northbound sailing shall be shared between the Parties in proportion to the aggregate agreed capacity that each Party provides within each cycle of six consecutive sailings. The foregoing principle may be waived by the Parties agreeing to do so in writing.

(b) One cycle will be defined as 6 consecutive fortnightly sailings and the slots provided within any given cycle will determine a Party's slot entitlement within that cycle, unless otherwise specifically agreed.

(c) The average weight per slot will be assessed at:

- 12 tonnes per TEU Southbound (from Europe via USEC to SPI/ANZ)
- 15 tonnes per TEU Northbound (from ANZ via USEC to Europe)

The Parties will agree the slot capacity of each vessel upon the basis of the above average deadweight per TEU.

(d) Any Party may agree to sell any portion of its allocation to another Party at a pre-agreed slot rate. Any sale of slots to a non-Party is not permitted without the written consent of the other Parties. Notwithstanding the preceding sentence, any Party may make space available to any affiliated or wholly owned subsidiaries and shall not require the consent of the other Parties to do so.

(e) In the event that the deadweight capacity of a ship is reduced as a result of draft limitations at ports or canals as well as temporary reductions in draft caused by unforeseen events, then the allocation of deadweight to each

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Party loading on that voyage leg shall be reduced proportionately to the overall reduction in deadweight. Any change in allocation made pursuant to this Article 5.3(e) will be effected at a port, or phased over a range of ports, as agreed by the Parties.

(f) Reefer plugs on each sailing shall be allocated among the Parties in accordance with the principle set forth in Article 5.3(a). A reefer plug premium will be established for excess reefer plug usage used on the other Parties vessels. For avoidance of doubt the Vessel Providing Party will not pay the other Parties a reefer premium for excess plugs utilized on its own vessels.

5.4 Terminals.

(a) Except in the French Pacific Islands where the Party providing the vessel will select the stevedore of its choice, the Parties agree to contract with a single terminal operator in each port, unless it is agreed otherwise. Ocean terminals will be selected on the following criteria:

- (i) High gross productivity in comparison to competing ports
- (ii) Competitive cost
- (iii) Berthing guarantee
- (iv) Parties' hubbing requirements

Providing that most of the above criteria are satisfied, preference will be given to terminals owned by any Party either wholly or partially through shareholdings.

(b) A Terminal Committee will be established.

(c) Each Party shall pay all stevedoring and terminal expenses attributable to its cargo and will be responsible for its agents remuneration (husbanding).

(d) Common terminal charges (such as, but not restricted to overtime, idle time, waiting time, extra labor if any, any expenses resulting from schedule adjustment due to Force Majeure cases) will be invoiced to each Party proportionally to its share of the total throughput in each port if identifiable, otherwise in accordance with allocation shares.

(e) All restows, including hatchcover moves, will be for the account of the vessel operator, except those attributable to the specific request of the other Parties, unless otherwise agreed.

5.5 Operational and Administrative Matters

The Parties are authorized to discuss and agree on routine matters such as cargo claims and other liabilities, indemnifications, general average, a cross charter party, joint working procedures, standards for containers and for the acceptance of breakbulk, oversized and dangerous cargo, and other operational/administrative issues to implement the terms hereof.

5.6 Further Agreements

Pursuant to 46 C.F.R. §535.408(b), any further agreement between the Parties, other than those concerning routine operational and administrative matters, will not be implemented unless such agreement has been filed and become effective under the Shipping Act of 1984, as amended.

ARTICLE 6: ADMINISTRATION AND DELEGATIONS OF AUTHORITY

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties.

6.2 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate same:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

ARTICLE 7: MEMBERSHIP

Initially, membership in this Agreement shall be limited to the Parties. Additional parties may be added by unanimous agreement of the Parties.

ARTICLE 8: VOTING

Except as may be otherwise provided in this Agreement, all decisions hereunder shall require unanimous agreement of the Parties.

ARTICLE 9: DURATION AND TERMINATION

9.1 This Agreement will become effective on the date it becomes effective pursuant to the U.S. Shipping Act of 1984, as amended, and shall continue indefinitely, subject to termination as provided herein. It is intended that commencement of the service hereunder will commence upon cessation of the existing Westabout and Eastabout services that will terminate around mid February 2006 pursuant to notices and phase out arrangements, which have been agreed between the Parties and other parties to the existing services.

9.2 This Agreement will have a minimum term of 2-years commencing

on the date it becomes effective (around mid-February 2006). Any Party may resign from the Agreement on not less than six (6) months written notice, such notice not to be served until at least 18 months have elapsed from the date upon which the Agreement came into effect.

9.3 Notwithstanding Article 9.2, if at any time during the term of the Agreement any Party should become bankrupt or declare insolvency or have a receiving order made against it or is in administration, suspend payments, or continue its business under a receiver or administrator for the benefit of any of its creditors, the other Parties will have the option to withdraw from the Agreement with immediate effect.

9.4 Notwithstanding Article 9.2, if at any time during the term of this Agreement there shall be a change in the ownership or ultimate control of a Party, or an agreement has been entered into for such a change of ownership or ultimate control, and the other Parties are of the opinion arrived at in good faith that such change (whether or not it has been effected) is likely to materially prejudice the working of this Agreement, then the other Parties may, acting independently of each other, within six months of becoming aware of the change in ownership or control or the existence of the agreement to effect such change, withdraw from the Agreement by giving not less than three months' notice in writing. For purposes of this Article 9.4, a change in the control or material change in the ownership of a Party or of the holding company of that Party shall not include:

- (i) Any public offering of shares in that Party or its holding company

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(ii) Any purchase or sale of shares in that Party or its holding company of less than 30% of the issued share capital of that company or its holding company.

Notwithstanding the aforementioned, the take over of CPS by TUI A.G. is known between the Parties at the time of entering this Agreement. It is therefore agreed that any subsequent merger or other restructuring operation between both CPS and Hapag-Lloyd Container Line GmbH within TUI A. G. shall not affect the duration and validity of this agreement

ARTICLE 10: GUARANTEE

After the takeover of CPS by TUI A. G., whether or not this company undergoes a change of name or a change in its structure and/or organization, CPS and Hapag-Lloyd shall remain jointly and severally responsible for the performance of all of their obligations towards the other Parties under this Agreement.

ARTICLE 11: ASSIGNMENT

The rights and obligations of any Party under this Agreement shall not be assignable except with the prior consent of the other Parties.

ARTICLE 12: LAW AND ARBITRATION

12.1 The Parties agree to try and resolve all disputes through discussion. If the dispute cannot be resolved by discussion, any Party may give the other Parties fifteen (15) days' notice of its intention to refer the dispute to arbitration. If the dispute is not resolved within that 15 day period, then either:

(a) If the dispute does not concern outwards liner cargo shipping from

Australia, it shall be settled in accordance with 12.2 below; or

(b) If any question or dispute arises with respect to outwards liner cargo shipping from Australia, the Parties to this Agreement shall inform the Minister responsible for the administration of Part X of the Trade Practices Act 1974 of the nature of the question or dispute and request permission for the question or dispute to be settled in accordance with Article 12.2 below. If such permission is not given then Australian law will apply to this Agreement and arbitration shall be before a single arbitrator to be appointed by agreement or in default of agreement, by the Australian Commercial Disputes Centre and the arbitration shall take place in Sydney in accordance with and subject to the Commercial Arbitration Act 1984 (NSW) and UNCITRAL arbitration rules. Where the amount in dispute is USD100,000 or less, the arbitration will proceed on the basis of documents and written submissions only. Any right of appeal or other recourse under Part V of the Commercial Arbitration Act of 1984 shall be excluded to the extent permitted under the Act.

12.2 To the extent that Article 12.1(b) does not apply, this Agreement shall be governed by and construed in accordance with the laws of England and each of the Parties hereto hereby submits to the jurisdiction of the English courts. Any dispute or claim arising out of or in connection with this Agreement shall be referred to arbitration by a single arbitrator in London to be appointed by agreement of the Parties or, in default of such agreement, by the President of the Law Society. Any such arbitration shall be in accordance with the *Arbitration Act 1950 as amended by the Arbitration Act 1979 or any other*

subsequent legislation, and the arbitrator's award shall be final and binding upon the Parties. Where the amount in dispute is USD100,000 or less, the arbitration will proceed on the basis of documents and written submissions only. To the extent permitted by the Arbitration Act 1979, the Parties to this Agreement exclude the jurisdiction of the High Court of Justice in England under Section 1 and 2 of that Act.

ARTICLE 13: FORCE MAJEURE

13.1 In such circumstances as the event of war, Act of God (including, but not limited to, earthquakes, tsunamis, cyclones, hurricanes, tornadoes, blizzards and flooding), civil commotion, acts of public enemies, arrest or restraint of princes, rulers and peoples, strikes, lockouts, labor unrest, warlike operations, terrorist acts, invasions, rebellions, sabotage or other work stoppages, hostilities, blockade, nuclear accidents, or any other event whatsoever which cannot be avoided against and which renders the performance of this Agreement wholly or substantially impracticable, this Agreement shall not thereby be terminated, but the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension.

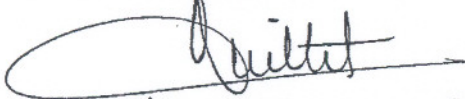
13.2 Should this Agreement be wholly suspended for a period exceeding three calendar months from the date of commencement of such suspension or partially suspended for a period exceeding six calendar months, this Agreement shall terminate.

CMA CGM/CP SHIPS/MARFRET
Vessel Sharing Agreement
FMC Agreement No. 011931

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be
executed by their duly authorized representatives as of this 6TH day of January,
2006.

For and on behalf of
CMA CGM SA and CMA CGM (UK) Limited



Name Jean-François GUILLET
Title Senior Vice President
Date January 6th, 2006

For and on behalf of
Compagnie Maritime Marfet S.A

Name
Title
Date

For and on behalf of
CP Ships (UK) Limited

Name
Title
Date

For and on behalf of
Hapag-Lloyd Container Linie GmbH

Name
Title
Date

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Name
Title
Date

For and on behalf of
Compagnie Maritime Marfet S.A



Name Bernard VIDAL
Title Managing Director
Date January 6 2006

For and on behalf of
CP Ships (UK) Limited

Name
Title
Date

For and on behalf of
Hapag-Lloyd Container Linie GmbH

Name
Title
Date

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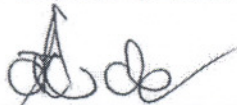
For and on behalf of
CMA CGM SA and CMA CGM (UK) Limited

Name
Title
Date

For and on behalf of
Compagnie Maritime Marfet S.A

Name
Title
Date

For and on behalf of
CP Ships (UK) Limited



Name GLENN R. HARBS
Title EVP OPERATIONS, CPS+RS
Date 06 JAN. 06

For and on behalf of
Hapag-Lloyd Container Linie GmbH

Name
Title
Date

CMA CGM/CP SHIPS/MARFRET
Vessel Sharing Agreement
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For and on behalf of
CMA CGM SA and CMA CGM (UK) Limited

Name
Title
Date

For and on behalf of
Compagnie Maritime Marfet S.A

Name
Title
Date

For and on behalf of
CP Ships (UK) Limited

Name
Title
Date

For and on behalf of
Hapag-Lloyd Container Linie GmbH

Name
Title DIRECTOR SHIPS OPERATIONS & OPERATIONS
Date 6 JAN 2006

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MSC/CMA CGM
SPACE CHARTER AGREEMENT
FORM NO. 1

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MSC/CMA CGM SPACE CHARTER AGREEMENT

A Space Charter Agreement

FMC Agreement No. 011821

Expiration Date: None



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Article 1: Name of the Agreement

The name of this agreement is the MSC/CMA CGM Space Charter Agreement (the "Agreement").

Article 2: Purpose of the Agreement

The purpose of this Agreement is to authorize MSC to charter space on its vessels in the Trade (as hereinafter defined) to CMA CGM.

Article 3: Parties to the Agreement

The parties to the Agreement are:

Mediterranean Shipping Company, S.A. ("MSC")
40 Eugene Pittard, CH-1206
Geneva, Switzerland

CMA CGM S.A. ("CMA CGM")
4, Quai d'Arenc
13002 Marseille
France

MSC and CMA CGM are hereinafter collectively referred to as the "Parties" and each individually referred to as a "Party".

Article 4: Geographic Scope

The geographic scope of this Agreement shall extend to the transportation of cargo between the United Kingdom, Belgium, France, Germany and Mexico, on the one hand, and the U.S. East and Gulf Coasts (Eastport, Maine to Brownsville, TX), on the other hand (the "Trade").

Article 5: Chartering of Space

5.1 CMA-CGM shall purchase weekly from MSC 425 TEU per round-voyage, and MSC will provide slots and guarantee availability of such space to CMA-CGM. The foregoing slots shall be allocated on MSC's North Atlantic and South Atlantic services in the Trade as follows:

(a) North Atlantic

Westbound: 175 TEU or maximum 1837.5 mtons weekly

Eastbound: 175 TEU or maximum 1837.5 mtons weekly

Of which 20% maximum to/from Boston

Reefers: 15 plugs

(b) South Atlantic

Westbound: 250 TEU or maximum 2625 mtons weekly

Eastbound: 250 TEU or maximum 2625 mtons weekly

Reefers: 20 Plugs

5.2 The maximum average weight per TEU both westbound and eastbound shall be 10.5 tons per TEU. If the actual weight exceeds the total weight allowed, such additional weight will be billed on the basis of the above maximum average weights per TEU on a one way basis, or the prospected excess loadings must be curtailed accordingly. Lost TEUs (out-of-gauge) are to be considered allocation and are to be billed accordingly.

5.3 Out of the actual loaded TEUs, a minimum of 20% must be 20'containers and a maximum of 60% can be 20' containers. The minimum/maximum ratio will only be applied by MSC in case the total capacity for a particular vessel/voyage is restricted.

5.4 If CMA-CGM wishes to charter space in addition to its fixed allocation, this may be done to the extent unused space is available at rates to be agreed upon by the Parties. This applies to both dry and empty containers. Such rates shall be for one-way movements only, and maximum average weight as specified in Article 5.2 shall apply.

5.5 The Parties shall agree on a slot price to be paid for dry and reefer containers moving in each direction on each service. Said slot price shall not cover stevedoring or other cargo handling costs, which shall be the responsibility of CMA-CGM. The slot price shall be valid for the entire duration of this Agreement unless it is adjusted based on an increase/decrease in bunker prices pursuant to a formula agreed upon by the Parties. In the event that operating conditions such as, but not limited to, strikes by terminal employees impair MSC's ability to sustain a regular weekly service, CMA-CGM may consider, at CMA CGM's option, to accept to pay their proportional share (slots purchased compared to vessel capacity) of any additional operating costs occurred during such period, for instance resulting from MSC's decision to deploy an extra vessel.

5.6 When CMA-CGM cargo destined to U.S. ports/destinations is required to undergo inspection by a national government, Customs or other authorized government agencies, MSC will make the laden containers available at the U.S. port of inspection. Costs resulting from such inspection including, but not limited to, spotting of containers at the inspection point, restowing of containers, delay to the vessel and its schedules, and any other consequences from such inspection will be for CMA-CGM expense and risk.

5.7 The Parties shall agree on procedures for the acceptance of dangerous and out-of-gauge cargo.

5.8 Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions and issue its own bills of lading.

5.9 Pursuant to 46 C.F.R. 535.407, any further agreements contemplated by this Agreement which do not relate to routine operational or administrative matters shall not be implemented until an appropriate amendment to this Agreement has been filed and become effective.

Article 6: Operation and Administration

6.1 Procedures for operation and administration will be in accordance with MSC's standard operating procedures. MSC as provider of all the vessels, will be responsible for all operational aspects.

6.2 This Agreement shall be administered by meetings or written or oral communications or agreements between the Parties and their duly authorized representatives. The Parties and their counsel are authorized to execute and file amendments to this Agreement.

Article 7: Compensation and Payment

The Parties shall discuss and agree on compensation and payment procedures including the issuance of invoices, the currency in which payment is to be made, the time for making payment, and treatment of delinquent payments.

Article 8: 3rd Party Slot/Sale/Purchase

8.1 CMA-CGM shall not enter into any other space or slot charter agreement in the Trade except for the following cases, in which CMA-CGM is entitled to enter into slot purchase contract:

- slot charter agreement with Americana
- its own existing TDM services
- *ad hoc* space required by CMA CGM in writing due to additional booking and space declined by MSC to CMA CGM.

8.2 Under this Agreement, CMA-CGM shall not sell slot space to any 3rd party without MSC's prior consent.

8.3 Under this Agreement, CMA-CGM shall not exploit or seek to build up new services, strings and/or feeder services which are alternative to/or in competition with MSC services in the Trade.

Article 9: Omission of Ports

In cases where MSC clearly demonstrates that the need to omit a port or ports to restore the schedule has been caused by proven force majeure (incl. port congestion above 24 hours), then MSC retains the right to discharge and load the cargo at the nearest port of convenience with each Party bearing any transshipment, storage and pre- and on-carriage cost for cargo moving under its bill of lading. MSC shall in this respect undertake to ensure proper and immediate notification and provide consultation as to efforts to minimize related costs. In all other cases of port omissions not related to proven force majeure, MSC remains

the party responsible to pay for all costs incurred (transshipment, pre and on-carriage) and to load those containers on the next sailing within MSC allocation at no cost to CMA CGM.

Article 10: Amendment

Any modification or amendment to this Agreement must be in writing and signed by both Parties.

Article 11: Notices

Any correspondence or notices hereunder shall be made by courier service or registered mail or, in the event expeditious notice is required, by fax confirmed by courier or registered mail, to the following addresses:

MSC:

Mediterranean Shipping Co.S.A.
40, Av. Eugene Pittard
1206 Geneva
Switzerland
Attention : Line Department
E-mail: daponte@msgva.ch
Fax: +41 22 703 87 87

CMA-CGM:

CMA-CGM
4, Quai d'Arenc B.P2409.
13002 Marseille Cedex 02
France
Attention : Vice President
E-mail: ho.rjsaade@cma-cgm.com
Fax: + 33 491 39 30 97

Article 12: Liability

12.1 For each shipment of cargo hereunder, MSC shall issue or be deemed to have issued to CMA-CGM a bill of lading in a form agreed upon by the Parties. If a Party wishes to introduce material amendments to the bill of lading, it must first seek the other Party's prior approval, such approval, however, is not to be unreasonably withheld.

12.2 Between CMA-CGM and MSC, the terms of this bill of lading shall govern the Parties' rights, obligations and liabilities with respect to each such shipment and the number of packages or customary freight units shown on the bill of lading issued by CMA-CGM to its customers shall be conclusive evidence thereof. In the event of damage to CMA-CGM owned, leased or operated containers, they shall be deemed shipper-owned containers and for the purpose of any liability for loss of or damage to CMA-CGM containers hereunder, they shall be considered to form part of the cargo in the memo bill of lading issued or deemed issued for each shipment hereunder.

12.3 CMA-CGM warrants that its bill of lading issued to its customers/cargo interests in respect of cargo carried hereunder, shall contain a "Himalaya Clause" identical in terms to the one contained in Clause 3 of MSC's bill of lading.

12.4 CMA-CGM shall use best endeavours to defend all claims or actions including in personam or in rem writs for loss of, or damage to cargo and/or for

delay in delivery of cargo without prejudice to its rights of recovery against MSC, if any, within this Agreement.

12.5 CMA-CGM warrants that its bill of lading does not contain an Indentity of Carrier (Demise Clause) or similar clause, the purpose of which is to establish any contractual relationship whats oever between MSC and CMA-CGM's customers and/or to transfer or impose upon MSC responsibilities and obligations, arising under CMA-CGM's bill of lading to third party cargo interests, which are properly those of CMA-CGM as principal/contractual carrier.

12.6 Except where otherwise stated herein, the term "bill of Lading" is understood to comprise a Party's bill of lading, waybill, or other contract of carriage issued hereunder.

Article 13: Force Majeure

13.1 Neither MSC nor CMA-CGM shall be deemed responsible with respect to its failure to perform any term or condition of the Agreement if such failure, wholly or partly, is due to an event of force majeure, such as, but not limited to: war (declared or undeclared); hostilities; warlike or belligerent acts or operations; piracy; terrorism, riots; civil commotion or other disturbances; participation in the U.S. Department of Defense Emergency Preparedness Program or other U.S. military national security agreements; acts of God; blockade of port or place or interdict or prohibition of or restriction on commerce or trading; governmental

action including but not limited to quarantine sanitary or other similar regulations or restrictions; strikes, lockouts or other labor troubles whether partial or general and whether or not involving employees of any Party; shortage, absence or obstacles of labour or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; unforeseeable breakdown or latent defect in the vessel's hull, equipment or machinery; shallow water, ice, landslide or other obstacles in navigation or haulage; any act of barratry and unusual severe weather, flood, earthquake or natural catastrophe which can cause operational hindrance.

13.2 Any Party claiming an event of Force Majeure shall exercise reasonable endeavours to remedy the consequences of such event. Upon the termination of such Force Majeure event causing a Party's failure to perform its obligations under this Agreement, such Party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

Article 14: No Agency or Partnership

Nothing in this Agreement shall give rise to nor shall be construed as constituting a partnership for any purpose or extent. Unless otherwise agreed, and for the purpose of this Agreement and any matters or things done or not done under or in connection with this Agreement, neither Party hereto is or shall be deemed the agent of the other.

Article 15: Assignment

Nether Party shall be entitled to assign or transfer its rights or obligations under this Agreement, unless with the other Party's consent.

Article 16: Insurance

For the duration of this Agreement both Parties undertake to have valid P&I Insurance for all conventional P&I risks with a club being a member of the Group of International P&I clubs. In the event the terms and conditions or the cover in general are materially amended, the respective club shall notify the other Party hereto without delay.

Article 17: Term

17.1 This Agreement shall become effective as of the date it enters into effect pursuant to the U.S. Shipping Act of 1984, as amended, and may be implemented beginning with such sailings as the Parties may mutually agree.

17.2 This Agreement shall continue for minimum periods which extend as follows:

(1) In relation to the North Atlantic service: Twelve months to count from 11th November 2004. The last Eastbound and Westbound sailings to depart from the first Port of Loading on 10th November 2005 latest, with a minimum notice of termination from either side of 3 months. Such notice of termination shall not be given prior to 10th August 2005.

(2) In relation to the South Atlantic Service: Six months to count from 11th November 2004 in the Eastbound direction and from 17th November 2004 in the Westbound direction. Either party may give notice to terminate at the end of the six months not later than 10th February 2005. Failing such timely notice the period will be extended for a further six months. If notice is given before 10th February 2005 the last Eastbound and Westbound sailings shall be those departing from the first Port of Loading on or before 10th May 2005 (Eastbound) and 16th May 2005 (Westbound). If notice is given after 10th February 2005 but before 10th August 2005 the last Eastbound and Westbound sailings will be those departing from the first Port of Loading on or before 10th November 2005 (Eastbound) and on or before 16th November 2005 (Westbound). The minimum notice period is always 3 (three months) irrespective of the period and if no notice has been given by either side before 10th August 2005 either party may give notice of termination at any time thereafter and the last service in each

direction shall be the last vessel departing the first port of loading on or before the date on which the notice expires.

17.3 Notwithstanding Article 17.2 above, this Agreement may be terminated pursuant to the following provisions:

(a) If, at any time during the term of this Agreement, there shall be a change in ownership of a Party, then the other Party may, within 3 months of becoming aware of such a change, give not less than 3 months notice in writing terminating this Agreement.

(b) If, at any time during the term of this Agreement either Party (the "Affected Party"):

- 1) is dissolved;
- 2) becomes insolvent or fails to pay its debts as they become due;
- 3) make a general assignment, arrangement or composition with, or for the benefit of its creditors;
- 4) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily;
- 5) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

And the other Party is of the opinion that:

- 1) such event or occurrence is or may be materially detrimental to the Service; or
- 2) sums that may be owed (other than those that would be considered disputed in good faith) may not be paid or have not been paid in full or that their payment may be delayed.

Then the other Party may give notice to the Affected Party terminating with immediate effect or suspending for such period as the other Party in its sole discretion deems appropriate, this Agreement or any part thereof.

Notwithstanding any termination in accordance with the above, the non-defaulting Party retains its right to claim the defaulting Party for any loss and/or damage caused or arising out of such termination.

Article 18: Governing Law and Jurisdiction

18.1 This Agreement shall be governed by and construed in accordance with the Laws of England. All disputed or differences under this Agreement which cannot be amicably resolved shall be referred to arbitration in England with Arbitration Act 1996 together with LMAA (London Maritime Arbitrators Association terms).

18.2 Notwithstanding the above, any dispute between the Parties relating to loss or damage to the cargo shall be dealt with under terms and conditions included in the relevant bill of lading.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this amendment to the Agreement
as of this 29th day of October, 2004.

MEDITERRANEAN SHIPPING COMPANY, S.A.

BY:

Paul M. Keane
Name: Paul M. Keane
Title: Attorney-In-Fact

CMA CGM S.A.

BY:

Paul M. Keane
Name: Paul M. Keane
Title: Attorney-In-Fact

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FEDERAL MARITIME COMMISSION

MAERSK LINE/CP SHIPS SLOT CHARTER AGREEMENT

FMC AGREEMENT NO. 011928

A Cooperative Working Agreement

Expiration Date: None

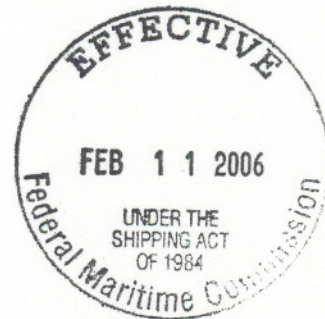


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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Maersk Line/CP Ships Slot Charter Agreement ("Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize Maersk Line to charter space to CP Ships in the Trade (as hereinafter defined) and to authorize the parties to enter into cooperative working arrangements in connection therewith.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "party" or "parties") are:

1. A.P. Møller-Maersk A/S trading under the name of Maersk Line ("Maersk Line")
50, Esplanaden
DK-1098, Copenhagen K.
Denmark
2. CP Ships (UK) Limited and CP Ships USA LLC (acting as a single party)("CP Ships")

CP Ships (UK) Limited:
2 City Place
Beehive Ring Road
Gatwick, West Sussex
RH6 0PA
United Kingdom

CP Ships USA LLC:
401 E Jackson Street
Tampa, FL 33602

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of the Agreement shall extend to the trade between the ports on the U.S. Atlantic Coast which may be served by Maersk Line from time to time on the one hand, and ports in Australia, New Zealand, North Europe, Jamaica, and Panama, on the other hand. All of the foregoing is hereinafter referred to as the "Trade."

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Maersk Line shall guarantee the availability of and provide to CP Ships, and CP Ships shall purchase from Maersk Line, slots for 150 TEUs per round voyage of Maersk Line's service in the Trade. Maersk Line may sell CP Ships slots in excess of the foregoing allocation on an ad hoc basis on terms to be agreed by the parties. CP Ships may not slot charter or sub-charter slots made available to it under this Agreement to any third party without the prior consent of Maersk Line.

5.2 The parties are authorized to discuss and agree on the terms and conditions relating to the sale of slots hereunder, including slot hire, the number of reefer plugs to be provided, the maximum weight restrictions (if any) applicable to the slot allocation, the permitted ratio (if any) of particular equipment sizes, and the compensation to be paid for such slots.

5.3 Maersk Line and the vessels it provides shall comply with the requirements of the ISM Code. As vessel provider, Maersk Line shall be responsible for all operational aspects of the vessels. Maersk Line shall have the option to introduce changes to the vessel schedule, and shall communicate ad hoc or

permanent changes in the vessel schedule to CP Ships at least 30 days in advance. In the event Maersk Line clearly demonstrates that factors beyond its control have made it necessary to omit a port or ports in order to restore the schedule, it may load and discharge cargo at the nearest port of convenience with transshipment, storage and other costs to be for the account of the party that issued the bill of lading for such cargo. Maersk Line shall undertake to ensure proper and immediate notice and provide consultation as to efforts to minimize related costs.

5.4 The parties are authorized to discuss and agree on the joint and/or individual negotiation of appropriate contracts with terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo, such as overtime and stand-by time.

5.5 CP Ships shall comply with all laws, regulations, requirements, directions or notices of customs, port and other authorities, and shall bear, pay and indemnify Maersk Line against all duties, taxes, fines, imposts, expenses, liabilities, damage, delay or losses (including, without prejudice to the generality of the foregoing, freight for any additional carriage undertaken) incurred, suffered or related to any illegal, incorrect, untimely or insufficient declaration, marking, numbering or addressing of CP Ships cargo or containers that are subject to this Agreement. Further, CP Ships shall immediately communicate to Maersk Line hold orders received from US Customs in respect to particular bills of lading or containers. CP Ships shall co-operate fully with Maersk Line in complying with hold orders, providing necessary information to Maersk Line and U.S. Customs, and otherwise assuring prompt and full compliance with related instructions received from U.S. Customs. These

obligations shall apply strictly and without regard to whether CP Ships acted or failed to act intentionally, negligently or otherwise.

5.6 The parties shall both be signatory to the Agreement to Voluntarily Participate in Customs-Trade Partnership Against Terrorism ("C-TPAT Agreement") and agree to develop and implement a verifiable, documented program to enhance security procedures throughout their respective portions of the supply chain process, as described in the C-TPAT Agreement.

5.7 The parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties; stowage planning; record-keeping; responsibility for loss or damage; insurance; the handling and resolution of claims and other liabilities; indemnification; documentation and bills of lading; and the treatment of hazardous and dangerous cargoes.

5.8 Pursuant to 46 C.F.R. § 535.408(b), any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

5.9 The parties shall collectively implement this Agreement by meetings, writings, or other communications between them and make such other arrangements as may be necessary or appropriate to effectuate the purposes and provisions of this Agreement.

ARTICLE 6: AGREEMENT OFFICIALS AND DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of either party; and
- (ii) Legal counsel for either party.

ARTICLE 7: VOTING

Except as otherwise provided herein, all actions taken pursuant to this Agreement shall be by mutual agreement of the parties.

ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT

8.1 This Agreement shall become effective on the date it is effective under the U.S. Shipping Act of 1984, as amended, or such later date as may be agreed by the parties in writing. It shall continue for a minimum period of 24 months with a minimum notice of termination from either party of 6 months. Such notice of termination shall not be given prior to 18 months after the commencement of the Agreement.

8.2 Notwithstanding Article 8.1 above, this Agreement may be terminated pursuant to the following provisions:

- (a) If, at any time during the term of this Agreement there shall be a change in ownership of a party, and the other party is of the opinion, arrived at in good faith, that such change in control is likely to materially prejudice the cohesion or viability of the Agreement, then the other party

may, within 12 months of becoming aware of such change, give not less than three months notice in writing terminating this Agreement. A company reorganization within the TUI group shall not constitute a change in ownership for purposes of this Article 8.2(a).

(b) If, at any time during the term of this Agreement either party (the "Affected Party"):

- i) is dissolved;
- ii) becomes insolvent or fails to pay its debts as they become due;
- iii) make a general assignment, arrangement or composition with, or for the benefit of its creditors;
- iv) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily;
- v) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

and the other party is of the opinion that:

- i) such event or occurrence is or may be materially detrimental to the service under this Agreement; or
- ii) sums that may be owed (other than those that would be considered disputed in good faith) may not be paid or have not been paid in full or that their payment may be delayed;

then the other party may give notice to the Affected Party terminating with immediate effect or suspending for such period as the other party in its sole discretion deems appropriate, this Agreement or any part thereof.

8.3 Furthermore, should CP Ships repeatedly fail to comply with the requirements described in Article 5.5 of this Agreement, or should CP Ships not comply with the requirements under the C-TPAT as described in Article 5.6 of this Agreement, Maersk Line can terminate this Agreement with immediate effect.

8.4 Notwithstanding any termination in accordance with Article 8.2 or 8.3 above, the non-defaulting party retains its right to claim against the defaulting party for any loss and/or damage caused or arising out of such termination.

8.5 Notwithstanding the above, and only applying within the initial 24 month

period of this Agreement, Maersk Line may terminate this Agreement with 3 months notice at any time after a minimum period of 6 months duration has elapsed from the point at which the Agreement came into effect, and only in the case that Maersk Line decides to cease operation of the service. CP Ships may terminate the Agreement on the notice provided in this Article 8.5 in the event it leaves the Trade.

ARTICLE 9: NON-ASSIGNMENT

Neither party shall assign all or any part of its rights, or delegate all or any part of its obligations, under this Agreement to any other person or entity without the prior written consent of the other party.

ARTICLE 10: FORCE MAJEURE

10.1 Neither Maersk Line nor CP Ships shall be deemed responsible with respect to its failure to perform any term or condition of the Agreement if such failure, wholly or partly, is due to an event of Force Majeure, such as, but not limited to: war (declared or undeclared); terrorism; hostilities; warlike or belligerent acts or operations; piracy; riots; civil commotion or other disturbances; participation in the U.S. Department of Defense Emergency Preparedness Program or other U.S. military national security agreements; acts of God; blockade of port or place or interdiction or prohibition of or restriction on commerce or trading; governmental action including but not limited to quarantine, sanitary or other similar regulations or restrictions; strikes, lockouts or other labor troubles whether partial or general and whether or not involving employees of any party; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; unforeseeable breakdown or latent defect in the vessel's hull, equipment or machinery;

shallow water, ice, landslide or other obstacles in navigation or haulage; any act of barratry and unusually severe weather which in fact cause operational hindrance.

10.2 Any party claiming an event of Force Majeure shall exercise reasonable endeavors to remedy the consequences of such event. Upon the termination of such Force Majeure event causing a Party's failure to perform its obligations under this Agreement, such Party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement. Any claim of Force Majeure needs to be documented in writing by the Party claiming same.

10.3 In the event this Agreement is wholly suspended for a period exceeding three calendar months or partially suspended for a period exceeding six calendar months due to Force Majeure then, notwithstanding anything in Article 8 hereof to the contrary, this Agreement may be terminated forthwith by either Party.

ARTICLE 11: INSURANCE

For the duration of this Agreement, each party shall undertake to have valid P&I Insurance for all conventional P&I Risks with a club being a member of the International Group of P&I Clubs. In the event the terms and conditions or the cover in general are materially amended, the affected party shall notify the other party without delay.

ARTICLE 12: APPLICABLE LAW AND ARBITRATION

12.1 This Agreement shall be governed by and construed in accordance with the laws of England and the Parties hereby submit to the jurisdiction of the English courts..

12.2 All disputes or differences arising under this Agreement which cannot be

amicably resolved shall be referred to arbitration in England in accordance with the Arbitration Act 1996. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The Parties agree to appoint a single/sole arbitrator, having appropriate commercial and consortia experience, within 21 calendar days of any Party seeking an appointment. If any Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the 21 days specified, then the LMAA arbitration tribunal shall appoint a sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of any Party.

12.3 The Parties further agree that where the amount in dispute is U.S.\$200,000 or less, the arbitration will proceed on a documents and written submissions basis only. However, oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s).

ARTICLE 13: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

ARTICLE 14: SEPARATE IDENTITY/NO AGENCY OR PARTNERSHIP

Each party shall retain its separate identity and shall have separate sales, pricing and, to the extent applicable, separate marketing function. Each party shall

issue its own Bills of Lading. This Agreement does not create and shall not be interpreted as creating any partnership, joint venture or agency relationship between the parties, or any joint liability under the law of any jurisdiction.

ARTICLE 15: NOTICES

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by registered mail or courier service to the addresses listed in Article 3.

ARTICLE 16: LANGUAGE

This Agreement and all notices, communications or other writings made in connection therewith shall be in the English language. Neither party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

ARTICLE 17: SEVERABILITY

If any provision of this Agreement, as presently stated or later amended is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

ARTICLE 18: WAIVER

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement, or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or

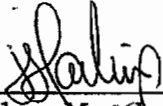
privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against either party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

ARTICLE 19: AMENDMENT

Any modification or amendment of this Agreement must be in writing and signed by both parties and may not be implemented until filed with the FMC and effective under the Shipping Act of 1984, as amended.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed
by their duly authorized representatives as of this 23 day of December, 2005.



A.P. Møller - Mærsk A/S
Name: J. HARLING
Title: V.P.



A.P. Møller - Mærsk A/S
Name: PETER FREDERIKSEN
Title: SR. V.P.

CP Ships USA LLC
Name:
Title:

CP Ships (UK) Limited
Name:
Title:



SIGNATURE PAGE

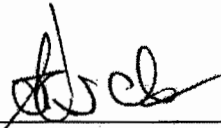
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed
by their duly authorized representatives as of this 23rd day of December, 2005.

A.P. Moller-Maersk A/S
Name:
Title:



CP Ships USA LLC
Name: GLENN R. HARBS
Title: EVP OPERATIONS

A.P. Moller-Maersk A/S
Name:
Title:



CP Ships (UK) Limited
Name: GLENN R. HARBS
Title: EVP OPERATIONS

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FEDERAL MARITIME COMMISSION

New World Alliance / Maersk Sealand Slot Exchange Agreement

FMC Agreement No. 011722

Expiration Date: See Article 9



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ARTICLE 1. NAME OF AGREEMENT

This Agreement shall be known as the "New World Alliance/Maersk Sealand Slot Exchange Agreement" (hereinafter the "Agreement").

ARTICLE 2. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the Parties hereto to obtain optimum efficiency of fleet operations and to maximize space utilization with regard to the trade covered herein so as to offer, efficient, competitive services to the shipping public.

ARTICLE 3. PARTIES

The Parties hereto are:

- (1) A.P. Moller-Maersk A/S trading under the name of Maersk Sealand ("MSL")

and
- (2) The members of the New World Alliance (hereinafter collectively referred to as "TNWA")
 - APL Co. Pte. Ltd. and American President Lines, Ltd. (hereinafter collectively referred to as "APL")
 - Mitsui O.S. K. Lines, Ltd. ("MOL")
 - Hyundai Merchant Marine Co. Ltd. ("HMM")

(1) hereafter referred to as either a "Party" or a "Line").

(2) hereafter referred to collectively as a ("Party") and the members thereof referred to individually as a ("Line").

ARTICLE 4. **GEOGRAPHIC SCOPE**

The geographic scope of this Agreement shall extend to and from ports on the East Coast and the Gulf Coast of the United States, and inland and coastal points in the United States served via such ports, on the one hand, and ports in Northern Europe (including without limitation ports in Germany, the United Kingdom, Belgium, the Netherlands and France), and inland and coastal points in Europe served via such ports, on the other hand (hereinafter the "Trade").

ARTICLE 5. **AGREEMENT AUTHORITY**

A. The Parties may discuss and agree upon the terms and conditions for exchanging, selling and/or allocating space to each other on the vessels subject to this Agreement.

B. The Parties may discuss and agree upon the deployment and utilization of vessels in the Trade up to a maximum of 35 vessels having an average capacity of up to approximately 4,500 TEUS per vessel, including, without limitation, the addition, withdrawal and substitution of vessels, sailing schedules, service frequency, ports to be served, port rotations, type and size of vessels to be utilized, feeder arrangements, including the sale or exchange of feeder slots between them, the addition or withdrawal of capacity from the Trade, and the terms and conditions of any such addition or withdrawal.

C. Without limiting the authority granted in this Article 5, the parties agree that:

1. Initially, the following strings shall be subject to this Agreement: (i)

TNWA's string of up to 12 vessels to and from ports on the East Coast of the United States and ports in Northern Europe, with an average capacity per sailing in each direction of approximately 3,000 TEUS, and (ii) MSL's strings will be comprised of up to 5 vessels for one string (the East Coast and Gulf Coast/Europe service) and up to 12 vessels for the other string (East Coast/Europe service). MSL's strings shall operate to and from ports on the East Coast and/or the Gulf Coast of the United States on the one hand and ports in Northern Europe on the other hand, with average capacities per sailing in each direction of approximately 3,700 TEUs for one string and 3,200 TEUs for the other.

2. Initially, the basic slot allocations on the three strings mentioned in the preceding subparagraph will be approximately 70 percent for MSL and approximately 30 percent for the members of TNWA, on an annualized, average and aggregate basis. These basic allocations may be adjusted within a range of 20% higher or lower for any Party from time to time as the Parties may agree.

D. The Parties may discuss and agree upon the use of terminal facilities, including with respect to whether to jointly or individually negotiate and enter into leases, subleases or assignments of such facilities, contracting for stevedoring services, terminal and other related ocean and shoreside services and supplies with each other or, as agreed, individually or jointly with third parties in the United States or Northern Europe.

Nothing contained herein, however, shall authorize the parties jointly to operate a marine terminal in the United States.

E. The Parties may discuss and agree upon documentation, data systems and computerization and joint communication including any joint negotiations, leasing or contracting related thereto.

F. The Parties may discuss and agree upon administrative matters and related issues, including, but not limited to, operation procedures, bills of lading, terminal operations, stowage planning, schedule adjustments, recordkeeping, responsibility of a Party and/or Line for loss or damage, change in ownership or insolvency of any Line, change in membership of the Parties, the interchange of information and data and the respective rights, liabilities and indemnities of each Party and/or Line arising under this Agreement, including matters such as failure to perform, insurance, indemnification, consequences for delays, port omission, port substitution, force majeure relief and treatment of hazardous and dangerous cargoes.

G. The Parties may discuss and agree upon the terms and conditions by which the Parties or Lines, directly or indirectly, interchange, lease, sublease, return, and may otherwise cooperate among or between themselves in connection with containers, chassis and other equipment used in the service.

H. The Parties may exercise the authority granted by this Article 5 to discuss and agree on changes to be made from time to time in any of the matters identified in

Article 5.A through 5.G above, except for the maximum number and average capacity of vessels specified in Article 5.B.

I. The Parties may discuss and agree on whether to enter into agreements jointly with third-parties, and/or whether to sell either jointly or separately any available surplus space on the vessels operated under the terms of this Agreement to ocean common carriers not signatories to this Agreement and to share or allocate any revenues received therefrom, on such terms, rates and conditions as the Parties may from time to time agree. Any agreement entered into pursuant to this subparagraph with ocean common carriers not signatories to this Agreement shall be filed with the Federal Maritime Commission in accordance with the requirements of the U.S. Shipping Act of 1984, as amended.

J. Each Line shall retain its own separate identity and shall have separate sales, pricing and marketing functions. Each Line will issue its own bills of lading, handle its own claims and shall be fully responsible for the expenses, husbandry and operation of its owned or chartered vessel(s) operated in the Trade, including drydocking, special survey and future capital improvements. Additionally, each Line shall be fully responsible for any and all terminal costs attributable to cargo moved on its own bill of lading.

K. The Parties are authorized to make and enter into implementing and interstitial arrangements, writings, oral and written communications, understandings,

procedures and documents within the scope of the authorities set forth in this Agreement in order to carry out the authorities and purpose hereof.

L. This Agreement shall not require a common position on conference membership. Any of the Parties or Lines are free to operate inside or outside conferences in the Trade covered in Article 4.

M. Pursuant to 46 C.F.R. 535.407, any further non-exempt agreement between the Parties cannot take effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

N. Only MSL and APL shall be entitled to use space on U.S.-flag vessels for the carriage of cargo reserved to U.S.-flag vessels pursuant to the cargo preference laws of the United States (including, but not limited to, Public Resolution No. 17, sections 901(b) and 901b of the Merchant Marine Act, 1936, as amended, and the Military Cargo Preference Act of 1904).

O. No Party or Line shall assign, space charter, or sub-space charter any slots it has obtained from another Party or Line under this Agreement to any third-parties in the Trade that are not subject to this Agreement, without obtaining prior written consent from the other Party or Line.

P. A Party or Line that is subject to this Agreement is authorized to charter the space on its own container vessels to third-parties on an ad-hoc basis provided that

such space first has been offered to the other Party or Line(s) subject to this Agreement within no fewer than 5 calendar days' notice and with not less than 24 hours for acceptance. The Parties agree that the Party or Line subchartering space to third parties will prohibit the third parties from rechartering or otherwise allowing another party to use that space. Each Party or Line selling space to those third parties shall sell that space at a rate no less than the effective rate for space, as agreed upon by the Parties, which rate may change from time to time.

Q. Except as the Parties may otherwise agree, no Party shall enter into any other regular and/or permanent space or slot charter agreement (whether purchasing or selling), rationalization, or other cooperative container shipping arrangement with any other vessel operator in the Trade without obtaining prior consent from the other Party; provided, however, that no restrictions shall be placed on the Party related to ad hoc purchases to cure service failures.

R. No Party shall seek to build up new services, strings and/or feeder services which are alternative to, or in competition with, the services provided pursuant to Article 5 within the Trade described in Article 4 above, without seeking the approval of the other Party. Such approval shall not unreasonably be withheld.

ARTICLE 6. ADMINISTRATION AND DELEGATION OF AUTHORITY

A. This Agreement shall be administered and implemented by such meetings, decisions, memoranda, and communications among the Parties or Lines, or any of them, as are necessary to enable them to effectuate the purposes of this Agreement.

B. The following individuals shall have the authority to file this Agreement and any modification to this Agreement with the Federal Maritime Commission, as well as the authority to delegate the same:

1. Any authorized officer of each of the Parties or Lines; and
2. Legal counsel for each of the Parties or Lines.

ARTICLE 7. MEMBERSHIP

Membership in this Agreement is limited to the Parties hereto, except that additional parties may be admitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

ARTICLE 8. VOTING

Any decisions or amendment to this Agreement shall be by unanimous agreement of both Parties and shall, to the extent required, be subject to the filing procedures of the U.S. Shipping Act of 1984, as amended.

ARTICLE 9. DURATION AND TERMINATION

9.1. The effective date of this Agreement shall be the later of: (i) the date this Agreement becomes effective under the Shipping Act of 1984 and the date that any other governmental approvals as may be required have been obtained, or (ii) on October 15, 2000, or (iii) the date the New World Alliance Facilitation Agreement becomes effective under the Shipping Act of 1984. Under no circumstances shall the effective date of this Agreement be earlier than the effective date under the Shipping Act of 1984, as amended. Operations under this Agreement shall commence on a date on or subsequent to the effective date of the Agreement, as agreed by the Parties, and shall continue for a minimum period of 30 months ("Initial Period") with a minimum notice of termination from either Party of 6 months. Such notice of termination shall not be given prior to 24 months after the commencement of operations pursuant to this Article. Upon expiration of the Initial Period, this Agreement shall continue in effect unless or until the Agreement is terminated upon not less than 6 months' prior written notice.

Notwithstanding the foregoing, the Parties may agree on provisions allowing earlier termination in the event of a change in ownership of a Party or Line, the dissolution, bankruptcy or insolvency of a Party or Line, or a similar occurrence.

9.2. In the event of default and notwithstanding any termination made in accordance with this Article 9, the non-defaulting Party or Line(s), as applicable, retain the right to bring a claim against the defaulting Party, or Line, as the case may be, for any loss and/or damage caused or arising out of such default.

9.3. The Parties or Lines, as applicable, will promptly notify the Federal Maritime Commission as well as any other relevant governmental authorities of any termination of, or withdrawal from, this Agreement.

9.4. Any termination or withdrawal hereunder shall be without prejudice to the Lines' respective financial obligations to one another as of the date of termination or withdrawal.

ARTICLE 10. FORCE MAJEURE

10.1 No Party or Line, as the case may be, shall be deemed responsible with respect to its failure to perform any term or condition of this Agreement if such failure is due to an event beyond its reasonable control, such as, but not limited to: war declared or undeclared; hostilities; war-like or belligerent acts or operations; piracy; riots; civil commotion or other disturbances; acts of God; blockade of port or place or interdict or prohibition of or restriction on commerce or trading; governmental action including but not limited to quarantine sanitary or other similar regulations or restrictions; strikes, lock-outs or other labor troubles whether partial or general and whether or not involving employees of any Party or Line; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; unforeseeable breakdown or latent defect in the vessel's hull, equipment or machinery; shallow water, ice, landslide or other obstacles in navigation or haulage; any act of barratry; and unusual severe weather which can cause operational hindrance.

10.2 Any Party or Line claiming an event beyond its reasonable control shall exercise reasonable endeavors to remedy the consequences of such event. Upon the

termination of such event causing a Party's or Line's failure to perform its obligations under this Agreement, such Party or Line, as the case may be, shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

ARTICLE 11. INSURANCE

For the duration of this Agreement, all Lines undertake to have valid hull and machinery, war risk, as requested, and P&I Insurance for all conventional P&I risks with a club being a member of the Group of International P&I clubs. In the event the terms and conditions or the cover in general are materially amended, the respective club shall notify the other Lines hereto without delay.

ARTICLE 12. NOTICES

Any correspondence or notices hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required - by fax or e-mail, confirmed by courier or registered mail, to the following addresses:

MSL

A.P. Moller
50 Esplanaden
1098 Copenhagen K
Denmark
Attn: Line Department
Fax: +45 33 63 47 84

APL

American President Lines Co. Ptd
Ltd
456 Alexandra Road
#06-00 NOL Building
Singapore
Attn: Line Operations
Fax: +65 371 6410

HMM

Hyundai Merchant Marine Co., Ltd.
66, Chokson-Dong, Jongro-Ku
Seoul
South Korea

Attn: Liner Project Team
Fax: +82-2-732-8482

MOL

Mitsui O.S.K. Lines, Ltd.
Shosen Mitsui Building
1-1 Toranomom 2-Chome
Minato-ku
Tokyo - 105-91
Japan

Attn: Liner Division
Fax: +81-3-3587-7796

ARTICLE 13. GOVERNING LAW AND ARBITRATION

This Agreement and each Line's Bill of Lading shall be governed by and construed exclusively in accordance with the laws of the United States. All disputes in connection with this Agreement, which cannot be resolved amicably, shall be resolved by arbitration in New York, except as otherwise agreed. This, however, provided that nothing herein shall relieve the Parties or the Lines, as the case may be, of obligations to comply with the U.S. Shipping Act of 1984, as amended.

ARTICLE 14. AMENDMENT

Any modification or amendment of this Agreement must be in writing and signed by all Lines.

ARTICLE 15. NO AGENCY OR PARTNERSHIP

Nothing in this Agreement shall give rise to, nor shall either Party or any Line or group of Lines be construed as constituting, a partnership for any purpose or extent. Nor

shall either Party or Line or group of Lines be considered an agent of any other Party or Line or group of Lines unless expressly stated or constituted as such by the terms of this Agreement.

ARTICLE 16. **ASSIGNMENT**

No Party or Line shall be entitled to assign or transfer its rights or obligations under this Agreement, unless with the other Party's and Lines' prior consent.

ARTICLE 17. **SEVERABILITY**

Should any term or provision in this Agreement be held invalid, illegal or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those as to which it is invalid, illegal or unenforceable, shall not be affected thereby; and each term or provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

ARTICLE 18. **LANGUAGE**

This Agreement and all notices, communications or other writings made in connection herewith, shall be in the English language. No Party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have agreed this 24th day of March, 2005, to amend the Agreement as per the attached page and to file same with the U.S. Federal Maritime Commission.

APL CO. PTE. LTD.

By: Eric C. Jeffrey
Name: Eric C. Jeffrey
Title: Attorney In Fact

AMERICAN PRESIDENT LINES, LTD.

By: Eric C. Jeffrey
Name: Eric C. Jeffrey
Title: Attorney In Fact

MITSUI O.S.K. LINES, LTD.

By: _____
Name:
Title:

HYUNDAI MERCHANT MARINE CO., LTD.

By: _____
Name:
Title:

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

By: _____
Name:
Title:

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

By: _____
Name:
Title:

Apr 04 05 01:59p

04/01/2005 11:16 FAX 202 463 4312

SHER & BLACKWELL

W003

New World Alliance/Maersk Sealand Slot Exchange Agreement
FMC Agreement No. 011722-001
First Revised Page No. 17

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have agreed this 27th day of March, 2005, to amend the Agreement as per the attached page and to file same with the U.S. Federal Maritime Commission.

APL CO. PTE. LTD.

AMERICAN PRESIDENT LINES, LTD.

By: _____

By: _____

Name:
Title:

Name:
Title:

MIYOSHI O.S.K. LINES, LTD.

HYUNDAI MERCHANT MARINE CO., LTD.

By: Charles F. Warren

By: _____

Name: Charles F. Warren
Title: ATTORNEY-IN-FACT

Name:
Title:

A.P. MOLLER-MAERSK A/S trading under the name of Maersk Sealand

A.P. MOLLER-MAERSK A/S trading under the name of Maersk Sealand

By: _____

By: _____

Name:
Title:

Name:
Title:

SIGNATURE PAGE

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APL CO. PTE. LTD.

AMERICAN PRESIDENT LINES, LTD.

By: _____

By: _____

Name:
Title:

Name:
Title:

MITSUI O.S.K. LINES, LTD.

HYUNDAI MERCHANT MARINE CO.,
LTD.

By: _____

By: Eliot J. Halperin

Name:
Title:

Name: Eliot J. Halperin
Title: Attorney-in-Fact

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

By: _____

By: _____

Name:
Title:

Name:
Title:

New World Alliance/Maersk Sealand Slot Exchange Agreement
FMC Agreement No. 011722-001
First Revised Page No. 17

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Federal Maritime Commission.

APL CO. PTE. LTD.

AMERICAN PRESIDENT LINES, LTD.

By: _____

By: _____

Name:
Title:

Name:
Title:

NETSUITS O.S.K. LINES, LTD.

HYUNDAI MERCHANT MARINE CO.,
LTD.

By: _____

By: _____

Name:
Title:

Name:
Title:

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

By: [Signature]
Name: J. HARLING
Title: V.P.

By: [Signature]
Name: PETER FREDERIKSEN
Title: SR V.P.

TRANS-ATLANTIC CONFERENCE AGREEMENT
FMC NO. 11375 - 059

A Conference Agreement Among Ocean Common Carriers
Under 46 CFR 535.104 (g)
(United States of America)
And Article 3 of
Council Regulation (EEC) No. 4056/86
(European Communities)



NOTE

This Agreement Was Last Republished
With Effect As From 31 December 1998

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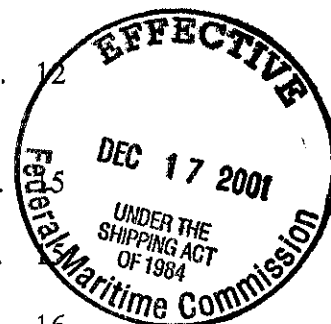
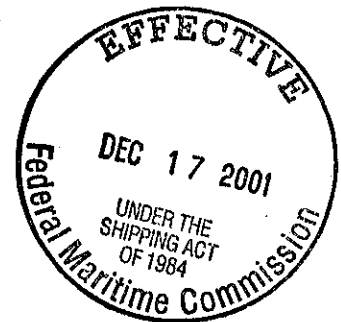


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WINESSETH

The Parties Hereto Have Agreed As Follows:

ARTICLE 1: NAME OF AGREEMENT

The name of this Agreement is the Trans-Atlantic Conference Agreement, herein referred to as the "Agreement".

ARTICLE 2: PURPOSE OF AGREEMENT

2.1 The purpose of this Agreement is to afford the Parties the opportunity to cooperate, as authorized herein, with respect to the provision of efficient and stable international liner services for the carriage of cargo on routes within the geographic scope of the trade specified at Article 4 hereof.

2.2 This Agreement has been entered into by the Parties (i) pursuant to the authority of the regulation prescribed by the U.S. Federal Maritime Commission ("FMC") under the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998, (the "Act") and (ii) in accordance with Regulations 17, 1017 and 4056 of the European Communities (the "EC Regulations").

ARTICLE 3: PARTIES TO AGREEMENT

The names and addresses of the Parties to this Agreement (the "Parties") are set forth below.

P&O Nedlloyd Limited
1 Meadowlands Plaza, 12th Floor
East Rutherford, NJ 07073

Mediterranean Shipping Co., S.A.
40 Av Eugene Pittard
1206 Geneva, Switzerland

RECEIVED

Nippon Yusen Kaisha
NYK Line
CPO Box 1250
Tokyo, 100-9 1, Japan

A.P. Moller Maersk A/S trading under the
name of Maersk Sealand
50 Esplandaden
1098 Copenhagen K, Denmark

Hapag-Lloyd Container Line GmbH
Ballindamm 25
20095 Hamburg, Germany

Atlantic Container Line AB
Sydatlanten, Skandiahammen
403 36 Gothenburg, Sweden

Orient Overseas Container Line Limited
Harbour Center
25 Harbour Road
Wanchai, Hong Kong

ARTICLE 4: GEOGRAPHIC SCOPE OF AGREEMENT

This Agreement covers eastbound and westbound shipping routes between (i) ports in the forty-eight contiguous states of the United States and the District of Columbia (the "U.S."), and interior and coastal points ("points") in the U.S. via said ports and (ii) ports in Europe situated in latitudes from Bayonne, France to the North Cape, Norway (excluding ports in Russia, Ukraine, Mediterranean ports and ports in Spain and Portugal) and points in Europe via said non-excluded European ports other than points in Russia, Ukraine, Spain or Portugal (hereinafter, the "Trade"). Provided, however, that except as may be otherwise expressly authorized with respect to "multicarrier service contracts" under Article 14 and/or any permissible "not below cost" rule which may be adopted and set forth in this Agreement, nothing herein shall authorize the Parties to discuss or agree to prices for inland transport services supplied within the territory of the European Economic Area ("EEA") to shippers in combination with other services as part of a multimodal transport operation for the carriage of containerized cargo in the Trade or any tariff or other matter pertaining to "inland transport within the EEA" and as defined at Article 14.2 of this Agreement. Matters pertaining to inland transport not within the EEA are hereinafter referred to as "non-excluded".

LCF33 1 07 3:51
AGREEMENT AUTHORITY

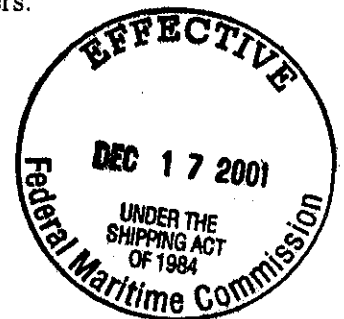
ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY

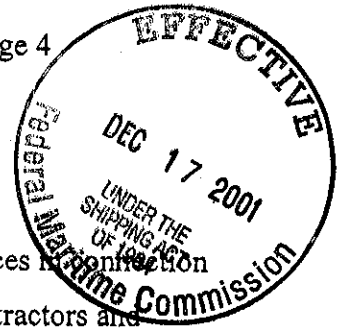
5.1 General Applicability

In order to provide for a framework necessary to accommodate their objective of operating under uniform or common rates, agreed conditions and a common tariff or tariffs with respect to the provision of scheduled maritime liner transport services in the Trade and carry out the purpose of this Agreement, the Parties, subject to the limitations set forth at Articles 4, 14 and elsewhere herein, by agreements and decisions among or between all or any of them, are generally authorized to engage in the following activities:

(a) Intra-Party Discourse

Hold meetings and otherwise communicate and caucus to discuss, consider, express views, state positions and act on any matter covered by this Agreement, or any proposed amendment thereto or supplemental agreement and, further subject to the protection of commercially sensitive confidential service contract information and such aggregation of individual Party data as may be required to ensure same, implement programs (i) to obtain, compile, prepare, maintain, exchange, distribute, issue and/or publish information, records, statistics, studies, reports and other data and materials and (ii) concerning tariff and service contract publication, subscription and filing, electronic document transmission and distribution, data processing, separate and integrated communications facilities such as E-Mail, telex, telecopier and telephone, leased lines and terminals, equipment used in connection with the aforesaid including hardware and software, and technological development projects in respect thereto. The Parties are also authorized to consider and act upon proposals/recommendations of the Ocean Carrier Equipment Management Association ("OCEMA"), FMC No. 011284, with respect to activities within the territory of the U.S. and otherwise authorized by OCEMA and this Agreement and, furthermore, to advise EIDA of their disposition of such matters.





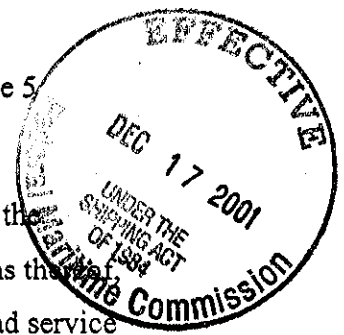
(b) Administration and Operation of Agreement

Provide for the operation of this Agreement and administrative services therewith. This authority includes employment of Agreement staff, contractors and counsel and the procurement of facilities, supplies and services attendant thereto; sharing and payment of Agreement costs and expenses, including those which may result from the actual or potential termination of this Agreement and/or the reduction of the functions, facilities and staff of the Secretariat; sectional organization of the Agreement; appointment of committees and other persons assigned to transact Agreement business; adoption of rules of parliamentary procedure and guidelines governing the conduct of Agreement affairs: and the implementation of decisions and all other administrative and operational matters as may, from time to time, be considered necessary to provide for the efficient and effective functioning of this Agreement. Specific administrative arrangements adopted by the Parties are set forth at Annex A of this Agreement.

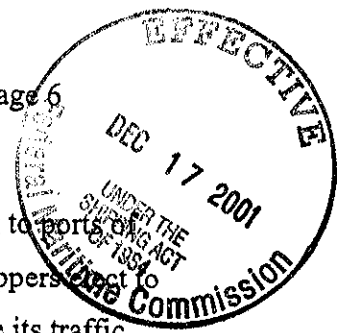
(c) Rates, Charges and Other Conditions of Carriage

Except as otherwise provided herein at Article 4 with respect to inland transport services supplied within the territory of the EEA, and at Article 14 with respect to service contracts, cooperate, agree and take implementing action with regard to, inter alia, the establishment, revision, maintenance, increase, decrease (whether selective or general) and cancellation of, or otherwise in connection with, the subject matter hereinafter described (whether or not subject to governmental filing or publication requirements):

(1) (i) Uniform or common Conference tariff rates, including but not limited to, commodity, class, unit, ad valorem, NOS, project, lumpsum, volume, time-volume/revenue, incentive and proportional rates (including proportional rates based on the origin/destination of cargo such as overland common point rates); non-excluded through rates (whether single or multi- factor, joint, intermodal or otherwise); Conference service contract rates of any character or description; non-excluded inland portions of through rates and non-excluded rates and charges for ancillary inland transport services; and any



other non-excluded rates and charges for services provided for or relating to the transportation of cargo in the Trade not covered by the foregoing descriptions thereof, such as, for example, terminal handling/ container/and less than containerload service charges at origin/destination ("THC"/"CSC"/"LCL"); minimum bill of lading, equipment usage/handover, special stowage/ equipment/ handling and advance charges; currency and fuel adjustment factors ("CAF"/"BAF"); arbitraries or outport differentials; oversize/ fitting/IMO/special port additionals; change of destination/optional stowage/heating fees and emergency surcharges; (ii) non-excluded tariffs, including separate tariffs covering particular services, routes, geographic areas and other discrete matters such as bill of lading, governing, routing, inland, sectional and open rate tariffs and sections in tariffs covering like matters; and service contract publications, including essential and all other contract terms, provisions, publications and filings; (iii) non-excluded rates, rules, charges and allowances relating to free time, per diem and detention for carrier provided containers, chassis and other equipment including that made available to shippers by leasing companies or any other persons under any terms or conditions whatsoever, and the positioning or return of such carrier or shipper provided chassis and other equipment; interchange with connecting and/or underlying carriers of any mode and all terms and conditions pertaining thereto; receiving, handling, storing, pick-up and delivery of cargo and transportation equipment; the consolidation of cargo by the Parties or any other persons and all rates, service, and other matters pertaining thereto; container yards, depots, freight stations, terminals (marine or otherwise) and places of receipt and delivery of cargo and of equipment used in connection with the transportation thereof including free time, demurrage, detention and storage charges relating thereto and route coding services, practices, procedures and all terms and conditions thereof; (iv) rules, allowances, arbitraries and conditions relating to alternate port and substituted service including port equalization/triangulation and the application of such service to the positioning and return of unladen carrier or shipper provided containers, chassis and other equipment; and (v) all such matters as may be routine, operational and interstitial to any of the foregoing or ancillary to the transportation of cargo in the Trade by the Parties, their agents, sub-agents, contractors and sub-contractors. Provided, that shippers shall



have the right to select inland carriers of their choice for each transport leg to ports of line-haul vessel loading and from ports of vessel discharge save where shippers elect to ship on through bills of lading when the Party chosen by a shipper to move its traffic shall select the inland carrier on each such leg of the through route.

(2) Opening of any tariff rate, rule or regulation on a specified commodity, or of general applicability to all or any class of commodities or other description of traffic, with or without limitation, and the closing of any tariff matter so opened. In addition to their authority to so open and close such matters, the Parties also may, but shall not be required to, meet or otherwise consider tariff items which are open, including their respective tariff entries therefor, and reach consensus or agreement to close such items, in whole or in part, on a uniform and common basis.

(3) With respect to shipments dispatched from the U.S., by a person in the U.S., and in accordance with the Act and FMC's governing regulations, (i) amounts, levels or rates of brokerage and freight forwarder compensation including terms and conditions for the payment thereof; (ii) the designation of persons eligible to act as brokers and to receive such payment including criteria applicable thereto; and (iii) rates or levels of compensation, if any, permitted to be paid to agents of shippers, cargo interests, brokers, forwarders or any intermediary.

(4) Rules and regulations relating to the payment of any and all non-excluded rates and charges, including the time and currency in which such payments shall be made; currency conversion; and credit conditions covering security requirements, suspension and restoration of credit privileges, handling of delinquent accounts, interest thereon, criteria for credit eligibility and notices to Parties with respect to all such matters.

(5) Decisions, in whole or in part, to except any particular description of traffic (e.g. "military", "charitable/relief", "governmental/inter-governmental" cargo) from the ratemaking and other activities of this Agreement. Each such exception shall be noted in the relevant tariff or tariffs of the Parties



(d) Agreement With Transport Users Concerning The Use of Scheduled Maritime Transport Services

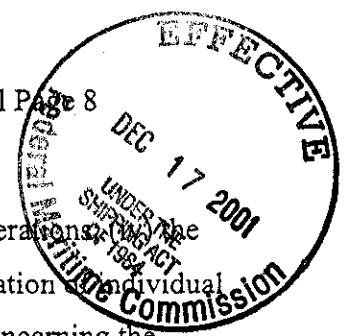
Enter into and implement consultation agreements with transport users concerning the rates, charges, conditions and quality of scheduled maritime transport services and negotiate with shippers and groups of shippers, including shippers' associations, with regard to rates, charges classifications, rules and regulations; and consult with Shippers' Councils with regard to matters of common interest including, but not limited to, general rate levels and other charges, rules, regulations and practices of general applicability and, in consideration of such negotiations or consultations, to act on such matters to the extent authorized by this Agreement.

(e) Self-Policing

Self-policing and enforcement of the obligations of the Parties under this Agreement, including obligations arising under any "not-below-cost rule" established pursuant to Article 10.2, cargo and shipping document inspection, collection of under-payments of rates and charges, and the formulation of rules and procedures governing such activities and the resolution of disputes arising therefrom. Such Self-policing provisions as may be adopted by the Parties pursuant hereto and to Article 10 shall be set forth in an Annex to this Agreement and undertaken in the accordance with the Act.

5.2 Technical Agreements

The Parties may, among themselves, voluntarily endeavor to achieve technical improvements or cooperation by means of: (i) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations; (ii) the exchange or pooling for the purpose of operating transport services of vessels, space on vessels or slots and other means of transport, staff, equipment or fixed installations; (iii) the organization and execution of successive or supplementary maritime transport operations and the establishment or application of inclusive or pooling for the

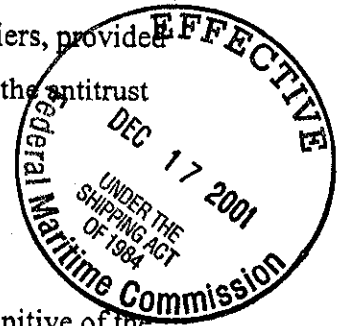


purpose of operating transport services, of rates and conditions for such operations, of the coordination of transport timetables for connecting routes; (v) the consolidation of consignments; and (vi) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs. In this regard the Parties have agreed to cooperate only with respect to the subject matter described in the foregoing subpart (ii) as provided at Annex B of this Agreement. Should the Parties agree to cooperate further with respect to that or any other subject matter described in the foregoing subparts hereof, they shall not implement such an agreement unless and until, first, any enabling amendment to this Agreement required by the Act enters into effect pursuant thereto, and, secondly, to the extent any such cooperation falls within the prohibition of Article 85(1) of the European Community Treaty (the "Treaty"), such cooperation is notified under Regulation 4056 or other applicable European community regulation.

5.3 Operation of Scheduled Maritime Transport Services

The Parties may cooperate with the objective of determining, regulating, setting and adjusting their respective non-excluded rates, charges and conditions of carriage (as more fully described at Article 5.1 (c) of this Agreement) and, as the case may be and subject to the provisions of Article 5.4 below, with one or more of the following additional objectives: (i) coordination of their respective shipping timetables, sailing dates or dates of call; (ii) determination of the frequency of their respective sailings or calls; (iii) the coordination or allocation of their respective sailings or calls; (iv) subject to the provision to the European Commission and FMC of such reports and forecasts as may be agreed between the Parties and the European Commission and the Parties and the FMC respectively, regulation of the carrying capacity offered by each of them (as may more fully be authorized by Annex B), always provided that the Parties shall not increase any tariff rates in conjunction with any capacity regulation program on any trade covered by such program or create an artificial peak season; and (v) allocation of cargo or revenue among them. As from May 1, 1999, and in connection with the operation of their respective maritime transport services, any two or more of the Parties are authorized to jointly negotiate with a non-ocean carrier or group of such carriers on a matter relating to

rates or services provided to them within the U.S. by those non-ocean carriers, provided that such negotiations and any resulting agreements are not in violation of the antitrust laws of the U.S. and are consistent with the purposes of the Act.



5.4 Ancillary Agreement Authority

The foregoing provisions of this Article shall not be deemed to be definitive of the authority of the Parties under this Agreement and such authority shall also include that which is elsewhere expressed herein, including the Annexes hereto, and extend to all routine operations, activities and agreements interstitial to or otherwise in implementation of all such expressed authority. Provided, however, that should the Parties, pursuant to the authority of this Agreement, discuss and/or negotiate a further agreement subject to the Act not concerning routine, interstitial operations or administrative matters under this Agreement and the substance of which is not set forth herein, such a further agreement shall not be implemented unless filed and in effect pursuant to the Act.

ARTICLE 6: OFFICIALS OF AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 The Parties shall establish a Secretariat to administer their affairs under this Agreement and may employ and appoint officials and other persons to serve on the staff thereof including a person responsible for the direction and supervision of the work of the Secretariat. Such persons shall scrupulously avoid conflicts of interest and discharge their duties with impartiality. A description of the general functions of the Secretariat is included at Annex A of this Agreement.

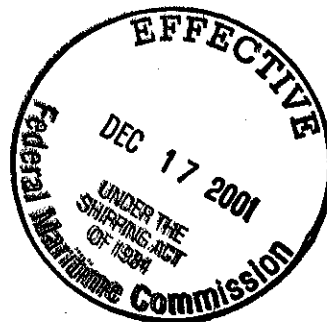
6.2 The Parties may establish such standing and ad hoc committees and sub-committees ("committees") of the whole or of any of them, and appoint designated persons from among them or the Secretariat to be Chairmen/Co-Chairmen/Vice Chairmen "Chairmen" thereof, as they may, from time to time, deem appropriate to effectively handle Agreement business

and said committees and Chairmen shall perform such assignments, exercise such authority, such assignments, exercise such authority, conduct their affairs and report as the Parties shall direct. Each Party serving on any committee shall be entitled to designate and redesignate the person or persons representing it.

6.3 This Agreement and any subsequent modifications thereto, including counterparts of the signature pages hereof, shall be executed by duly authorized officials of each of the Parties or, at their respective direction, for and on their behalf by Agreement Counsel as attorney-in-fact. Agreement Counsel is hereby authorized to file this Agreement and any subsequent modifications to which the Parties may agree, and to submit associated supporting materials, as may be required by law or otherwise directed by the Parties. All modifications to this Agreement shall be provided to the European Commission prior to implementation.

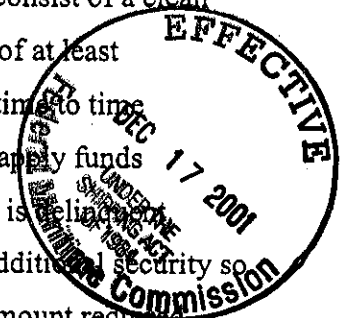
ARTICLE 7: AGREEMENT MEMBERSHIP WITHDRAWAL AND EXPULSION

7.1 Any ocean common carrier providing regularly scheduled ocean common service over routes within the Trade, or furnishing evidence of ability and intention in good faith to institute and maintain such service, and undertaking in good faith to abide by all of the terms and conditions of this Agreement, may become a Party hereto. Every application for membership shall be acted upon promptly and membership shall become effective in accordance with applicable governmental requirements. Upon notice of admission to membership, an applicant shall sign a copy of this Agreement and pay a non-refundable initiation fee of U.S. \$5,000 and a pro-rata assessment of budgeted operating costs at the time applicable. It shall also execute any Agreement Termination/Secretariat Reduction Understanding among the Parties as may, at the time, be in effect and adopted pursuant to the authority of and in accordance with Article 5.1(b) and Section 7 of Annex A of this Agreement.



7.2 Each Party to this Agreement, at the time it enters into effect, and each carrier that may subsequently become a Party, shall post a financial guarantee as security against its commitments and undertakings pursuant thereto, including but not limited to, its share of Agreement costs and expenses and any obligations in respect of which the Parties may be jointly or severally liable or other indebtedness. Said guarantee shall consist of a clean irrevocable (i) bank guarantee or (ii) letter of credit, or other security of at least equivalent value, posted with the Secretariat as the Parties may from time to time determine. The Secretariat shall proceed against such guarantees and apply funds collected pursuant thereto to off-set such indebtedness when payment is delinquent. Upon notice from the Secretariat, each Party shall promptly deposit additional security so as to constantly maintain the value of the aforesaid guarantee in the amount required. Said guarantee shall be returned to the depositing Party (i) within ninety (90) days following the effective date of termination of its membership in the Agreement, or (ii) promptly after all indebtedness it may have to the Agreement shall have been fully satisfied or otherwise settled, whichever shall the later occur. The aforesaid guarantee required to be posted by each Party shall be in an amount recommended by the Secretariat and determined to be sufficient to cover each Party's projected quarterly share of Agreement costs and expenses and a reasonably estimated pro-rata share of any additional contractual liabilities of the Agreement but shall not exceed \$600,000.

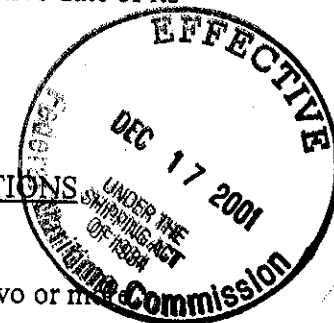
7.3 Any Party may withdraw without penalty from this Agreement effective not less than ninety (90) days after submitting written notice of such intent to the Secretariat. The Parties hereby expressly stipulate that the retention of a Party's financial guarantee as security for the payment of outstanding obligations pursuant to Article 7.2 hereof shall not constitute or be deemed to constitute a "penalty" for any purpose whatsoever. Upon receipt of such notice of a Party's withdrawal, all other Parties shall immediately be advised thereof by the Secretariat. Withdrawal from relevant operations on less than ninety (90) days' notice shall render a Party liable to the Agreement for liquidated damages in the sum of US \$1,000 per day for each day less than ninety (90) days any such withdrawal is effective. Any Party may, within thirty (30) days of receipt of advice



of notice of such withdrawal by another Party, withdraw by the same procedure and to the same extent, effective not earlier than the effective date of that Party's withdrawal. The submission of notice of withdrawal shall not, until the withdrawal becomes effective, relieve a Party of its obligations under the Agreement. A Party shall not, after submitting a notice of withdrawal, be entitled to vote on any rate, charge, rule, service contract, or practice which is to continue in effect or become effective after the effective date of its withdrawal.

ARTICLE 8:

AGREEMENT VOTING MEETINGS AND ACTIONS



8.1 Except as otherwise provided by this Agreement, or where any two or more Parties consent to be limited to a single vote (owing to an identity of underlying interests) at the time of execution of this Agreement and as noted on the signature page hereof and thereby made a provision of this Agreement, each Party shall be entitled to cast one vote on each matter presented for decision pursuant hereto.

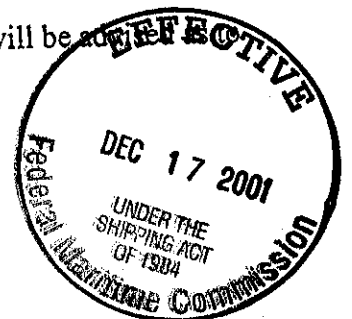
8.2 Parties entitled to vote may vote for ("yes"), against ("no") or with the majority ("majority") with respect to any matter presented for decision at a meeting or by poll, or may elect to abstain ("abstain") from voting on any matter so presented. In the event of an equal number of votes for and against any matter, majority votes shall be counted as votes against that matter. Should any Party elect to abstain from voting on any matter, whether subject to majority, unanimous or other voting requirement, that matter shall be determined solely on the basis of the votes cast by the other Parties. At a meeting, a Party may also elect to "pass" or to "revert" when called upon by the Chair to cast its vote. In the former case, the Party shall cast its vote immediately after each other Party has been so called upon. In the latter case, the Party shall cast its vote after the meeting by advising the Chair thereof within the time established by the Chair for it to do so, failing which the Party shall be counted as having voted with the majority on the matter involved. Provided, however, that where a matter voted upon at a meeting would carry or fail notwithstanding the subsequent vote of a reverting Party, that matter shall be

recorded and treated as a final decision unless all of the other Parties voting thereon agree to hold that decision in abeyance at the request of the reverting Party and pending the timely subsequent casting of its vote.

8.3 Parties may be represented and vote at meetings by proxy through the Chair or another Party. Parties so represented shall be considered present for quorum and other procedural purposes under this Agreement.

8.4 Any matter which may be decided by the Parties pursuant to this Agreement may be considered and acted upon by telephone, telex, E-Mail, personal or other type of poll, as well as at meetings. Such polls shall be conducted by the Secretariat upon the request of any Party, unless otherwise agreed, or may be conducted upon the initiative of the Secretariat. If, after three (3) working days following the commencement of a poll, or such a lesser or greater time as may be fixed by the Parties on a case by case basis to meet special circumstances, votes sufficient to determine the matter involved pursuant to this Agreement have been cast, that matter shall be recorded and treated as a final decision notwithstanding that any Party's vote with respect thereto has not been cast. Further provided that should a Party not cast its vote on any matter subject to simple or less than majority voting and polled pursuant hereto within the time provided therefor, it shall be deemed to have abstained from voting thereon and the matter shall be determined solely on the basis of the votes cast by the other Parties.

8.5 Any matter presented for decision pursuant to this Agreement at a meeting may be voted upon by secret ballot and shall be so voted upon, provided that a request therefor is made by a Party to the Secretariat, or other person chairing the meeting, not later than the time the matter is opened for discussion except that in the case of any matter of new business considered at a meeting, such a secret ballot request may be made at any time before voting on the matter commences and regardless of whether the matter has been opened for discussion. At the conclusion of such a ballot, the Parties will be advised whether the matter voted upon carried or failed.

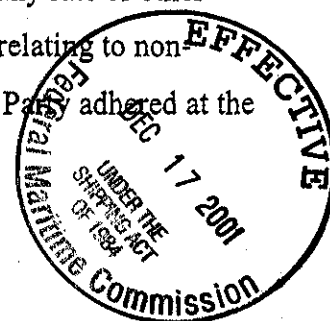


8.6 Regular meetings of the Agreement and its committees, the date, time and place of which shall be determined by the Parties in interest or left by them to "the call of the Chair", will be held with sufficient frequency to permit the expeditious transaction of all Agreement business. Unless unanimously waived, at least four (4) working days advance notice shall be given of all matters to be considered at any meeting that require unanimous or unanimous less one decision to carry. Special meetings may be requested by any Party in interest upon application to the Secretariat together with full information as to the reason for same, and other Parties in interest shall be polled on the question including the date, place and time of the proposed special meeting. Notice of regular and special meetings, setting forth the subject matter thereof, shall be given to all Parties entitled to participate therein. Said Parties may decide to cancel or change the date, time and place of any regular or special meeting which has been called.

8.7 A quorum at any meeting at which final action is authorized to be taken shall consist of two-thirds of all Parties eligible to participate and vote at the meeting, counting Parties represented in person or by proxy. In the absence of a quorum at a meeting, no final action shall be taken. There shall be no quorum requirements at any meeting at which final action is not authorized or proposed to be taken.

8.8 The Parties may, from time to time, adopt and revise parliamentary procedures governing the conduct of meetings and other Agreement proceedings, and determine the manner in which parliamentary questions are to be resolved.

8.9 Except as otherwise expressly provided in this Agreement, any matter presented for decision shall require a vote of a simple majority of all Parties entitled to vote thereon to carry and, except as otherwise provided, each Party shall be bound by, and respect and adhere to, all final decisions which are reached pursuant to the provisions of this Agreement. A unanimous less one vote of all Agreement Parties shall be required in respect to any decision to amend this Agreement or to open or close any rate or other items. Further provided that any rate or other such item exclusively relating to non-containerizable cargo which was/ is open under a tariff to which any Party adhered at the



time this Agreement enters into effect shall remain open to the same extent and degree unless and until closed pursuant to a unanimous vote of all Parties. A unanimous vote of all Agreement Parties shall also be required in respect to the institution and/or use of route coding service in connection with the U.S. inland transport of cargo shipments having a prior or subsequent transatlantic movement in the Trade.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

The term of this Agreement shall be of indefinite duration. Provided, however, that the Parties may, unanimously, or by unanimous vote less one, decide to terminate this Agreement upon such terms as they shall at the time determine and that any such termination shall take effect in accordance with any governmental requirements applicable thereto.

ARTICLE 10: NEUTRAL BODY POLICING

10.1 The Parties shall, in accordance with Section 5(b)(4) of the Act and at the request of any of them, require an independent neutral body to police fully the obligations of the Agreement and the Parties. Rules governing such policing as the Parties may adopt shall be set forth in an Annex to this Agreement.

10.2 The Parties are authorized to agree that, when providing inland transport services within the EEA, no Party shall charge a price therefor less than the direct out of pocket cost incurred by it in providing the inland transport service ("not-below-cost rule"). For the purposes of such a rule, "cost" shall not include empty equipment positioning/ repositioning costs in Europe or overhead/administration costs. Should the Parties adopt such a rule, they may appoint an independent neutral body to monitor compliance therewith.



ARTICLE 11: PROHIBITED ACTS

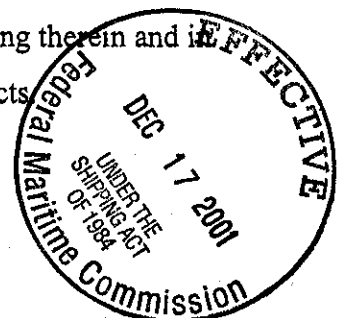
This Agreement shall not boycott or take any other concerted action resulting in an unreasonable refusal to deal, or engage in any predatory practice designed to eliminate the participation, or deny the entry, in the Trade of a common carrier not party to the Agreement, a group of common carriers, an ocean tramp, or a bulk carrier.

ARTICLE 12: CONSULTATION; SHIPPERS' REQUESTS AND COMPLAINTS

12.1 In the event of a controversy, claim or dispute of a commercial nature arising out of or relating to (i) this Agreement or (ii) any effort to reduce or eliminate malpractices, the Parties, in accordance with Section 5(b)(6) of the Act, acting through the Secretariat, shall attempt to resolve the dispute amicably with opportunity for discussions with the disputant. There shall also be consultations for the purpose of seeking solutions on general issues of principle between transport users, including associations and councils thereof, on the one hand and the Agreement on the other concerning the rates, conditions and quality of scheduled maritime transport services. These consultations shall take place whenever requested by any of the above mentioned parties and be conducted pursuant to any standing procedures as may be adopted with respect thereto.

12.2 Shippers' requests and complaints may be made by the submission thereof to the Secretariat and shall be promptly distributed to and acted upon by the Parties. Action on requests or complaints need not be restricted to the exact scope thereof and may include other matters varying from but related thereto. Advice of decisions shall be provided to the requesting or complaining party. If a request or complaint is denied, the requesting or complaining party shall be granted an early opportunity to be heard by the Secretariat.

12.3 Matters arising under this Article and pertaining to individual or multi-carrier service contracts shall be dealt with exclusively by the Party or Parties participating therein and in such a manner as to ensure the confidentiality of the terms of such contracts.



ARTICLE 13: INDEPENDENT ACTION

13.1 Notice and Implementation

(a) Each Party may act independently to establish, revise and cancel any ocean port/port tariff rate and any tariffed U.S. inland and portion of a through intermodal rate applicable to it, including those pertaining to commodities excepted from tariff filing under Section 8(a) of the Act, on one business day's written notice to the Secretariat and with effect no later than as may be required by law.

(b) Each Party may also so act independently with respect to any other tariff rate or item, whether required to be filed or likewise excepted, on five days' written notice to the service Secretariat and with effect no later than said fifth day unless otherwise required by law. Provided, however, that no prior notice shall be required when any authorized independent action results in an increase in cost to shippers.

(c) The lodging of a rate or service item with the Secretariat for publication pursuant to Sub-Article 13.1(a)(b) shall constitute notice in accordance therewith. Upon receipt of such a notice, the Secretariat shall: (i) immediately cause the rate or service item to be published in the Agreement tariff for use by the Party giving notice of such rate or service item; and (ii) promptly advise all Parties thereof, and each other Party may thereupon notify the Secretariat in writing that it elects to adopt the rate or service item involved, on or after its effective date, for its own account. Upon receipt of notice that a Party wishes to adopt the rate or service item of another Party for its own use, the Secretariat shall immediately cause the rate or service item to be published in the Agreement tariff for use by the Party giving notice of the adoption of such rate or service item.

(d) The Parties shall not agree to any procedure whereby rate or other tariff proposals of a Party must be discussed with, or communicated to, other Parties prior



to providing notice of independent action; provided, however, that nothing herein shall prevent a Party from voluntarily discussing or communicating rate or other tariff proposals with, or to, other Parties prior to exercising the right to take independent action.

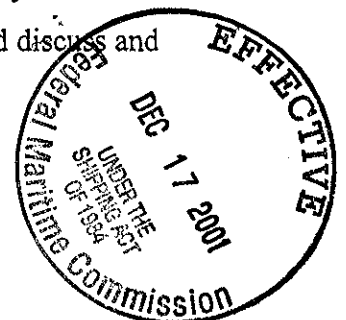
(e) At any time before or after notice of action under this Sub-Article 13.1 has been given, or at any time before or after such action has become effective, the Parties, or any of them, may discuss and adopt the proposed, pending or effective action, or take any other action in response thereto including action for the purpose of reaching a compromise. Provided, however, that (i) no proposed, pending or effective action of any Party or Parties pursuant to this Sub-Article 13.1 shall be canceled or altered without its or their consent; (ii) nothing herein shall require a Party or Parties proposing to take or having taken action under Sub-Article 13.1 either to attend any meeting called to discuss that action or to compromise it; and (iii) nothing herein shall require or permit a Party to give more than 5 calendar days' notice of any action taken pursuant to this Sub-Article 13.1.

(f) The Parties shall not agree to limit the authority for giving notice of independent action for each Party to named or designated individuals; provided, however, that each Party may individually adopt its own policy with respect to those person(s) within its organization who may exercise the right of independent action.

13.2 Each Party shall in accordance with the foregoing provisions of Article 13.1, have the right, upon five (5) calendar days' notice, to take independent action on any amount, level or rate of freight forwarder compensation established pursuant to Article 5.1(c)(3) of this Agreement.

ARTICLE 14: SERVICE CONTRACTS

14.1 The Parties may, to the extent authorized by this Agreement and subject to the conditions stipulated at Article 14.11 below, enter into service contracts, and discuss and agree on matters related to such contracts.



14.2 For the purpose of this Agreement, the term "service contract" ("SC") means a contract as defined at Section 3(21) of the Shipping Act of 1984 and, as from 1 May 1999, as defined at Section 3(19) of the Ocean Shipping Reform Act of 1998:

A written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotations, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party;

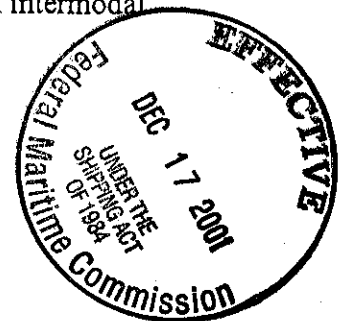
and the term "inland transport within the EEA" means:

The transportation, via any mode, of shipments of cargo, having a prior or subsequent transatlantic movement in the Trade, beyond the gate of any European marine terminal employed by a Party, to or from any point (i) in the EEA or (ii) outside the EEA where the inland transport route traverses territory within the EEA but excluding transshipment by sea between a European port within the EEA and a European port not within the EEA.

14.3 Except for SCs dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles (as from 1 May 1999 only), waste paper, or paper waste ("exempted commodities"), as defined by the Act and FMC's regulations, each SC entered into by any one or more of the Parties shall be filed confidentially with the FMC. SCs covering exempted commodities may also be so filed and, in which event, shall also be subject to the further requirements next stated and provided that the terms of unfiled contracts covering exempt commodities which would have been made public if they had been filed shall not be disclosed by participating Parties to other Parties.

14.4 Each SC shall include the following essential terms:

- (a) the origin and destination port ranges;
- (b) the origin and destination geographic areas in the case of through intermodal movements;
- (c) the commodity or commodities involved;
- (d) the minimum volume or, as from 1 May 1999, portion;



- (e) the line-haul rate;
- (f) the duration;
- (g) service commitments; and
- (h) the liquidated damages for nonperformance, if any.

When a SC is filed confidentially with the FMC, a concise statement of the essential terms thereof required to be made available to the general public in tariff format by the Act shall be published as prescribed by FMC and, until 1 May 1999, those essential terms shall be available to all shippers similarly situated.

14.5 Subject to applicable legal requirements and the provisions of this Agreement, the Parties are authorized to negotiate and enter into individual SCs ("ISCs"), multi-carrier SCs ("MSCs") and Conference ("Agreement") SCs ("ASCs") and engage in related SC activities with (i) any one or more shippers; (ii) any ocean transportation intermediary as defined at Section 3(17)(B) of the Act that accepts responsibility for the payment of all charges applicable under the contract; or (iii) any shippers' association (any and all such enumerated entities, in the singular or plural, hereinafter referred to as a "Shipper").

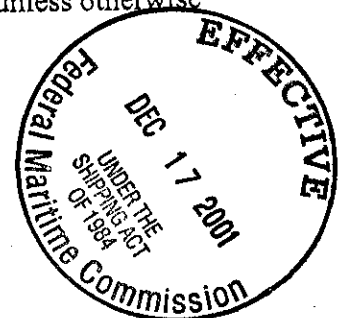
14.6 Nothing in this Agreement shall restrict the right of any Party to negotiate and enter into ISCs freely with any Shipper with respect to all SC matters including, inter alia, inland portions of through rates for transportation within the EEA and/or any other matter pertaining to inland transport within the EEA, and the amendment of ISCs. Nothing in this Agreement shall restrict the right of any two or more, but less than all of the Parties, to negotiate and enter into MSCs freely with any Shipper, and engage in related activities including, inter alia, discussions and communications between or among them concerning MSCs and amendments thereto. Provided, however, that should a Shipper request any MSC carrier party or parties to provide any service pertaining to inland transport within the EEA, whether involving the inland portion of through



intermodal service, inland transport separately arranged by the Shipper, i.e., "merchant haulage", or any other inland transport service whatsoever, under a MSC, the terms thereof shall, except as may be otherwise permitted by the Commission of the European Communities, be bi-laterally negotiated between the Shipper and each involved MSC carrier party individually, recorded in a confidential annex to the MSC filed between the Shipper and each involved MSC carrier party individually, and not disclosed to or discussed with any other MSC carrier party. MSC matters shall not be subject to voting by the Parties to this Agreement generally but shall be determined solely by those participating therein and not disclosed to non-participating Parties save as provided for by this Agreement or by law.

14.7 The Parties shall, subject to the majority voting provisions set forth at Article 8.9 of this Agreement, have the right to jointly negotiate, enter into and amend ASCs with Shippers and to discuss, communicate, agree and engage in related SC activities with respect thereto. Provided, however, that should a Shipper request any ASC carrier party or parties to provide inland transport service within the EEA under an ASC, the terms thereof shall be subject to the same conditions as apply to such service under MSCs pursuant to Article 14.7, above, and further provided that any Agreement Party shall have the right to elect to participate or not to participate in any ASC in its entirety or in part.

14.8 ASCs and MSCs authorized under this Agreement shall not include any carrier not a Party to this Agreement as a participating carrier party thereto and, unless and to the extent otherwise authorized by the Commission of the European Communities, shall not contain rate structures differentiated on the basis of which SC carrier party transports any shipment of cargo and as distinguished from rate structures differentiated on the basis of commodity/commodity classification, type of service/equipment/handling and/or routing and uniformly applicable to all participating carrier SC parties. Under ASCs and MSCs, the Shipper party shall have the right to choose which participating carrier parties transport shipments of cargo pursuant thereto and in what proportions unless otherwise agreed to by such a Shipper under such a SC.



14.9 The Parties shall have the right to promulgate and adopt a standard/model ASC form and from which the parties to any SC may agree to deviate on a case by case basis in consequence of SC negotiations with Shippers. Parties engaged in ISC and MSC activities shall have the right to refer to and adopt any such form as the basis for negotiating such SCs with Shippers and to refer to and adopt published Agreement SC rates and/or Agreement tariffs. Provided, however, that the Parties (except, in relation to any MSC, those of them participating therein) shall not discuss or otherwise communicate with respect to which ASC form, rates and/or Agreement tariff terms are or are not, or may or may not, be included in any ISC. The Parties are also authorized to agree to voluntary SC guidelines which relate solely to technical, non-commercial matters or to the disclosure by a Party to the other Parties of the existence, but not the terms, of an ISC with a Shipper when such Shipper requests an ASC or MSC. Any such guidelines as may be adopted by the Parties shall be provided to the FMC in the manner and form prescribed by its regulations.

14.10 ISCs and MSCs shall expressly state that, except as is otherwise obligatory under U.S. law, the terms thereof are confidential and are not to be disclosed to third parties. Said undertaking shall extend to the negotiation of such SCs, their existence and any subsequent amendments or modifications thereto. Provided, however, that the Parties are authorized to (i) exchange information relating to ISCs and MSCs and discuss such information where that information is available by reason of a legal requirement or where a Shipper SC party has consented, (ii) agree to the voluntary guidelines set forth in Article 14.10, above, and (iii) when in the course of considering an ASC, request any Party or Parties having an ISC and/or MSC with the prospective shipper party thereto to disclose the existence of such a contract or contracts but not any other detail with respect thereto. The parties to an ISC or MSC may agree between themselves on the civil law remedies for breach of its confidentiality provisions and/or that obligations relating thereto are waived.



ARTICLE 15: ADHERENCE TO AGREEMENTS

15.2 The Parties respectively undertake to adhere to the provisions of this Agreement and not to improperly divulge legally privileged or other confidential Agreement transactions. This undertaking shall extend to the "associates" of each Party and include all persons, firms, associations or corporations that are (i) agents or sub-agents, employees, subsidiaries or affiliates of a Party, (ii) subject to the control of a Party or which themselves control a Party, or (iii) commonly controlled by any person, firm, association or corporation which controls a Party.

15.2 Nothing in this Agreement shall serve to preclude or restrict any Party from (i) sharing any vessels with, and/or chartering space/slots aboard any vessels to or from, another ocean common carrier that is not a Party to this Agreement or (ii) participating in any joint service which transports uncontainerized cargo in pure car/truck vessels pursuant to an agreement in effect under the Act.

ARTICLE 16: AGREEMENT EXPENSES

The expenses of the Agreement shall be apportioned among the Parties as they shall from time to time determine. Invoices for assessments to meet such expenses shall be rendered regularly by the Secretariat to the Parties and promptly paid. The Secretariat shall apply a Party's financial guarantee to satisfy any of its monetary obligations to the Agreement which are outstanding for more than sixty (60) days after written notice of delinquency to such a Party.



ANNEX A

ADMINISTRATION

PREAMBLE:

In order to provide for the procurement, maintenance and sharing of Agreement office facilities, furnishings, equipment, supplies and services; employment of officials, staff and contractors; budgeting, allocation and assessment of costs; and administration and management of their activities and affairs, the Parties, pursuant to Articles 5.1(b) and 6 of this Agreement, hereby establish the following administrative arrangements for said purposes.

SECTION 1: ADMINISTRATIVE ORGANIZATION

1.1 There shall be established in the United States and/or Europe such legal entities as may be required to provide administrative services to the Agreement. Said entities are herein collectively referred to as the "Secretariat".

1.2 The Agreement shall appoint the Secretariat as its agent for the purposes of these administrative arrangements with authority to carry out instructions relevant thereto for and on its behalf. The Secretariat shall operate subject to the direction and supervision of the Parties. The Parties may authorize the Secretariat to assist in the supervision and management of Agreement operations and delegate such authority to it as is considered necessary for that purpose. The Secretariat shall report to the Parties via any committee(s) or sub-committee(s) they may appoint and implement such decisions and policies as said committee or committees shall direct.



SECTION 2: ADMINISTRATIVE FUNCTIONS OF THE SECRETARIAT

The Secretariat shall assist the Parties in the supervision and management of their administrative arrangements and the operations of the Agreement. The Secretariat also shall have full authority to carry out the decisions of the Parties and to perform such other duties and functions as may be determined and delegated by them. Subject to the direction of the Parties, the Secretariat is specifically authorized to receive shippers' requests and complaints; meet, discuss and negotiate rates, charges, classifications, rules and regulations with shippers and groups of shippers including Shippers' Associations, but not Shippers' Councils, and the agents or representatives of such shippers, groups and associations; consult with Shippers' Councils in regard to matters of common interest such as those listed at Articles 5.1(d) and 12.1 of this Agreement; negotiate and agree to the terms of contracts; execute contracts for and on behalf of the Parties including, but not limited to, Conference service contracts and amendments to such contracts but not multi-carrier or individual service contracts; execute amendments to this Agreement; maintain the books, records and property of the Agreement; provide notices of Agreement affairs and notices of meetings and agenda therefor; keep and retain records of the proceedings, activities and decisions of the Agreement; prepare minutes of meetings, tariffs, shipper lists, reports, studies, recommendations and other materials relating to operations under this Agreement; cooperate with independent neutral body self-policing officials; administer the operation of all services contracted for by the Agreement; and perform such other duties and functions as may be assigned by the Parties. The Secretariat, shall, as directed, chair meetings of the Agreement and its committees. Provided, however, that in the absence of the Secretariat at any meeting, or upon the decision of the Parties, any person representing a Party at a meeting may be appointed by the Parties to chair that meeting. The Secretariat shall, in particular, strictly adhere to the confidentiality provisions of this Agreement.



SECTION 3: FINANCIAL FUNCTIONS OF THE SECRETARIAT

3.1 The Secretariat shall maintain and manage the funds and accounts of the Agreement and ensure their security and the propriety of all disbursements therefrom.

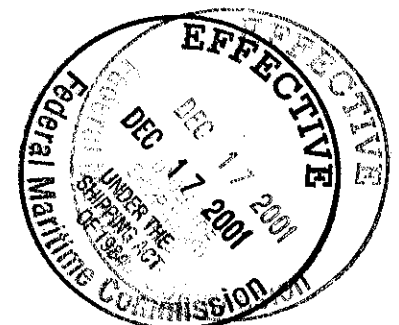
3.2 The Secretariat shall establish accounts in its name in banking institutions and all funds of the Agreement received shall be promptly deposited in such accounts. Individuals shall be nominated to sign checks drawn against such accounts and their signatures shall be filed with the appropriate banking institutions. Dual signatures of checks in excess of stipulated amounts may be required.

3.3 The Secretariat may deposit funds on hand in interest bearing savings accounts, or invest such funds in Certificates of Deposit or Government Securities, and all earnings so derived shall be applied against expenditures for the benefit of the Parties. It shall not, however, borrow any money, or obtain credit or other special accommodation from any bank or other third party, except such credit as may be extended to it by vendors, nor in any manner pledge or create a lien upon the property of the Agreement or the Parties.

SECTION 4: ACCOUNTING FUNCTIONS OF THE SECRETARIAT

4.1 The Secretariat shall keep and maintain current books and records of all of its transactions in accordance with sound and prudent principles of accounting. Independent certified or chartered accountants shall be appointed to act as auditors.

4.2 The Secretariat shall establish a system of accounts and accounting and prepare annual budgets and such interim and final yearly statements of accounts as may be determined.



4.3 The Secretariat shall render periodic assessments of expenses to the individual Parties to the Agreement on the basis of the approved budget and agreed allocation system among them and all such assessments shall be promptly paid to it. As soon after the close of the accounting year as possible, the Secretariat will reconcile all accounts and adjust all surpluses and deficits.

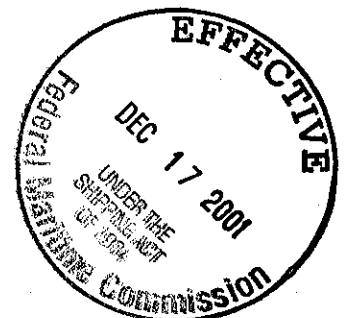
SECTION 5: PROCUREMENT AND EMPLOYMENT FUNCTIONS
OF THE SECRETARIAT

5.1 The Secretariat shall procure and maintain all authorized facilities, furnishings, equipment and supplies as may be required by the Agreement to conduct its business.

5.2 At the direction of the Parties or such committee or committees it may appoint for such purposes, the Secretariat shall employ, compensate and discharge from employment, all Agreement personnel and establish levels of compensation, fringe and social benefits and other terms and conditions of employment with respect thereto, all in accordance with applicable law, and all such personnel shall be employees of the Secretariat. It shall also establish and maintain such medical, life insurance and retirement or pension plans for the benefit of its employees, or any of them, on such terms and conditions as may likewise be directed.

5.3 The Secretariat also shall contract for such professional, expert and other specialized services as may be required on an ongoing or occasional basis by the Agreement including, but not limited to, attorneys, accountants, statisticians, economists, chemists, printers, public relations persons, consultants, etc.

5.4 The Secretariat shall arrange and coordinate the efficient and economic use and allocation of all facilities, equipment, supplies, staff and services required by the Agreement in the course of its operations.



SECTION 6: ANCILLARY FUNCTIONS OF THE SECRETARIAT

6.1 The Secretariat may arrange for the procurement or sharing of facilities or services with other persons, associations or entities.

6.2 In order to economize, utilize otherwise not fully productive office facilities and staff and obtain the benefit of such economies of scale as may be reasonably available to it, the Secretariat may lease or sub-lease space to other persons and entities and arrange to provide administrative services for such other parties.

SECTION 7: AGREEMENT TERMINATION/REDUNDANCY COSTS

In order to provide for the extraordinary, unbudgeted, one time costs which may accrue from the actual or potential termination of this Agreement and/or the reduction of the functions, facilities and staff of the Secretariat, the Parties are authorized to agree in writing to, and execute, a binding and enforceable Understanding, and amendments thereto, covering same and copies of which shall be appended to the minutes of any meeting at which they may be adopted.



ANNEX B

SPACE/SLOT CHARTERING
AND EQUIPMENT EXCHANGE

PREAMBLE:

In order to more particularly provide for the implementation of their general authority under Articles 5.2 and 5.3 of this Agreement with respect to the carrying capacity of each of the Parties and the chartering of vessel space/slots and exchange of equipment, the Parties have agreed as follows:

SECTION 1: GENERAL PROVISIONS

(a) Except as otherwise provided in Section 4 of this Annex B, the Parties may, from time to time, and with respect to ad hoc, sporadic or emergency movement of containers, it being understood that all on-going or long term charter arrangements between/among the Parties shall be covered by separate and discrete filed agreements, voluntarily enter into, modify and terminate space/slot chartering arrangements between or among them pursuant to the provisions of this Annex B to the Agreement on any vessels of the Parties operated in any segment of the Trade. The Parties also may, from time to time, voluntarily exchange equipment pursuant to Section 9 of this Annex to the Agreement.

(b) Nothing in this Annex or elsewhere in this Agreement shall serve to:

(i) preclude or restrict any Party from sharing vessels with, and/or chartering space/slots aboard vessels to or from, another ocean common carrier that is not a Party to this Agreement pursuant to an agreement in effect under the Act, or

(ii) authorize the Parties to agree to the coordination of shipping timetables, ports of call, sailing dates or dates of call and the frequency of such sailings or calls except



insofar as is necessary for any ad hoc, sporadic or emergency movement or other chartering activity contemplated by this Annex B.

SECTION 2: DEFINITION OF TERMS

As used herein, a Party who charters vessel capacity from another Party is the "charterer"; a Party whose vessel capacity is chartered by another Party is the "underlying carrier"; and a shipper who tenders the cargo to the charterer is the "underlying shipper".

SECTION 3: SPECIFIC PROCEDURES

(a) Except as otherwise herein provided, any Party may advise any other Party at any time of the need for, or the availability of, vessel capacity for chartering purposes. A Party may charter space or slots under its operational control to another Party on any line-haul, feeder, relay, or other vessel utilized, in whole or part, for the transportation of cargo within the scope of the Agreement. Parties may also agree to such a charter arrangement in conjunction with discussions regarding the hire, off-hire and deployment or redeployment of any such vessels.

(b) Chartering shall be strictly voluntary and no Party shall be obligated to charter space or slots to or from any other Party.

(c) Cargo shipments made pursuant to this Annex shall be consigned to the charterer and transported by the underlying carrier on a contract carrier basis.

(d) Compensation for any shipments under space/slot charter arrangements between Parties shall be as those party to such arrangements may agree.

(e) Nothing herein shall be construed as a demise or partial demise of any vessel of any Party. At all times during any voyage on which cargo, containers or other equipment are carried pursuant to the terms of a charter arrangement entered into hereunder, the Master, his delegates, the officers and crew, shall be and remain the employees and agents of the underlying carrier only and shall not be or be deemed to be the employees or agents of the charterer.



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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

(f) The charterer and underlying carrier shall make such ancillary terminal, operating, administrative and other arrangements as may be needed to conduct and perform chartering pursuant hereto, and shall exchange such booking data, shipping documents, tariff, service contract information and other material as they may require for that purpose.

(g) An underlying carrier shall ensure that its personnel will, in accordance with any instructions of the charterer, maintain, repair, and inspect the charterer's equipment.

SECTION 4: TEMPORARY SLOT ASSIST CHARTERING

(a) In recognition of the decreased demand for vessel capacity that has historically existed from mid-December to mid-February, the Parties are hereby authorized to discuss and agree upon the temporary withdrawal of up to two vessels per week in either or both directions covered by the Trade during all or part of the period from the last week of December 2002 through the second week of February 2003, subject to the conditions set forth in Article 5.3(iv) of this Agreement. Vessels removed during the aforementioned period or substitute vessels of comparable capacity will be redeployed in the Trade by approximately the second week of March 2003. The Parties intend to withdraw only vessel capacity that would otherwise be unused and it is their understanding and intent to maintain sufficient vessel capacity to meet cargo demand during periods when one or two vessels have been withdrawn.

(b) The Parties temporarily withdrawing vessel(s) are hereby authorized to charter space from those Parties not withdrawing vessels during the period of temporary vessel withdrawal. All terms and conditions relating to the chartering of space by one Party to another under this Section 4, including the amount of space to be chartered, the charter hire to be paid for such space, the types and sizes of containers that will or will not be accepted under such temporary chartering arrangements, any restriction on the type of cargo that will or will not be accepted under such temporary chartering arrangements (e.g., dangerous/hazardous cargo out of gauge cargo, non-containerized cargo), and the administrative and operational aspects of such chartering arrangements (e.g., booking

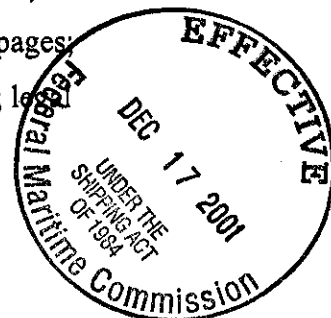
notice and procedures, vessel cut-off dates, point of contact and payment terms and conditions) shall be bi-laterally agreed upon by the Parties involved.

SECTION 5: LIABILITIES

(a) Charterer The charterer shall, with respect to the underlying shipper, employ its regular bill of lading and strictly adhere to its applicable tariffs and service contracts. The charterer shall be liable to the underlying shipper and shall receive and process claims for cargo loss and damage in the same manner and to the same extent and degree as if the cargo has been transported on the charterer's own vessel. The charterer shall indemnify and hold harmless the underlying carrier for damage to property, death, injury or illness resulting from misdescription of goods, improper stowage of goods within containers, or defect in the construction of containers tendered by the charterer to the underlying carrier. The charterer shall also indemnify the underlying carrier for any fines, penalties, duties or other expenses imposed on the latter due to errors in cargo manifests or any other documents, whether furnished by the charterer or the underlying shipper, if the charterer is liable for such errors.

(b) Underlying Carrier Subject to the terms and conditions of the charter arrangement, the underlying carrier shall indemnify the charterer, as provided in the Carriage of Goods by Sea Act, 46 U.S.C. 1301-1315, for liability to the underlying shipper in connection with any loss or damage to property caused by the underlying carrier.

(c) Force Majeure Except as may be otherwise specifically provided in a charter arrangement, the obligations of the parties to an arrangement shall be excused to the extent that the existence and continuance of conditions beyond their control render either the underlying carrier or the charterer, or both, unable to carry out their obligations. Such conditions include but are not limited to: war; civil commotion; invasion; rebellion; hostilities; strikes and labor disputes, sabotage or other work stoppages; unusually severe weather; regulations or orders of governmental authorities; le



intervention; acts of God; or inability to obtain materials or services. A Party asserting the existence of such conditions as an excuse for non-performance shall promptly give written notice of such conditions to all other Parties to the charter arrangement.

(d) Perishable Cargoes Unless otherwise specifically provided in a charter arrangement, the underlying carrier shall not be held liable for damage to the cargo if the charterer fails to take delivery of all containers said to contain perishable cargoes moving in dry or temperature-controlled equipment within twenty-four (24) hours after said containers have been available for pickup from the underlying carrier.

SECTION 6: RESOLUTION OF DISPUTES

Except as otherwise specifically provided in a charter arrangement, any dispute or claim arising thereunder which is not amicably resolved by the Parties to the arrangement shall be settled by arbitration in London in accordance with the law of England and the Arbitration Act of 1979, or any statutory modification or re-enactment thereof then in force. Unless the contending Parties agree on the appointment of a single arbitrator, the matter in dispute shall be referred to the decision of two arbitrators, one to be appointed by the Party or Parties complaining and the other by the Party or Parties complained against. Such arbitrators shall have the power to choose an umpire, and if they cannot agree upon one, the umpire shall be nominated by the President of the Law Society in London, unless otherwise agreed. If the Party or Parties complaining or complained against should fail to appoint an arbitrator within twenty-one (21) calendar days after receipt of written notice of the appointment of an arbitrator by the other, the arbitrator first appointed shall act as the sole arbitrator. The award of judgement given by the arbitrator, arbitrators or umpire shall be final and binding upon all Parties concerned. The Party or Parties at fault shall pay the full cost of the arbitration unless otherwise specifically directed by the award or judgement.



SECTION 7: CARGO PREFERENCE LAWS

Laws and governing regulations, orders, directives, rulings and other such decrees requiring shipments to be carried in whole or in part by a national flag line shall be observed unless appropriate waivers are obtained.

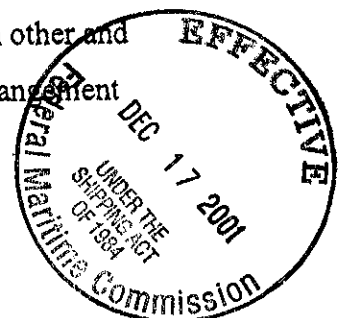
SECTION 8: OPTIONAL ARRANGEMENTS

The liability and disputes provisions of Sections 5 and 6 and the provisions of subparagraphs (e) and (g) of Section 3 hereof shall apply except as may be otherwise mutually agreed by a charterer and an underlying carrier with respect to any chartering arrangements between them.

SECTION 9: EQUIPMENT EXCHANGE

(a) As used herein, "equipment exchange" means and includes, inter alia, the exchange/interchange of empty (unladen) cargo containers, chassis, and other like or related equipment ("equipment"); procurement and sharing of storage depots/sites and facilities therefor; the transportation of equipment as required; management of the logistics of equipment exchange, dispatch, receipt, delivery, return and transfer; handling, positioning and other operations and activities in connection therewith; equipment maintenance, damage, repair, insurance, use by receiving Parties and liability incidental to the foregoing; payments, fees, charges and costs in respect to the aforesaid and all such other matters as may be ancillary thereto.

(b) The terms and conditions of equipment exchange under this Agreement shall be those as may, from time to time, be established by mutual agreement of the respective Parties electing to participate in such arrangements with each other and such Parties also may, in each case, determine to optionally file their arrangement



with FMC pursuant to Section 535.301(b) of its regulations or observe the exemption provisions of Section 535.305(b) of those regulations.

(c) In further implementation of their authority under this Agreement to exchange equipment, the Parties may establish, by mutual agreement, the terms of an arrangement to promote and facilitate the interchange of empty containers between them and, for that purpose, also establish a computerized reporting system whereby each may regularly report information on its container imbalances for various European locations and have access to corresponding information for each other Party with a view to effecting interchanges of empty containers, for subsequent use in the transport of cargo, between them (the "European Inland Equipment Interchange Arrangement").

(d) Nothing in this Annex or the Agreement shall serve to (i) require any Party to exchange equipment with another Party or Parties or (ii) preclude or restrict any Party from exchanging equipment with any other person.

* * * * *



Wherefore, the Parties have caused this amendment to be executed by their duly authorized representatives as of this 15th day of April, 2005.

ATLANTIC CONTAINER LINE AB

A.P. MOLLER-MAERSK A/S trading under
the name of Maersk Sealand

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

P&O NEDLLOYD LIMITED

NIPPON YUSEN KAISHA

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

ORIENT OVERSEAS CONTAINER
LINE LIMITED

MEDITERRANEAN SHIPPING
COMPANY, S.A.

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

HAPAG-LLOYD CONTAINER
LINIE GMBH

By: Wayne Rohde
Name: Wayne Rohde
Title: Attorney-in-fact

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Contship/P&O Nedlloyd Vessel Sharing Agreement

A Vessel Sharing Agreement

This Agreement has not previously been published

Term: See Article 6



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Article 1: Name of Agreement.

This Agreement shall be known as the **Contship/P&O Nedlloyd Vessel Sharing Agreement**.

Article 2. Parties to the Agreement.

The parties to this Agreement are:

P&O Nedlloyd **Limited**/P&O Nedlloyd B.V. (as one party) ("PONL")
Beagle House
Braham Street,
London E1 8EP
England

and

Contship Containerlines, a division of CP Ships (UK) Limited ("CS")
Waterfront House,
Wherry Quay,
Ipswich IP4 1AS,
England;

hereinafter referred to individually as "Party" and collectively as the "Parties".

Article 3. Definitions

| | | |
|-------------|-------|--|
| Affiliate | means | (i) in relation to CS - any company within the CP Ships Limited group (ii) in relation to PONL - any company within the P&O Nedlloyd Container Line Limited group |
| Conferences | means | Various conference and discussion agreements as listed in Appendix 4. |

| | | |
|-----------------------------------|-------|--|
| Core Trades | means | The trades (i) Europe to Australia/New Zealand/South Pacific Islands, (ii) Australia/New Zealand to Europe (iii) United States East Coast to Australia/New Zealand/South Pacific Islands and (iv) Australia/New Zealand to United States East Coast |
| Eastabout Loop | means | One Loop of the Service sailing eastabout around the world with trading scope set out in Article 5.A.1.1 |
| Loops | means | One of the component sailing schedule rotations of the Service |
| Minimum Service Level | means | The minimum levels of service which the OSG Lines agree to provide pursuant to this Agreement and other filed agreements with respect to frequency of service, ports of call and ship capacity as set out in Appendix 1 |
| Operating Agreement | means | An agreement that will be prepared pursuant to this Agreement and prior to the start of the Service setting out further details of the routine day to day operational and administrative co-operation between the Parties |
| Standard Deadweight Capacity | means | In respect of each Sector, the capacity of a Ship in tonnes available for the carriage of cargo. |
| Standard Slot Capacity | means | In respect of each Sector, the capacity of a Ship in Slots available for the carriage of cargo and empty containers. |
| Overall Service Group (OSG) Lines | means | The Parties together with other ocean common carriers entering into an arrangement with the Parties to operate the Service under this Agreement and other agreements filed and effective under the Shipping Act of 1984, as amended, and under legislation in other applicable jurisdictions |

| | | |
|--------------------------|-------|--|
| Sector | means | Part of a round voyage of either an Eastabout or Westabout sailing as set out in Article 5.C.1.1 |
| Sector Allocation Shares | means | The respective share of the Parties and of each other OSG Line (as set forth in other filed agreements) of the operational slot capacity and operational deadweight capacity of a Ship in a Sector determined in accordance with Article 5.C.1.3 |
| Service | means | The service consisting of 2 Loops as envisaged to be operated by the Parties as set out in Article 5.A |
| Ship(s) | means | A ship deployed in the Service pursuant to Article 5.B |
| Slot(s) | means | The space on any Ship for the stowage of containers. Each slot shall be the space required for the carriage of one standard ISO twenty foot equivalent unit (TEU). |
| Westabout Loop | means | One Loop of the Service sailing westabout round the world with trading scope set out in Article 5.A.1.2 |

Article 4 Geographic Scope.

- 4.1 The geographical scope of this Agreement shall be the service described in Clause 5.A **to/from** the proposed ports listed in Appendix 1.
- 4.2 The Service shall provide the total space requirements for the Parties in the Core Trades. The Parties will not set **up/use** any other **service** in the Core Trades other than by mutual agreement.
- 4.3 To the extent that the Parties participate in the Core Trades it **is** intended that they become or remain members of the respective conferences, rate or discussion agreements covering these trades (as set out in Appendix 4), provided, however, that each Party is free, in accordance with the terms of the Conference, rate or

¶ Notwithstanding that this Agreement covers **service** between ports in non-U.S. trades, the scope of this Agreement for purposes of the Federal Maritime Commission jurisdiction is limited to **services to/from** U.S. ports and the **parties** understand that no immunity from U.S. antitrust laws attaches to the agreement with respect to portions of this Agreement that cover trades **other** than the U.S. trades by virtue of the inclusion of such trades in this Agreement.

discussion agreements to withdraw from such conference or agreement or not to become a member of such Conference or other agreement.

- 4.4 It is acknowledged that one or both Parties have other service arrangements for which the Service provides appropriate connections. The Parties do not exclude the possibility of co-operating with each other on such additional trades. In the event they do co-operate in such additional trades, the Parties will file an appropriate amendment to this Agreement in accordance with the provisions of the Shipping Act of 1984, as amended, and/or under legislation in other applicable jurisdictions.

Article 5. Authority

A. The Service

The Parties agree to introduce no later than February, 2003 (see Article 6 below regarding commencement plans), a high quality direct service with fast, competitive transit times, and weekly named day calls at the main ports, operating between the following main areas:

- 1.1 Eastabout Loop (weekly, 10 Ships)
North Europe - Mediterranean - Australia - New Zealand
- Caribbean - US East Coast - North Europe
- 1.2 Westabout Loop (weekly, 12 Ships)
US East Coast - Caribbean - South Pacific - New Zealand
- Australia - Singapore - Mediterranean - North Europe -
US East Coast

The proposed port rotations are set out in Appendix 1. The precise ports of call within each such main area are subject to amendment and/or addition by mutual agreement, with the over-riding requirement of maintaining a regular, reliable, cost effective and competitive schedule.

B. Ships

- 1.1 The Parties will operate the Service with 2 Loops
- a. Eastabout Loop: 10 Ships, the **minimum** specifications of which are given in Appendix 2.

- b. Westabout Loop: 12 Ships, the minimum specifications of which are given in Appendix 3, and which the Parties or other OSG Lines intend to provide for the duration of the agreements filed and effective under the Shipping Act of 1984, as amended, and under legislation in other applicable jurisdictions.
- 1.2 The Parties will agree on a phase-in schedule for the new vessels and a phase-out of currently deployed vessels. Total phase-in and phase-out costs during the phase-in period associated with the start up of the Service will be determined and shared between the Parties. Any shared costs for phase-in and phase-out will be based on agreed reference prices and actual vessel operating costs will not be used or exchanged. Both Parties will ensure that phase-in and phase-out schedules are performed in the most economical manner possible and will endeavour to **maximise** any revenue earning potential during these periods as one way towards achieving same.
- 1.3 On the Eastabout Loop CS will provide 3 Ships and PONL will provide 7 Ships. On the Westabout Loop PONL will provide 3/4 Ships and CS will provide 3/2 Ships. The remaining 6 Ships will be provided by other OSG Lines.
- 1.4 The Parties intend that the Operating Agreement will contain clauses to cover the implications of any change in the provision of Ships during the term of the Agreement, **particularly** in respect of:-
- a. Rules for substitution in the event that one Party wishes to replace a Ship provided to the Service with another for whatever reason. This clause would deal with the extent to which approval from the other Party would be necessary and with the notice which would have to be given for such a change.
 - b. Provision for regular reviews of the Service to determine, inter alia, whether the Ships provided continue to be the most suitable for the trade.
 - c. Mechanisms for amending Slot allocations in the event of changes in the number or size of Ships provided.

- d. Rules for determining which **Party(ies)** should adjust their provision in the event of changes to the structure of the Service and in particular to changes in the number of Ships required for the **Service**.
- e. Sharing of costs associated with the phasing-in /phasing-out of Ships in the event of changes in provision of Ships.

C. Space Allocations

1.1 Space shall be apportioned to each **Party** on each Sector in line with the principles set out below:-

- a. The round voyage of each Loop shall be divided into a number of Sectors. The Sectors shall be:-

Westabout

Sector 1 - Europe - USEC

Sector 2 - USEC - Caribbean - South Pacific-
Australia/ New Zealand

Sector 3 - Australia/New Zealand - Europe (via
Singapore)

Eastabout

Sector 1 - Europe - Australia/ New Zealand

Sector 2 - Australia/New Zealand (via Caribbean) -
USEC

Sector 3 - USEC - Europe

1.2 The Parties, in this Agreement, and the Parties with the other OSG Lines, in separately filed agreement, will agree to Standard Slot Capacities and Standard Deadweight Capacities for each Ship to apply to each Sector. These Standard Capacities shall take account of the expected cargo mix, cargo deadweight and empty container positioning for each Sector. The Standard Capacities will also take account of draught restrictions and/or **port/canal** regulations pertaining to the Service.

OSG Lines, other than the Parties, shall be allocated Slots and deadweight according to separate agreements filed

and effective under the Shipping Act of 1984, as amended, and under legislation in other applicable jurisdictions, .. - - - - -

Deleted:

The shares determined under 1.2 above will be used to allocate the remaining Standard Slot Capacity and the remaining Standard Deadweight Capacity of each Ship on the respective Sector after deducting the allocations made to the other OSG Lines. Consistent with this provision the allocations for the Parties to this Agreement are set forth in Appendix 5.

Each Party shall have the option to provide space from within its allocation to any of its Affiliates, subject to mutual agreement, which is not to be unreasonably withheld.

1.3 The Parties agree that the costs of providing and operating the Ships shall be on the basis of the following principles:

- a. Each Party **will** be responsible for the actual costs of providing and operating the Ships it provides to the Service.
- b. Slot costs shall be calculated based on standard round voyage reference costs, not actual operating costs. Such standard round voyage reference costs shall consist of a Ship provision element, a bunker element and a **port/canal** cost element, will be separately determined for each Sector, and will be allocated to each Sector of the round voyage by reference to the pro-forma Sector voyage time, or as otherwise agreed. This calculation will be performed separately for each Loop.
- c. The amount so determined **will** be payable to the OSG Line providing and operating the Ship to offset the actual costs of provision and operation and will be payable on a **used/not used** basis by the other OSG Lines in proportion to their respective allocation of space on that Sector.

1.4 Reefer plug allocations **will** be agreed between the Parties in this Agreement and between the Parties and other OSG Lines in separately filed agreements. Allowances will be payable to the OSG Line providing and operating the

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Ship by the other OSG Lines for the use of reefer plugs and will include elements to cover fuel, monitoring and capital element. The capital element being in respect of the cost of supplying and operating reefer plant in excess of that supplied in a standard ship.

- 1.5 The OSG Lines will agree a mechanism for the *ad hoc* exchange of Slots on individual sailings and for the settlement of costs related thereto.

D. Use of Space

- 1.1 Each Party shall be entitled to use its Slot allocation without any geographical restrictions regarding the origin or destination of the cargo. Cargo may be carried through more than one Sector during a vessel voyage. There shall be no priorities for either full, empty, wayport/interport or breakbulk cargo.
- 1.2 In the event that any Party requires additional space then it shall request additional Slots on an *ad hoc* basis from the other Party. The Party to whom additional slots are allocated shall be liable for payment of the Slot whether used or unused.
- 1.3 Sale of unused slots by a Party or excess slots by the Party providing and operating the Ship shall be on such financial terms as the Parties may from time to time agree.
- 1.4 Subject to all applicable governmental requirements, any unused Slots within a Party's entitlement may be sold or sub-chartered *ad hoc* to any approved third party, always provided that the other Party will have first refusal of such unused Slots; such first refusal to be exercised within 48 hours of offer. An *ad hoc* sale shall be deemed to be a sale of Slots on a single voyage leg or Sector.
- 1.5 Slot sales to (or Slot purchases from) third parties of a larger and more permanent and significant nature must be discussed and agreed upon in advance by the other Party. Such agreement shall not be unreasonably withheld.

E. Performance

The Parties agree that the criteria for determining Ship performance and the procedures determining responsibility for remedial action and costs shall be developed upon a mutually agreeable and fair basis.

F. Port Terminals

The Parties are authorized to jointly negotiate ocean terminal and stevedoring agreements. Subject to such criteria as the Parties may from time to time agree, the Parties shall work towards the establishment of the most efficient ocean terminal arrangement, which may include using one ocean terminal at each port of call. In selecting an ocean terminal, preference will be given to ocean terminals owned/leased/operated by Parties or their subsidiary or associated companies and consideration shall be given to the

fulfilment of Parties' existing ocean terminal contracts. It is understood, however, that the selection of an ocean terminal shall be based on all input, including cost, comparative service and all other relevant factors (such as other services calling at the terminal). To the extent this Article 5.F relates to outwards or inward liner cargo shipping services in Australia, it is limited to the extent permitted under Part X of the Trade Practices Act (Cth) 1974.

Article 6. Commencement, Duration and Termination

- A. The phase in under this Agreement shall begin on or about 17th November 2002 provided that this Agreement shall have become effective under the Shipping Act of 1984, as amended and all other regulatory requirements in Europe and Australia have been met. The operational arrangements pursuant to this Agreement shall take effect on the commencement of the loading of the first vessel to sail pursuant to this Agreement. It is the Parties' intention that this Agreement shall continue indefinitely at least until 31st December 2009, either party having given at least 12 months written notice of termination. However, either Party may give at least six months notice to terminate the agreement without penalty at any time after 16th May, 2005.
- B. Subject to joint inability to secure agreement from the European Commission to co-operate for a longer period under European Regulation 4056/186. then notwithstanding Article 6.A and recognising the provisions of European legislation relating to highly integrated consortia, the Parties recognise that either Party may withdraw from this Agreement without penalty no earlier than the maximum duration permitted under the replacement regulation to the European Union regulation 870/195, subject to giving at least 6 months' prior notice of withdrawal. For the avoidance of doubt it is intended that if a Party withdraws from this Agreement pursuant to this sub-Clause 6.B then this Agreement shall be terminated at the date of withdrawal.
- C. The Parties also anticipate that the final arrangements between the Parties and between the Parties and other OSG Lines will require notification to the European Commission in order to gain exemption from Article 81 of the EC Treaty and with the Australian Department of Transport in accordance with Part X of the Australian Trade Practices Act 1974.

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- D. In respect of **services** provided under this **agreement**, previous agreements or other Conferences, the Parties will agree where necessary to phase out steps leading to the **operational** change, variation, or termination of, those agreements and phase-in steps for the introduction of complementary or additional services to be provided under the **terms** of this Agreement or any future agreements.

Article 7. Non-Assignment

1.1 The rights and obligations of each Party under this Agreement shall not be assignable except to Affiliates or parent companies or with the prior agreement of the other Party. Each Party warrants that any Affiliateto which any assigned right or obligation is made shall not be sold to a third party.

Article 8. Notices

1.2 All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and sent by registered letter by fax or by **email** as appropriate or other written means as may be agreed, and addressed to the other Party at its official company address as follows:-

| Party | Notify party and address details |
|--|---|
| Contship Containerlines, a division of CP Ships (UK) Limited | Mr. D.J. Halliday, Senior Vice President, Waterfront House, Wherry Quay, Ipswich IP4 1AS, England;Telephone: ++44- 1473-232000 Fax:++44 - 1473-211923 email: davidhalliday@jps.contship.com |
| P&O Nedlloyd Limited/P&O Nedlloyd BV (acting as one party) | The Company Secretary, P&O Nedlloyd Limited, Beagle House, Braham Street, London E1 8EP Telephone: ++44 -20-7441-1228 Fax:++44-20-7441-8110 email: g.r.cheeseman@ponl.com |

1.3 Any such notices, legal processes or other formal communications shall be deemed to have reached the person to whom it is addressed 48 hours after posting in the case of a letter or registered letter or when dispatched if by fax or **email**.

Article 9. Disclaimer of Partnership

1.1 This Agreement is not intended to create a partnership, agency, or joint liability under the laws of any jurisdiction.

Article 10. Insolvency

1.1 Notwithstanding Article 6, if at any time during the term of this Agreement either Party should become bankrupt or declare insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the Party (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other Party), or any event similar to any of the above shall occur under the laws of the Party's country of incorporation (the Party so affected being referred to in this Article only as the Affected Party) and the other Party is of the opinion that the result may be materially detrimental to the Service, or that sums may be owed by the Affected Party to the other Party and may not be paid in full or their payment may be **delayed**, then the other Party may, with immediate effect, either terminate or suspend this Agreement for such period as in its sole discretion it deems appropriate.

Article 11. Change of Ownership

1.1 Notwithstanding Article 6, if at any time during the term of this Agreement there shall be a change in the control or a material change in the ownership of a Party or the holding company of a Party (the Party so affected being referred to in this Clause only as the Affected Party) and the other Party is of the opinion arrived at in good faith that such change is likely materially to prejudice the cohesion or viability of the Service, then the other Party may within three months of the coming into effect of such change give not less than six months' notice in writing to the Affected Party terminating the period of the Agreement. For the purposes of this Article a

change in the control or material change in the ownership of a Party or of the holding company of that Party shall not include any public offering of shares in that Party or its holding company, or existing shareholders changing their relative **shareholdings**, or the acquisition by a ~~3rd~~ party of a minority shareholding in that Party or its holding company.

Article 12 Force Maieure

1.1 In such circumstances as the event of war, Act of God, civil commotion, act of public enemies, arrest or restraint of princes, rulers and peoples or any other event whatsoever which cannot be avoided or guarded against and which renders the performance of this Agreement wholly or substantially impracticable, this Agreement shall not thereby be terminated, but the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension.

1.2 Should this Agreement be wholly suspended for a period exceeding three calendar months from the date of the commencement of such suspension or partially suspended for a period exceeding six (~~6~~)calendar months, the Agreement shall terminate.

Article 13. Enforceability

1.1 If any provisions of any clause in this Agreement, as presently stated or later amended or adopted, shall be held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. ~~All~~ remaining provisions hereof shall remain binding and enforceable.

Article 14. Law and Arbitration

1.1 Except where Article 15 applies, this Agreement shall be governed by and construed in accordance with the laws of England.

1.2 All disputes or differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in England in accordance with the Arbitration Act 1996 together with **LMAA** (London Maritime Arbitration Association) terms in use at the time of the dispute or difference.

1.3 The Parties to agree to appoint a **single/sole** arbitrator, having appropriate **commercial and** consortia experience, within 21 days of either Party seeking an appointment. If either Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the **LMAA** President will appoint a **single/sole** arbitrator (or a panel of three arbitrators, as appropriate) at the request of either party.

1.4 The Parties further agree:-

a. The right of appeal to the Courts is excluded, and immediately following the appointment of the **arbitrator(s)** each Party shall send to the **arbitrator(s)** a letter **confirming** that such right of appeal is excluded.

b. Where the amount in dispute is **US\$ 200,000** or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed exceptionally and at the discretion of the **arbitrator(s)**.

c. For all disputes or differences whatever the amount claimed, there shall be no discovery, but, if in the opinion of the **arbitrator(s)** a Party has failed to produce any relevant **document(s)**, he may order the production of such **document(s)** and may indicate to the Party to whom the order is directed that if, without adequate explanation, he fails to produce the **document(s)** it will not favour that Party's case.

d. The term "relevant document" includes all documents relevant to the dispute of difference, whether or not favourable to the Party holding them. It includes witness statements, expert reports and the like on which the Party intends to rely, but does not include documents which are not legally disclosable.

e. Both Parties agree that any awards given under this Clause shall be notified to the European Commission.

f. Any interest awarded under this Article shall be simple interest only.

Article 15. Law and Arbitration – Certain Sectors

1.1 The parties acknowledge that section 10.06 of the Trade Practices Act 1974 (Cth) requires that questions under an agreement in relation to an outwards liner cargo shipping service must be determined in Australia in accordance with Australian law, and that Westabout – Sector 3 and Eastabout – Sector 2 are outwards liner cargo shipping services within the meaning of the Trade Practices 1974 (Cth) ('Outwards Services'). Accordingly, the parties agree that any question arising under the Agreement solely in relation to Outwards Services shall be determined in Australia in accordance with the laws of New South Wales, Australia.

1.2 All questions arising under this Agreement relating solely to Outwards Services which cannot be amicably resolved shall be referred to arbitration in Sydney Australia in accordance with and subject to the Commercial Arbitration Act 1984 (NSW) and UNCITRAL Arbitration Rules .

1.3 The Parties to agree to appoint a **single/sole** arbitrator, having appropriate commercial and consortia experience, within 21 days of either Party seeking an appointment. If either Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the Australian Chamber of Shipping Resident (or equivalent) will appoint a **single/sole** arbitrator (or a panel of three arbitrators, as appropriate) at the request of either Party.

1.4 The Parties further agree:-

a. The right of appeal to the Courts, including any right under Part VI of the Commercial Arbitration Act 1984 (NSW), is excluded, and immediately following the appointment of the **arbitrator(s)** each Party shall send to the **arbitrator(s)** a letter confirming that such right of appeal is excluded.

b. Where the amount in dispute is US\$ 200,000 or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed exceptionally and at the discretion of the **arbitrator(s)**.

c. For all disputes or differences whatever the amount claimed, there shall be no discovery, but, if in the opinion of the **arbitrator(s)** a Party has failed to produce any relevant **document(s)**, he may order the production of such **document(s)** and may indicate to the Party to whom the order is directed that if, without adequate explanation, he fails to produce the **document(s)** it will not favour that Party's case.

d. The term "relevant document" includes all documents relevant to the dispute of difference, whether or not favourable to the Party holding them. It includes witness statements, expert reports and the like on which the Party intends to rely, but does not include documents which are not legally disclosable.

e. Any interest awarded under this Article shall be simple interest only.

Article 16. Separate Marketing

- 1.1 Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Party shall issue its own Bills of Lading.

Article 17. Administration

- 1.1 The Parties will develop procedures to handle the day-to-day operational requirements of the Agreement.
- 1.2 The communication channels, systems and procedures as well as other general items dealing with the day-to-day work for operation pertaining to the space charter not otherwise covered under this Agreement shall be specified in separate working procedures. This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties to enable them to effectuate the purposes of this Agreement. The Parties are further authorised to obtain, compile, maintain and exchange information related to operations in the Trade, only in so far

as the information is necessary for the implementation of this Agreement and, subject to the confidentiality obligations of any Party.

1.3 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate the same:

- a. any authorized officer or representative of a Party, and
- b. legal counsel for each of the Parties.

1.4 Except for routine operational and administrative matters, the Parties will in accordance with 46 C.F.R. Section 535.407 file amendments to this Agreement prior to implementation thereof, and under legislation in other applicable jurisdictions

Article 18. Language

1.1 This Agreement and all notices, communications or other writing shall be in the English language and no Party shall have any obligation to translate such matter into any other language. The wording in the English language shall prevail.

Article 19. Liability

1.1 It is anticipated that the Parties will sign a comprehensive liability agreement.

1.2 The liability agreement will provide that Slots are taken by each Party (acting as a Slot charterer) under the terms of an agreed slot charterparty.

Signature Page

This amendment is signed this 22nd day of July, 2003.

For and on behalf of Contship Containerlines,
a division of CP Ships(UK) Limited

By: 

Name: Wayne R. Rohde
Title: Attorney-in-fact

For and on behalf of P&O Nedlloyd Limited/
P&O Nedlloyd BV (acting as one party)

By: 

Name: Neal M. Mayer
Title: Attorney-in-fact



Appendix I

Minimum Service Levels

Frequency of sailings

1. The Parties intend that the Service will provide a minimum of (52) sailings per year, subject to accident, breakdown, maintenance and repair, in each of the following trades
 - (a) Europe – Australia
 - (b) Australia – Europe
 - (c) United States East Coast – Australia
 - (d) Australia – United States East Coast

The minimum of (52) sailing per year will be on a regular basis with sufficient container equipment that is in good order and condition. The Parties intend to provide capacity on the service as follows:-

Inward - 160.000 TEUs

Outwards - 82,000 TEUs including 20.000 TEUs for refrigerated cargo.

2. Ports of call

- (a) The port rotation of the Eastabout Loop will be:

Tilbury – Hamburg – Rotterdam – La Spezia/Genoa – Damietta – Suez – Melbourne – Sydney – Brisbane – Auckland – Napier* – Port Chalmers – Panama – Manzanillo – Philadelphia – Zeebrugge – Tilbury

• Napier calls will be suspended during the off-peak season

- (b) The port rotation of the Westabout Loop will be:

Tilbury – Hamburg – Dunkirk – Le Havre – New York – Norfolk – Savannah – Manzanillo – Panama – Papeete – Auckland – Noumea – Sydney – Melbourne – Adelaide – Fremantle – Singapore – Jeddah – Suez – Damietta – Malta – La SpezialGenoa – Tilbury

- (c) Inwards Europe to Australia Trade

- (i) Loading Ports

Cargo will be accepted in both Full Container Load and Less than Full Container Load at ports served directly on a regular basis from the following ports ("direct call ports"):

La Spezia/Genoa
Damietta
Hamburg
Dunkirk

Le Havre
Rotterdam
London (Tilbury)

(ii) Discharge Ports

Cargo will be delivered at the following ports directly on a regular basis ("direct call ports"):

Brisbane
Sydney
Melbourne

(d) Outwards Australia to Europe Trade

(i) Loading Ports

Cargo will be accepted in both Full Container Load and Less than Full Container Load at ports served directly on a regular basis from the following ports ("direct call ports"):

Brisbane
Sydney
Melbourne
Adelaide
Fremantle

(ii) Discharge Ports

Cargo will be delivered at the following ports directly on a regular basis ("direct call ports"):

La Spezia/Genoa
Damietta
Hamburg
Dunkirk
Le Havre
Rotterdam
London (Tilbury)

(e) Inwards United States East Coast to Australia Trade

(i) Loading Ports

Cargo will be accepted in both Full Container Load and Less than Full Container Load at ports served directly on a regular basis from the following ports ("direct call ports"):

New York
Norfolk
Savannah
Manzanillo

(ii) Discharge Ports

Cargo will be delivered at the following ports directly on a regular basis ("direct call ports"):

Sydney
 Melbourne
 Adelaide

(9) Outwards Australia to United States East Coast Trade

(i) Loading Ports

Cargo will be accepted in both Full Container Load and Less than Full Container Load at ports served directly on a regular basis from the following ports ("direct call ports"):

Brisbane
 Sydney
 Melbourne

(ii) Discharge Ports

Cargo will be delivered at the following ports directly on a regular basis ("direct call ports"):

Manzanillo
 Philadelphia

3. Minimum Capacities

(a) Eastabout Loop

The Eastabout Loop will be served by 10 Ships with minimum capacities of

| | Usable TEU Capacity (note 1) | | Tonnes | Reefer Plugs (note 2) |
|-------------------------|------------------------------|-------|--------|-----------------------|
| | Full | Empty | | |
| Europe-Australia | 3000 | 1100 | 37,500 | 1100 |
| Australia - USEC/Europe | 2486 | 1500 | 40,500 | 1100 |

(b) Westabout Loop

The Westabout Loop will be served by 12 ships with minimum capacities of

| | Usable TEU Capacity (note 1) | | Tonnes | Reefer Plugs (note 2) |
|-----------------------|------------------------------|-------|--------|-----------------------|
| | Full | Empty | | |
| Europe-USEC-Australia | 1850 | 300 | 24,700 | 300 |
| Australia - Europe | 1540 | 650 | 27,000 | 300 |

Notes:

1. Ships' capacities will be limited on all sectors by deadweight considerations. TEU capacities are therefore approximate and will vary from voyage to voyage.

2. Capacity as measured in tonnes is dependent on a number of factors relating to average weight of cargo, 20'/40' mix of containers, stowage factors, depth of water considerations in certain ports and other operational matters. Capacity can vary between southbound and northbound voyage legs.

3. Reefer plug capacity represents the maximum number of plugs that can be supported on a sustained basis over a full voyage.

Minimum Specification Criteria of Ships for the Eastabout Loop

Type:- Fully Cellular Containership - Gearless

Size:- TEU Intake 4100 TEU nominal
4000 TEU through Panama Canal
Cargo Deadweight 37500 tonnes on southbound voyage
43500 tonnes on northbound voy
Reefer Capacity 1300 plugs of which 1100 shall be
continuously sustainable

40ftdv Intake Unrestricted

Speed:. 24.9 knots at Scantling Draft (90% mcr. with 20% sea margin)

Design:. Panamax Design: LOA not to exceed 294.4 metres
Breadth not to exceed 32.2 metres

Air Draft: Capable of negotiating all ports of call

Bunker Intake: to give endurance of approx. 23000
nautical miles

Pile Weights: Under Deck 20ft Containers at 30 tonnes
gross each 40ft Containers at 35 tonnes
gross each On Deck 20ft Stacks - 90 tonnes in total
40ft Stacks - 120 tonnes in total

GRT: Design configured to minimize Suez Tonnage Dues with minimizing
fuel in double bottom tanks

Minimum Specification Criteria of Ships for the Westabout Loop

Type:- Fully Cellular Containership - Geared

It is agreed that Ships of the CSBC2226 Class and La Tour/Utrillo type will meet the required specification

Size:- TEU Intake 2200 TEU nominal
2050 TEU through Panama Canal
Cargo Deadweight 24700 tonnes on SB voyage
24000 tonnes via Papeete
27000 tonnes on NB voyage
Reefer Capacity 300 Useable Plugs/slots
40ftdv Intake Unrestricted

Speed:- 20.0 knots at Design Draft (90% mcr. with 15% sea margin)

Bunker Intake: To give endurance of approx. 13800 nautical miles

Design: **Panamax** Design: Breadth not to exceed 32.2 metres
LOA not to exceed 294.4 metres

Air Draft: Capable,of negotiating all ports of call

Pile Under Deck 20ft Containers at 24.0 tonnes gross each
Weights: Deck 40ft Containers at 30.0 tonnes gross each
minimums

On Deck 20ft Stacks - 75 tonnes in total
40ft Stacks - 96 tonnes in total

1. Various Conference agreements relating to the trade between Europe and **Australia/New Zealand/Pacific Islands**
 - (1) Europe to Australia and New **Zealand** Conference;
 - (2) The **Australia/New Zealand** to Europe Liner Association Constitution;
 - (3) Euroceania

2. Various Conference and Discussion Agreements relating to the trade between USEC and **Australia/New Zealand**
 - (1) United States Australasia Agreement (202-011677)
 - (2) United **States/Australasia** Interconference and Carrier Discussion Agreement (203-011117)
 - (3) **Australia/United States Containerline** Association (202-011407)
 - (4) **Australia/United States** Discussion Agreement (203-011275)
 - (5) **New Zealand/United States Container Line** Association (202-009831)
 - (6) **New Zealand/United States** Interconference and Camer Discussion Agreement (203-011268)

3. Trade Participation Agreements
 - (1) Southbound Trade Participation Agreement (Europe to Australian and New **Zealand** Conference)
 - (2) Northbound Trade Participation Agreement (The **Australia/New Zealand** to Europe Liner Association)

Principles of Slot and Deadweight Allocation - Sector Allocation Shares

Sector Allocation Shares (SAS's)

- (a) Allocations will be made for each member of the Overall Service Group on each Sector according to the following principles.
- (b) The Sectors shall be

| | | |
|-----------|----------|--------------------------|
| Eastabout | Sector 1 | Europe-ANZ |
| | Sector 2 | ANZ- U.S. East Coast |
| | Sector 3 | U.S. East Coast - Europe |
| Westabout | Sector 1 | Europe - U.S. East Coast |
| | Sector 2 | U.S. East Coast - ANZ |
| | Sector 3 | ANZ- Singapore/Europe |

- (c) Sector Allocation Shares (SAS) shall be determined as follows:-
In recognition that the Trade in each Sector is a "weight" trade, it is understood that within each Sector and for each OSG Line the SAS shall be determined by comparing the agreed deadweight allocation with the standard deadweight capacity of the Ship within that Sector.
- (d) The Slot Allocation shall be determined as follows:-
 - (i) In certain Sectors a specific agreement will be reached between the Parties and other OSG Lines in separate agreements for a pre-determined Slot allocation. In such instances, said Slot allocation shall be reflected in Appendix 5 of the relevant agreement.
 - (ii) When there is no pre-determined Slot allocation, each OSG Line shall receive its agreed SAS percentage share, as reflected in Appendix 5 of each relevant agreement, based on the full Slot, empty Slot or deadweight capacity of the Ship, whichever is applicable.
- (e) Each OSG Line's SAS will change from one Sector to the next. The Parties and the other OSG Lines will agree changes in allocation from port to port along the common coast on a pragmatic basis and as set out in the Working Procedures to

Annexe 12

Contrats type Armateur / Chargeur (APL et CMA-CGM)

APL p. 2

CMMA-CGM p. 9

1. DEFINITIONS

"Carrier" includes APL Co. Pte Ltd, American President Lines, Ltd, the Vessel, its owner, operator, charterer (whether demise, time, voyage, space or slot), the master, and any connecting or substitute water carrier.

"Merchant" includes the Shipper, Consignee, Receiver, Holder of the Bill of Lading, Owner of the cargo or Person entitled to the possession of the cargo or having a present or future interest in the Goods and the servants and agents of any of these, all of whom shall be jointly and severally liable to the Carrier for the payment of all Freight, and for the performance of the obligations of any of them under this Bill of Lading.

"Person" means any natural person, company, firm, body corporate of unincorporated association or body, including any Government or governmental or statutory instrumentality or port authority.

"Sub-Contractor" includes owners and operators of vessels (other than the Carrier), stevedores, terminal and groupage operators, road and rail transport operators, longshoremen, warehousemen and any independent contractor employed by the Carrier in performance of the Carriage.

"Indemnify" includes defend, indemnify and hold harmless.

"Goods" means the cargo received from the Merchant and includes any equipment or Container not supplied by or on behalf of the Carrier.

An endorsement on this Bill of Lading that the Goods have been shipped "on board" means on board the Carrier's Vessel, or another mode of transport operated by or on behalf of Carrier en route to the Port of Loading for loading aboard Carrier's Vessel.

"Container" includes any open or closed container, van, trailer, flatbed, transportable tank, flat, pallet, skid, platform or any similar article used to consolidate Goods and any equipment associated or attached thereto.

"Carriage" means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill of Lading.

"Combined Transport" arises if the Place of Receipt and/or the Place of Delivery are indicated on the face hereof in the relevant spaces.

"Port to Port Shipment" arises if the Carriage called for by this Bill of Lading is not Combined Transport.

"Vessel" includes the vessel named on the face of this Bill of Lading and any other vessel, lighter or watercraft owned, operated, chartered or employed by the Carrier or any connecting or substituted water carrier performing Carriage under this Bill of Lading.

"Freight" includes all charges payable to the Carrier in accordance with the Applicable Tariff and this Bill of Lading.

2. CARRIER'S APPLICABLE TARIFF

The terms of the Carrier's Applicable Tariff are incorporated herein. Particular attention is drawn to the terms therein relating to Container and Vehicle demurrage.

Copies of the relevant provisions of the Applicable Tariff are obtainable from the Carrier or its agents upon request. In case of inconsistency between this Bill of Lading and the Applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the Terms and Conditions hereof, including the Applicable Tariff(s), it is, or has the authority of, the Person owning or entitled to the possession of the Goods and/or Container and this Bill of Lading, and that all prior agreements and Freight arrangements are merged in and superseded by the provisions of this Bill of Lading.

4. SUB-CONTRACTING

i) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

ii) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (including any independent contractors and any Sub-Contractors of the Carrier and their servants or agents), other than the Carrier which imposes or attempts to impose upon any such Person, or any Vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of such Person and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of every right, defence, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for its benefit; and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent and trustee for such Persons.

iii) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

5. CARRIER'S RESPONSIBILITY

A. PORT-TO-PORT SHIPMENT

If the Carriage called for by this Bill of Lading is a Port-to-Port Shipment, the Carrier's liability, if any, shall be restricted to the period when the Goods are loaded on board the Vessel until discharged therefrom or transhipped to another Vessel tackle-to-tackle, to be determined in accordance with the provisions of Clause 6 hereof.

B. COMBINED TRANSPORT

i) If the Carriage called for by this Bill of Lading is a Combined Transport Shipment, the Carrier undertakes to perform and/or procure in its own name, performance of the Carriage from the Place of Receipt or the Port of Loading to the Port of Discharge or the Place of Delivery, whichever is applicable, and the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.

ii) During the period prior to loading onto the Vessel and after discharge from the Vessel, the Carrier shall be entitled as against the Merchant to all rights, defences, immunities, exemptions, limitations of or exonerations from liability, liberties and benefits contained or incorporated in the contract between the Carrier and any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (and including such Persons mentioned in Clause 4 ii) hereof) and who would have been liable to the Merchant if the Merchant had contracted directly with such Person or contained in any compulsory legislation applicable to such Person. However, in no event shall the Carrier's liability exceed that determined in accordance with the provisions of Clause 6 hereof.

iii) If it cannot be proven where or when or at what stage of the Carriage the Goods or Containers or other packages were lost or damaged, it shall be conclusively deemed to have occurred whilst at sea and the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.

C. GENERAL PROVISIONS (APPLICABLE TO BOTH PORT-TO-PORT AND COMBINED TRANSPORT SHIPMENTS)

i) The Carrier does not undertake that the Goods or Containers or other packages shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay or any other cause.

ii) The terms of this Bill of Lading shall govern all responsibilities of the Carrier in connection with or arising out of the supply of a Container to the Merchant whether before or after the Goods are received by the Carrier for transportation or delivered to the Merchant.

iii) When a Container is supplied by the Merchant, the Merchant enters into this Bill of Lading contract for itself and as agent of the owner or lessee (if other than the Merchant) of the Container, and the owner or lessee, as the case may be, is bound by the Terms and Conditions of this Bill of Lading as a result.

The rights, defences, immunities, exemptions, limitations of and exonerations from liability, liberties and benefits shall apply in any action or proceeding whatsoever brought against the Carrier and/or any Person encompassed in Clause 4 ii) hereof, whether in contract, tort, equity or other theory of recovery.

6. PARAMOUNT CLAUSE

i) From loading of the Goods onto the Vessel until discharge of the Goods from the Vessel, the Carrier's responsibility shall be subject to the provisions of any legislation compulsorily applicable to this Bill of Lading:

a) which gives effect to the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 25, 1924, ("the Hague Rules") including adaptations thereof, such as the Carriage of Goods by Sea Act of the United States, 1936 ("US COGSA"), the provisions of which shall apply on all shipments to or from the United States whether compulsorily applicable or not, or

b) which gives effect to said Rules as amended by the Protocols to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, dated at Brussels, February 23, 1968 (the "Hague-Visby Rules") and December 21, 1979 (the "SDR Protocol"), but where the Hague-Visby Rules or SDR Protocol are not compulsorily applicable, they shall not be given effect. Where the Hague Rules, adaptations thereof or the Hague-Visby Rules and SDR Protocol are not compulsorily applicable, except as to shipments to or from the United States, as provided in Clause 6 i) a), this Bill of Lading shall be governed by the Hague Rules, except that the limitation shall be US\$500 per package or per shipping unit as stated in Clause 7, and without prejudice to the Carrier's right to rely upon the Terms and Conditions of this Bill of Lading, notwithstanding the fact that they may confer wider or more beneficial rights, defences, immunities, exemptions, limitations, exonerations, liberties or benefits upon the Carrier and third-party beneficiaries than those afforded by the aforesaid conventions or legislation.

ii) The applicable conventions or legislation shall apply to the Carriage by inland waterways and reference to Carriage by sea in such conventions or legislation shall be deemed to include inland waterways.

iii) The Carrier, notwithstanding which convention or legislation is applicable, shall be entitled to the benefit of Sections 4281 through 4287 of the Revised Statutes of the United States and amendments thereto, as if the same were expressly set out herein, including but not limited to the Fire Statute.

iv) Prior to loading onto the Vessel and after discharge from the Vessel or if the stage of Carriage during which the loss or damage to Goods occurred cannot be proved, the Carrier's liability shall be governed under the Hague Rules, except that the limitation shall be US\$500 per package or per shipping unit as stated in Clause 7, and for this purpose the Hague Rules shall be extended to the periods before loading and subsequent to discharge and to the entire period of the Carrier's responsibility.

Notwithstanding Clause 6 iv), if the provisions of any contract between Carrier and any contractor or the provisions of any international convention or national law applicable to any such mode of Carriage employed at the time of such loss, damage, misdelivery, conversion or delay would result in liability to the modal carrier, and such liability is less than Carrier's liability determined in Clause 6 iv), then Carrier's liability shall not exceed such lesser amount.

v) It is hereby agreed by the Merchant that the Carrier qualifies and shall be regarded as a Person entitled to limit liability under the relevant Convention on the Limitation of Liability for Maritime Claims or similar legislation; except to the extent that mandatory law of the country applies in the appropriate jurisdiction (in which case such law shall apply), the size of the fund to which the Carrier may limit liability shall be calculated by multiplying the limitation fund of the carrying Vessel

at the relevant time by the number of Twenty Foot Equivalent Units ("TEUs") aboard at that time for which the Carrier is the contracting Carrier and dividing that total by the total number of TEUs aboard at that time.

Nothing herein contained, expressed, implied or incorporated by reference, shall be deemed to waive or operate to deprive the Carrier of or lessen any of its rights, defences, immunities, exemptions, limitations, exonerations, liberties or benefits afforded by applicable legislation or by the Terms and Conditions hereof.

7. PACKAGE LIMITATION

- i) For shipments to and from the United States, neither the Carrier nor the Vessel shall in any event become liable for any loss of or damage to or in connection with the Carriage of Goods in an amount exceeding US\$500 (which is the package or shipping unit limitation under U.S. COGSA) per package or in the case of Goods not shipped in packages per customary freight unit.
- ii) In all other trades the Carrier's maximum liability shall be as provided in clause 7 i) save that the words "£100 lawful money of the United Kingdom" shall substitute the word "US\$500" wherever appearing therein.
- iii) Notwithstanding Clause 7 i) and ii), where the nature and value of Goods have been declared by the Shipper in writing to the Carrier before shipment and inserted in this Bill of Lading and the Shipper has paid additional Freight on such declared values, the Carriers liability if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro-rata on the basis of such declared value.
- iv) Shipping unit in this Clause 7 includes customary freight unit and the term "unit" as used in the Hague Rules and Hague Visby Rules.

This clause applies in addition to and shall not be construed as derogating from any defence or exclusion, restriction or limitation of liability available to the Carrier under the terms of this Bill of Lading or otherwise.

8. NOTICE OF LOSS, TIME BAR

- i) The Carrier shall be deemed prima facie to have delivered the Goods as described in the Bill of Lading unless notice of loss or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this Bill of Lading or, if the loss or damage is not apparent, within three consecutive days thereafter .
- ii) The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods, unless suit is brought in the proper forum and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered . In the event that such time period shall be found to be contrary to any law compulsorily applicable , the period prescribed by such law shall then apply but in that circumstance only.

9. SHIPPER-PACKED CONTAINERS

- i) If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the Goods and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense incurred by the Carrier, if such loss, damage, liability or expense has been caused by:
 - a) the manner in which the Container has been filled, packed, stuffed or loaded; or
 - b) the unsuitability of the Goods for Carriage in Container; or
 - c) the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container reasonably fit for the purpose for which it is intended; or
 - d) the unsuitability or defective condition of the Container supplied by the Shipper.
- ii) The Shipper shall inspect Containers before stuffing them and its use of the Containers shall be prima facie evidence of their being suitable and not in a defective condition.

10. CARRIER'S CONTAINERS

- i) Each Merchant shall assume full responsibility and indemnify the Carrier for any loss of or damage howsoever caused to any Container or other equipment furnished by or on behalf of the Carrier which occurs while such Container or equipment is in the possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.
- ii) The Carrier shall not in any event be liable for and each Merchant shall be severally liable to indemnify and hold the Carrier harmless from and against any loss of or damage to property of other Persons or injuries to other Persons caused by Container(s) furnished by or on behalf of the Carrier or contents thereof while in the use or possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.

11. INSPECTION OF GOODS

- i) The Carrier shall be entitled, but under no obligation, to open any package or Container at any time and to inspect the contents.
- ii) If by order of the authorities at any place, a Container has to be opened for the Goods to be inspected, the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.

12. DESCRIPTION OF GOODS

- i) No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars furnished or made by or on behalf of the Shipper.
- ii) If any particulars of any Letter of Credit and/or Import Licence and/or Sale Contract and/or Invoice or Order number and/or details or any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for its convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.
- iii) The Merchant acknowledges that, except when the provisions of Clause 7 iii) apply, the value of the Goods is unknown to the Carrier.

13. SHIPPER'S/MERCHANT'S RESPONSIBILITY

- i) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are correct.
- ii) The Merchant shall indemnify the Carrier against all loss, damage, liability and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.
- iii) The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing, the full return Freight for the Goods if returned, or if on-carried, the full Freight from the Port of Discharge or the Place of Delivery nominated herein to the amended Port of Discharge or the amended Place of Delivery) incurred or suffered by reason of any failure to so comply or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect of any such failure to comply or by reason of any such marking, numbering or addressing of the Goods.

14. FREIGHT, INCLUDING CHARGES

- i) Freight including charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
- ii) The Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, remeasure or revalue the contents and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either five times the difference between the correct Freight and the Freight charged or to double the correct Freight less the Freight charged, whichever sum is the smaller, and the expenses incurred in determining the correct particulars, shall be payable as liquidated damages to the Carrier.
- iii) Full Freight hereunder shall be due and payable at the place where this Bill of Lading is issued, by the Merchant without deduction on receipt of the Goods or part thereof by the Carrier for shipment. All charges due hereunder together with Freight (if not paid at the Port of Loading as aforesaid) shall be due from and payable on demand by the Merchant (who shall be jointly and severally liable to the Carrier therefore) at such port or place as the Carrier may require, Vessel or cargo lost or not lost from any cause whatsoever.
- iv) All other charges shall be paid to the Carrier before delivery of the Goods in full without offset, counterclaim or deduction, in the currency specified in the Carrier's Applicable Tariff, or, if no currency is so specified, in the lawful currency of the United States.
- v) The Merchant shall remain responsible for all Freight regardless whether the Bill of Lading be marked, in words or symbols, "Prepaid", "To be Prepaid" or "Collect".

15. LIEN

The Carrier shall have a lien on all Goods, Containers and any documents relating thereto for all sums due under this contract or any other contract of undertaking to which the Merchant was party or otherwise involved, which lien shall also extend to general average contributions, salvage and the cost of recovering such sums, inclusive of attorney fees, and shall survive delivery. Such lien may be enforced by the Carrier by public auction or private treaty, without notice to the Merchant.

16. OPTIONAL STOWAGE AND DECK CARGO

- i) By tendering Goods for Carriage without any written request for Carriage in a specialized Container, or for Carriage otherwise than in a Container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose Container or similar article of transport used to consolidate Goods.
- ii) Goods may be stowed by the Carrier in Containers, and Containers whether stowed by the Carrier or received fully stowed, may be carried on or under deck without notice unless on the face hereof it is specifically stipulated that the Containers or Goods will be carried under deck. The Merchant expressly agrees that cargo stowed in Containers and carried on deck is considered for all legal purposes to be cargo stowed under deck. Goods stowed in Containers on deck shall be subject to the legislation referred to in Clause 6 hereof and will contribute to General Average and receive compensation in General Average, as the case may be.

iii) Goods (not being Goods stowed in Containers other than flats, pallets, or similar units) which are stated herein to be carried on deck and which are so carried, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during Carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever.

17. METHODS AND ROUTES OF TRANSPORTATION

- i) The Carrier may at any time and without notice to the Merchant:
 - a) use any means of transport or storage whatsoever;
 - b) transfer the Goods from one conveyance to another;
 - c) tranship the Goods;
 - d) undertake the Carriage of the Goods on a Vessel or Vessels in addition to and/or other than that named on the face hereof;
 - e) unpack and remove Goods which have been packed into Container and forward the same in a Container or otherwise;
 - f) proceed by any route in its discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever once or more often and in any order;
 - g) load or unload the Goods at any place or port (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port;
 - h) comply with any orders or recommendations given by any government or authority, or any Person or body acting or purporting to act as or on behalf of such government or authority, or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions;
 - i) permit the Vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked;
- ii) The liberties set out in Clause 17 i) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other Goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing Persons involved with the operation or maintenance of the Vessel in all situations. Anything done in accordance with Clause 17 i) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.

18. MATTERS AFFECTING PERFORMANCE

- i) If at anytime the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including by the condition of the Goods) whensoever and howsoever arising whether or not prior to the commencement of the Carriage or the making of the contract of Carriage, the Carrier may without notice to the Merchant:
 - a) abandon the Carriage of the Goods or any part of them and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease; or
 - b) suspend Carriage of the Goods or any part of them and store them ashore or afloat upon the terms of the Bill of Lading and use reasonable endeavours to forward the Goods as soon as possible after the cause of the hindrance, risk, delay, difficulty or disadvantage has been removed, but the Carrier makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Port of Discharge or Place of Delivery, whichever is applicable, named in this Bill of Lading.
- ii) In any event the Carrier shall be entitled to full Freight on Goods received for Carriage and the Merchant shall pay any additional cost resulting from the circumstances mentioned in Clause 18 i) .
- iii) If the Carrier elects to suspend the Carriage under Clause 18 i) b) , this shall not prejudice the Carrier's rights subsequently to abandon Carriage under Clause 18 i) a).

19. DANGEROUS, HAZARDOUS OR NOXIOUS GOODS

- i) No Goods which are or may become inflammable, explosive, corrosive, noxious, hazardous, dangerous or damaging (including radio-active materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without its express consent in writing and without the Container or other covering in which the Goods are to be carried as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such written consent and marking, or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous or noxious nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight and the Carrier shall be under no liability to make any general average contribution in respect of such Goods.
- ii) The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risk of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during Carriage and handling.
- iii) Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages, liabilities or expenses arising in consequence of the Carriage of such Goods.

Nothing contained in this Clause shall deprive the Carrier of any of its rights provided for elsewhere in this Bill of Lading.

20. TEMPERATURE CONTROLLED CARGO

- i) Goods will not be provided temperature controlled, insulated or naturally ventilated stowage unless the Carrier has undertaken such special stowage in advance of the Carrier's receipt of the Goods, and in the absence of such agreement, the Merchant warrants that the Goods do not require such protection. The Carrier does not provide mechanically ventilated stowage, and does not furnish or maintain preservative gases in connection with temperature controlled stowage, and the Carrier assumes no responsibility for loss of or damage to Goods arising in whole or in part from any lack of such stowage.
- ii) The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, breakdown or stoppage of the refrigerating machinery, plant, insulation, or of any apparatus of the Container, Vessel, conveyance of other facilities, unless the Carrier shall, before or at the beginning of the carriage, have failed to exercise due diligence to maintain any such equipment (other than Shipper-provided equipment) in an efficient state. If the Goods have been packed into a refrigerated Container, by or on behalf of the Shipper, it is the obligation of the Shipper to stow the contents properly and set the thermostatic controls exactly; and the Carrier shall not be liable for any loss of or damage to the Goods arising out of or resulting from the Shipper's failure in such obligations. If the Carrier has packed the Goods into a refrigerated Container, and a temperature or temperature range has been disclosed to the Carrier by the Shipper or its authorized representative, Carrier will set the thermostatic control accordingly.
- iii) With respect to both Carrier-and Shipper-packed Containers, where Carrier has undertaken, by special agreement, to carry the Goods at a particular temperature or temperature range, the Carrier undertakes only that the refrigeration equipment shall perform within the operating specifications of the equipment and makes no warranty or agreement with respect to the actual temperature of any commodity, fruit, vegetable, meat, fish or any perishable Goods within the Container.

21. DELIVERY

- i) Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder notwithstanding any custom or agreement to the contrary.
- ii) If no Place of Delivery is named on the face hereof, the Carrier shall be at liberty to discharge the Goods at the Port of Discharge, without notice at or onto any wharf, craft or place, on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods discharged as aforesaid shall wholly cease, notwithstanding any charges, dues or other expenses that may be or become payable, unless and to the extent that any applicable compulsory law provides to the contrary (in which case the terms and conditions of this Bill of Lading shall continue during such additional compulsory period of responsibility). The Merchant shall take delivery of the Goods upon discharge.
- iii) If a Place of Delivery is named on the face hereof, the Merchant shall take delivery of the Goods within the time provided for in the Carrier's Applicable Tariff (see Clause 2).
- iv) If the delivery of the Goods is not taken by the Merchant when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled, without notice, to unpack the Goods if packed in Container and/or to store the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-Contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.
- v) If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due under Clause 21 ii) or iii), or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility whatsoever attaching to him and at the sole risk and expense of the Merchant, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
- vi) If, at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods under Clause 21 ii) or iii), the Carrier is obliged to hand over the Goods into the custody of any customs, port or other authority, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.
- vii) Failure by the Merchant to take delivery of the Goods in accordance with the terms of this Clause, notwithstanding his having been notified of the availability of the Goods for delivery, shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
- viii) In the event of the Carrier agreeing, at the request of the Merchant, to any change of destination, the terms of this Bill of Lading shall continue to apply until the Goods are delivered by the Carrier to the Merchant at the amended Port of Discharge or Place of Delivery, whichever is applicable, unless the Carrier specifically agrees in writing to the contrary.
- ix) The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in the Applicable Tariff.
- x) In the event that the consignee/receivers of the cargo require the Carrier to deliver the cargo at a port or place beyond the place of delivery originally designated in this Bill of Lading and the Carrier in its absolute discretion agrees to such further carriage, such further carriage will be undertaken on the basis that the Bill of Lading terms and conditions are to apply to such carriage irrespective of whether this Bill of Lading has been surrendered by the consignees/receivers or not, as if the ultimate destination agreed with the consignees/receivers had been entered on the front of this Bill of Lading as the place of delivery and is thereby considered to be the place of delivery for the purposes of the clauses on the reverse side of this Bill of Lading.

22. TRANSHIPMENT BILLS OF LADING

If the Goods are to be transhipped via a connecting carrier to a destination point beyond the place of delivery stated on the face hereof, Carrier may, on behalf of the Merchant and acting solely as their agent, arrange for such beyond Carriage consistent with instructions received from the Merchant at their risk and expense. In such event, the Carrier

may deliver the Goods to the connecting carrier without surrender of the Carrier's original, properly endorsed Bill of Lading and upon request by the Merchant, shall obtain the connecting carrier's acknowledgment that delivery of the Goods shall be made only upon surrender of the Carrier's original, properly endorsed Bill of Lading.

23. BOTH-TO-BLAME COLLISION

The Both-to-Blame Collision Clause published by the Baltic and International Maritime Council and obtainable from the Carrier or its agents upon request is hereby incorporated into this Bill of Lading.

24. GENERAL AVERAGE & SALVAGE

i) General average shall be adjusted at any port or place at the option of the Carrier and subject to Clause 16 ii) in accordance with the York Antwerp Rules 1994, provided that where an adjustment is made in accordance with the law and practice of the United States of America or of any other country having the same or similar law or practice the following clause shall apply:-

New Jason Clause

- a) in the event of accident, damage, peril or disaster, before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods.
 - b) if a salvaging Vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salvaging Vessel belonged to strangers.
- ii) If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.
- iii) The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.
- iv) In the event of the Master in his sole discretion or in consultation with owners considering that salvage services are needed, the merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration, without any prior consultation with the Merchant.

25. WAR RISKS; GOVERNMENTAL ORDERS

The Carrier shall have liberty to carry Goods declared by any belligerent to be contraband and persons belonging to or intending to join the armed forces or governmental service of any belligerent; to sail armed or unarmed and with or without convoy; and to comply with any orders, requests or directions as to loading, departure, arrival, routes, ports of call, stoppage, discharge, destination, delivery or otherwise, howsoever given by the government of any nation or department thereof or any Person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or Person having, under the terms of the war risk insurance on the Vessel, the right to give such orders, requests or directions. Delivery or other disposition of the Goods in accordance with such orders, requests or directions shall constitute performance of the Carrier's delivery obligations under the terms of this Bill of Lading, and all responsibility of the Carrier, in whatever capacity, shall terminate upon such delivery or other disposition.

26. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have the power to waive or vary any term of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

27. VALIDITY

In the event that anything herein contained is inconsistent with any applicable international conventional or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of each inconsistency but no further be null and void.

28. LAW AND JURISDICTION

i) Governing Law

Insofar as anything has not been dealt with by the terms and conditions of this Bill of Lading, Singapore law shall apply. Singapore law shall in any event apply in interpreting the terms and conditions hereof.

ii) Jurisdiction

All disputes relating to this Bill of Lading shall be determined by the Courts of Singapore to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the Courts of any other country which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such disputes, but shall not constitute a waiver of the terms of this provision in any other instance.

iii) Notwithstanding Clause 28 i) and ii), if Carriage includes Carriage to, from or through a port in the United States of America, the Merchant may refer any claim or dispute to the United States District Court for the Southern District of New York in accordance with the laws of the United States of America.

CONNAISSEMENT CMA CGM.

TERMES ET CONDITIONS (au 26 février 2003).

1. DEFINITIONS

Dans ce Connaissance les termes

- | | |
|-----------------------|--|
| « Connaissance » | désigne ce document de transport qu'il soit appelé Connaissance, lettre de transport maritime ou « Waybill » |
| « Transport » | désigne tout ou partie des opérations et des prestations assurées par le Transporteur relatives aux Marchandises |
| « Transporteur » | désigne la Partie au nom de laquelle le Connaissance est émis |
| « Transport Combiné » | désigne le Transport entrepris lorsqu'un « Lieu de Prise en Charge » et/ou un « Lieu de Livraison » sont indiqués au recto dans les cases correspondantes |
| « Conteneur » | comprend tout Conteneur, remorque, citerne mobile, plate-forme ou palette ou tout matériel similaire utilisé afin de grouper les Marchandises et tout équipement afférent ou rattaché |
| « Fret » | comprend tous les frais à payer au Transporteur conformément au tarif en vigueur à ce Connaissance incluant les frais d'entreposage ou les surestaries |
| « Marchandises » | désigne tout ou partie de la cargaison reçue du Chargeur y compris tout équipement ou Conteneur non fourni par le Transporteur ou pour son compte |
| « Règles de la Haye » | désigne les dispositions de la Convention Internationale de Bruxelles du 25 août 1924 sur l'unification de certaines règles en matière de connaissances, ainsi que les modifications apportées par les Protocoles signés à Bruxelles le 23 février 1968 et le 21 décembre 1979, mais seulement dans la mesure où les dispositions de ce Protocole sont impérativement applicables au transport couvert par ce Connaissance |
| « Porteur du titre » | désigne toute personne en possession de ce Connaissance et ayant droit à la Marchandise en qualité de destinataire ou d'endossataire du Connaissance ou par tout autre moyen |
| « Indemniser » | comprend défendre, indemniser et répondre de toute responsabilité |

- « Marchand » désigne le Chargeur, le Porteur du titre, le Destinataire, le Réceptionnaire des Marchandises, toute Personne propriétaire ou ayant-droit à la Marchandise en qualité de destinataire ou d'endossataire de ce Connaissance et quiconque agissant pour leur compte.
- « A bord » sur le recto de ce Connaissance signifie à bord de tout mode de Transport utilisé ou fourni par le Transporteur en tant que pré-Transport qu'il s'agisse de Transport ferroviaire, routier, maritime et aérien.
- « Personne » désigne tout individu, groupe, société ou autre entité
- « Transport de Port à Port » désigne le Transport objet de ce Connaissance lorsqu'il ne s'agit pas d'un Transport Combiné
- « Sous-Traitant » désigne les armateurs et opérateurs de navires (autres que le Transporteur), manutentionnaires, opérateurs de terminaux, groupeurs, Transporteurs Substitués, Transporteurs routiers et ferroviaires, et tout cocontractant employé par le Transporteur ou pour son compte en vue de la réalisation du Transport
- « Transporteur Substitué » désigne tout Transporteur maritime, ferroviaire, routier, aérien ou autre auquel le Transporteur a recours pour n'importe quelle partie du Transport visé par le Connaissance
- « US COGSA » désigne la loi américaine relative aux Transports de Marchandises par Mer (United States Carriage of Goods by Sea Act) telle que ratifiée en 1936
- « Navire » désigne le mode de transport prévue et désigné au recto du Connaissance comprenant les barges ou autres modes de transport qui pourrait se substitué au navire désigné

2. TARIF DU TRANSPORTEUR

Les termes et conditions du tarif en vigueur sont incorporés au présent Connaissance. L'attention du Marchand est particulièrement attirée sur les dispositions relatives aux surestaries des Conteneurs et véhicules. Des copies des dispositions du tarif en vigueur peuvent être obtenues du Transporteur ou de ses agents sur simple demande. En cas de divergence entre le Connaissance et le tarif applicable, le Connaissance prévaudra.

3. ACCEPTATION DES CLAUSES DU CONNAISSEMENT MARITIME

Le Connaissance sera adressé ou délivré au Marchand aux seuls risques, dépenses ou responsabilités de ce dernier. La date d'envoi de ce Connaissance sera considérée comme étant la date de remise de celui-ci au Marchand.

A la remise de ce Connaissance, le Marchand accepte d'être tenu par toutes les mentions et conditions mentionnées sur le recto et sur le verso de ce document qui régissent l'ensemble des relations, quelles qu'elles soient, entre le Marchand et le Transporteur, ses agents, cocontractants, employés, Capitaines et navires, en quelque circonstance que ce soit, quels que soient les engagements antérieurs à celui-ci, et ce que le Transporteur agisse es-qualité ou en tant que tiers.

4. GARANTIE

Le Marchand garantit qu'en acceptant les clauses et conditions ci-incluses, il est propriétaire ou ayant-droit des Marchandises et de ce Connaissance, ou qu'il a qualité pour agir pour le compte de ces derniers

5. TRANSPORTEUR NON-OPERATEUR DE NAVIRE (NVOCC)

Si ce Connaissance est accepté par un Marchand, agissant en tant que Transporteur non-opérateur de navire (NVOCC), et ayant émis à son tour d'autres contrats de Transport à des tiers, ledit NVOCC garantit que tous les contrats de Transport qu'il a émis incorporeront les termes et conditions de ce Connaissance. Ledit NVOCC accepte en outre d'indemniser le Transporteur, ses préposés, agents et Sous-Traitants, de toutes conséquences résultant de l'absence d'incorporation de ces termes et conditions.

6. RESPONSABILITE DU TRANSPORTEUR ET CLAUSE PARAMOUNT

(1) Transport de Port à Port - Lorsque la perte ou le dommage survient entre le chargement des Marchandises par le Transporteur ou par tout Transporteur Substitué au port de chargement, et le déchargement par le Transporteur ou par tout Transporteur Substitué au port de déchargement, la responsabilité du Transporteur sera déterminée conformément aux Règles de La Haye ou à toute loi nationale rendant les Règles de La Haye impérativement applicables à ce Connaissance. Le Transporteur ne sera en aucun cas responsable des pertes ou dommages aux Marchandises, quelle qu'en soit la cause, si ces pertes ou dommages sont intervenus avant le chargement ou après le déchargement du navire. Nonobstant ce qui précède, et dans le cas où une loi impérative stipulerait le contraire, le Transporteur bénéficiera de tous les droits, exonérations, limitations et immunités des Règles de la Haye, pendant cette période d'extension de responsabilité et ce, même si la perte ou les dommages ne sont pas intervenus en mer. Dans le cas où ce Connaissance couvrirait des Transports vers ou à partir des Etats-Unis, le US COGSA sera obligatoirement applicable. Les dispositions prévues par le US COGSA s'appliqueront également (sauf stipulations expresses contraires) aux périodes antérieures au chargement des Marchandises à bord du navire et postérieures à leur déchargement du navire, à la condition toutefois que pendant ces périodes lesdites Marchandises aient été sous la garde effective du Transporteur ou de tout autre Sous-Traitant.

(2) Transport Combiné

- (a) En cas de Transport ferroviaire ou routier réalisé dans un Etat autre que les Etats-Unis, la responsabilité du Transporteur sera déterminée en accord avec la loi de cet Etat et/ou avec toute convention internationale rendue impérativement applicable par les lois de cet Etat. En l'absence de telles lois ou conventions, les dispositions de la Clause 6 (2) (f) seront applicables.
- (b) En cas de Transport routier entre des pays européens, la responsabilité du Transporteur sera déterminée conformément à la Convention de Genève relative au contrat de transport international de marchandises par routes (CMR) du 19 mai 1956 ; et en cas de Transport ferroviaire entre des pays européens, la responsabilité du Transporteur sera déterminée conformément à la Convention de Berne relative aux transports ferroviaires internationaux (CIM) du 25 février 1961 (ou à tout amendement à ces Conventions).
- (c) En cas de Transport Combiné à partir de, vers, ou à l'intérieur des Etats-Unis, et sous réserve que les Marchandises soient sous la garde du Transporteur ou de tout Transporteur Substitué, ce Transport Combiné sera régi par les dispositions de la Clause 6 (1).
- (d) Dans l'hypothèse où la Clause 6 (1) ne serait pas applicable à un tel Transport Combiné en provenance, vers, ou à l'intérieur des Etats-Unis, la responsabilité du Transporteur sera régie par, et sera soumise aux termes et conditions du Connaissance émis par le Transporteur Substitué et/ou lorsqu'ils seront applicables, aux termes et conditions du ICC Uniform Bill of Lading ainsi qu'au tarif du Transporteur Substitué qui sera incorporé au présent Connaissance dans son intégralité. Nonobstant ce qui précède, dans le cas où un contrat particulier de Transport aurait été conclu entre le Transporteur et tout Transporteur Substitué, ce Transport Combiné sera régi par les termes et conditions de ce contrat qui sera incorporé intégralement au présent Connaissance ; des copies de ce(s) contrat(s) seront mises, sur simple demande, à la disposition du Marchand dans n'importe quelle agence du Transporteur.
- (e) Exception faite des dispositions prévues aux Clauses 6 (2) (c) et (d) ci-dessus, et conformément à la Clause (6) (1), les Règles de La Haye seront applicables aux Transports Combinés réalisés à l'extérieur des Etats-Unis, où le COGSA n'est pas impérativement applicable.
- (f) Le Transporteur sera néanmoins exonéré de toute responsabilité pour pertes ou dommages survenus pendant le Transport, si ces pertes ou dommages résultent de toute cause ou événement inévitable et dont le Transporteur ne pouvait empêcher les conséquences par l'exercice d'une diligence raisonnable. Dans le cas contraire, la responsabilité maximale du Transporteur au titre de cette Clause 6 (2) (f) sera de un Euro par Kg de Marchandise perdue ou endommagée.

(3) Mandat

Chaque fois que le Transporteur acceptera d'accomplir à la demande du Marchand tout acte ou opération non initialement prévus et/ou mentionnés au présent Connaissance, il n'agira qu'en qualité d'agent du Marchand et il ne pourra être tenu pour responsable de tout dommage, perte ou avarie à la Marchandise survenus au cours des actes ou opérations ainsi réalisées ou de tout autre préjudice de quelque nature qu'il soit.

(4) Subrogation

En cas de paiement de toute réclamation par le Transporteur au Marchand, le Transporteur sera subrogé de plein droit dans tous les droits du Marchand à l'encontre de tous les Tiers, y compris les Transporteurs Substitués ou tout autre sous-contractant, au titre de la perte ou du dommage.

7. NOTIFICATION DE RECLAMATION ET DELAI D'ACTION

A défaut de réserves précises et motivées décrivant en détail la nature des pertes ou dommages aux Marchandises notifiées par écrit au Transporteur au port de déchargement ou au lieu de livraison avant ou au moment de la livraison des Marchandises, ou dans les trois jours ouvrables suivants la livraison en cas de pertes ou dommages non apparents, les Marchandises seront présumées avoir été livrées telles qu'elles sont décrites au Connaissance. En tous cas, le Transporteur et ses Sous-Traitants seront déchargés de toute responsabilité pour non-livraison, mauvaise livraison, retard, pertes ou dommages, à moins qu'une action judiciaire ne soit intentée dans l'année de la livraison des Marchandises, ou de la date à laquelle ces Marchandises auraient dû être livrées.

8. CLAUSES DE RESPONSABILITE

(1) Base de l'indemnisation

Sans préjudice à toute autre limitation de responsabilité applicable en vertu de l'article 6 ci-dessus, l'assiette de la compensation sera limitée à la valeur des Marchandises à l'Etat sain (à l'exclusion des taxes ou primes d'assurances) ainsi que du fret calculé au pro rata du Transport effectué, si celui-ci a été payé. En aucune circonstance le Transporteur sera tenu d'indemniser les préjudices indirectes quels que soient leur nature ou subi par ricochet ainsi que pour les pertes de profit.

(2) Ad Valorem

Le Marchand reconnaît et accepte que le Transporteur n'a aucune connaissance de la valeur des Marchandises, et qu'aucune indemnisation supérieure à celle prévue par ce Connaissance ne peut être réclamée sauf si la valeur de la Marchandise déclarée par le Chargeur avant le début du Transport, avec l'accord du Transporteur, a été mentionnée sur ce Connaissance et le Fret supplémentaire payé. Dans ce cas, le montant de la valeur déclarée se substituera aux limites prévues par ce Connaissance et toutes pertes ou tous dommages partiels seront réglés au prorata de cette valeur déclarée. En tout état de cause, l'indemnisation ne pourra excéder la valeur commerciale effective de la Marchandise telle que définie à l'article 8 (1) du Connaissance.

(3) Retard

Le Transporteur ne s'engage en aucune manière à ce que les Marchandises arrivent au port de déchargement ou au lieu de livraison à une date déterminée ou pour tout marché ou usage particulier et en aucun cas ne sera responsable des pertes ou dommages directs ou indirects ou des conséquences dommageables résultant d'un retard. Si cette exonération de responsabilité est contraire à une loi impérativement applicable, la responsabilité du Transporteur sera limitée à deux fois la valeur du Fret ou encore lorsque la phase au cours de laquelle le retard est intervenu est connue, à deux fois la valeur du Fret y afférent.

Si malgré les termes du présent Connaissance le Transporteur est déclaré responsable et est tenu d'indemniser le préjudice subi en cas de retard, le Marchand accepte de façon irrévocable que la responsabilité du Transporteur soit limitée au montant du fret, à l'exclusion des charges locales encourues et/ou des surestaries.

9. MOYENS DE TRANSPORTS ET ITINERAIRES

- (1) Le Transporteur pourra à tout moment, et sans en aviser préalablement le Marchand,
 - (a) utiliser tous moyens de transport quels qu'ils soient,
 - (b) transférer les Marchandises d'un moyen de Transport à un autre, y compris les transborder ou les transporter sur un autre navire que celui désigné au verso,
 - (c) dépoter les Marchandises mises dans un Conteneur et les réexpédier dans un autre Conteneur ou par tout autre moyen,
 - (d) suivre tout itinéraire de son choix (qu'il s'agisse ou non de l'itinéraire le plus court, le plus direct, de l'itinéraire habituel ou de l'itinéraire annoncé) et ceci à quelque vitesse que ce soit, rallier tout lieu ou port quelconque et y faire relâche une ou plusieurs fois et dans n'importe quel ordre,
 - (e) charger ou décharger les Marchandises en tout lieu ou port (que ce port soit ou non mentionné au recto comme port de chargement ou de déchargement) et les entreposer dans ce lieu ou port,
 - (f) se conformer à tous ordres ou recommandations donnés par toute autorité gouvernementale ou publique ou toute Personne agissant pour leur compte ou habilitée à donner de tels ordres ou recommandations aux termes de la police d'assurance couvrant le moyen de transport utilisé,
 - (g) permettre au navire de naviguer avec ou sans pilotes, de remorquer ou d'être remorqué ou de passer en cale sèche.
- (2) Les facultés offertes au Transporteur dans la Clause 9 (1) peuvent être invoquées par ce dernier en toutes circonstances, relatives ou non au Transport des Marchandises, et comprenant le chargement ou le déchargement d'autres Marchandises, le soutage, les réparations au navire, le réglage d'instruments, l'embarquement ou le débarquement de toutes Personnes, participant ou non à l'exploitation ou à l'entretien du navire, et l'assistance du navire en toute situation. Toute action entreprise dans le cadre de la Clause 9 (1) ainsi que tout retard pouvant en résulter, ne seront pas considérés comme constituant une inexécution contractuelle.
- (3) Si le Marchand, lors de la remise des Marchandises au Transporteur, ne requiert pas par écrit un Transport en Conteneur spécialisé ou un Transport autre qu'en Conteneur, il accepte que les Marchandises soient transportées dans un Conteneur d'usage général.

10. EVENEMENTS AFFECTANT LE TRANSPORT

Si, à tout moment, le Transport est, ou est susceptible d'être affecté par tout obstacle, péril, retard, difficulté ou empêchement de toute sorte (autre que l'incapacité des Marchandises à être transportées convenablement et en toute sécurité) et qu'elle qu'en soit la cause (même si ces obstacle, péril, retard, difficulté, ou empêchement existaient déjà lors de la conclusion de

ce contrat ou au moment de la prise en charge par le Transporteur) le Transporteur, que le Transport soit commencé ou non, pourra sans préavis au Marchand et à son gré, soit :

- (a) transporter les Marchandises jusqu'au port de déchargement prévu ou au lieu de livraison, selon le cas, par un itinéraire autre que celui indiqué sur le Connaissance ou que celui habituellement utilisé. Dans cette hypothèse, le Transporteur aura droit au paiement du Fret supplémentaire, incluant les primes pour risque de guerre, tel qu'il l'aura déterminé, ou
- (b) suspendre le Transport des Marchandises et les entreposer à terre ou à flot conformément aux clauses et conditions de ce Connaissance et mettre en œuvre les moyens raisonnables pour les réexpédier dès que possible, mais le Transporteur ne prend aucun engagement quant à la durée de la suspension et au délai de réexpédition. Dans cette hypothèse, le Transporteur aura droit au paiement du Fret supplémentaire tel qu'il l'aura déterminé, ou
- (c) abandonner le Transport des Marchandises et les mettre à la disposition du Marchand en tout lieu ou port que le Transporteur considérera sûr et approprié. La responsabilité du Transporteur à l'égard de ces Marchandises cessera lors de cette mise à disposition. Le Transporteur aura néanmoins droit à l'intégralité du Fret afférent aux Marchandises reçues pour Transport, et le Marchand payeront toutes dépenses supplémentaires de Transport vers le lieu de mise à disposition ainsi que les frais supplémentaires de livraison et d'entreposage en ce lieu.

Si le Transporteur décide d'utiliser un autre itinéraire en vertu de la Clause 10 (a) ou de suspendre le Transport en vertu de la Clause 10 (b), cette décision ne portera pas préjudice à son droit d'abandonner par la suite le Transport en vertu de la Clause 10 (c).

11. AVIS D'ARRIVEE ET DE LIVRAISON

- (1) Toute mention du connaissance concernant les Personnes devant être avisées de l'arrivée des Marchandises ne figure que pour la seule information du Transporteur, et le défaut d'une telle notification n'engagera pas la responsabilité du Transporteur et ne relèvera pas le Marchand des obligations définies ci-dessous.
- (2) Le Marchand prendra livraison des Marchandises dans le délai prévu selon le tarif applicable du Transporteur (voir Clause 2). Si le Marchand fait défaut, le Transporteur pourra, sans avis préalable, déposer les Marchandises mises en Conteneurs et/ou les entreposer à terre, à flot, sur terre-plein, ou sous hangar, aux seuls risques du Marchand. Un tel entreposage constituera la livraison conforme des Marchandises et à partir de ce moment, la responsabilité du Transporteur quant aux Marchandises cessera totalement. Tous les frais en résultant (s'ils sont payés ou doivent l'être par le Transporteur ou son agent ou Sous-Traitant) devront être réglés à première demande par le Marchand au Transporteur.
- (3) Le Marchand sera entièrement responsable des coûts, dépenses ou indemnités, résultant de son action ou omission pouvant empêcher ou met en péril de façon directe ou indirecte le déchargement ou la Livraison de la Marchandise.

- (4) Si le Marchand ne prend pas livraison des Marchandises dans les dix jours à compter du moment où la livraison aurait dû être effectuée, conformément à la Clause 11 (2), ou si de l'avis du Transporteur, elles sont susceptibles de se détériorer, de s'avaries, de perdre leur valeur ou d'occasionner des frais d'entreposage ou d'autres frais supérieurs à leur valeur, le Transporteur pourra, sans préjudice des autres droits qu'il pourrait détenir contre le Marchand, sans avis préalable et sans encourir aucune responsabilité de ce fait, vendre, détruire ou disposer des Marchandises et imputer tout produit de la vente sur les sommes qui lui sont dues par le Marchand en vertu de ce Connaissance.
- (5) Le refus par le Marchand de prendre livraison conformément aux termes de cette Clause et/ou de minimiser toutes pertes ou dommages constituera une renonciation de sa part à toute réclamation, quelle qu'elle soit, au titre de ces Marchandises ou de leur Transport.
- (6) Dans l'hypothèse où le Transporteur accepterait à la demande du Marchand, de modifier le lieu de livraison au Connaissance, les termes et les conditions de ce Connaissance continueraient de s'appliquer uniquement dans les limites prévues par le tarif applicable, jusqu'à ce que les Marchandises soient livrées par le Transporteur au Marchand au lieu de livraison modifié. Si le tarif applicable ne prévoit pas explicitement l'application des termes et conditions du Connaissance, le Transporteur agira alors en tant qu'agent du Marchand en organisant la livraison des Marchandises au lieu de livraison modifié mais ne sera alors tenu d'aucune responsabilité pour toutes pertes, dommages ou retard, qui affecteront les Marchandises.

12. FRET

- (1) Le Fret est dû en totalité à compter de la réservation du Transport de la Marchandise auprès du Transporteur ou de son Agent ou de tout autre représentant et est acquis à tout événement. En cas d'annulation du Transport par le Marchand, ce dernier sera redevable envers le Transporteur, son agent, ayant droit ou cessionnaire, d'une indemnité égale au montant du fret incluant les charges, coût et dépenses subies par le Transporteur en raison de cette annulation.
- (2) L'attention du Marchand est attirée sur les dispositions du tarif en vigueur concernant la monnaie de paiement du Fret, le taux de change, la dévaluation et tous autres éléments relatifs au Fret.
- (3) Le Fret est calculé sur la base des éléments fournis par ou pour le compte du Chargeur. Si les éléments fournis par ou pour le compte du Chargeur sont incorrects, une indemnisation contractuelle sera versée au Transporteur à titre de dommages-intérêts forfaitaires, conformément au tarif en vigueur.
- (4) Le Marchand sera responsable de l'entier paiement du Fret au Transporteur, son Agent, représentant ayant droit ou cessionnaire, dû en relation avec le Transport soumis à ce Connaissance, à la date stipulée au présent contrat ou telle qu'il a pu en être accepté autrement sans déduction d'aucune sorte nonobstant toute demande reconventionnelle, ou sursis à exécution, avant la livraison des Marchandises. Par ailleurs, le Marchand accepte de renoncer à toute possibilité ou droit à compenser le montant du Fret avec

tout autre montant dû ou qui pourrait être dû sur le fondement d'une action contractuelle ou délictuelle, dont il dispose ou pourrait disposer envers le Transporteur, ses sous contractants, agents, officiers, employés ou cessionnaire, que cette réclamation porte ou non sur le Transport soumis à ce Connaissance et sans préjudice de son droit à introduire en justice une réclamation.

- (5) Toute Personne chargée par le Marchand d'organiser l'expédition des Marchandises sera considérée comme l'agent exclusif du Marchand et aucun paiement de Fret à cette Personne ne pourra être considéré comme un paiement au Transporteur. De la même façon, tout défaut de paiement d'une partie du Fret au Transporteur par cette Personne sera considéré comme un défaut de paiement du Marchand.
- (6) Un intérêt de 2% sur la base du taux Libor sera dû pour tout Fret, surprime et charges demeurés impayés, une fois l'échéance de paiement dépassée. Le Marchand sera redevable envers le Transport de tous les coûts et dépenses incluant les dépenses raisonnables d'avocat ou de procédure engagées afin de recouvrer le montant du Fret impayé.

13. PRIVILEGE

Le Transporteur, ses préposés ou agents ont un privilège sur les Marchandises (ainsi que sur toute documentation s'y rapportant) ainsi que le droit de vendre la Marchandise soit par vente privée soit par vente aux enchères publiques pour tous Frets (y compris les Frets additionnels dus en vertu de la Clause 12), surprimes, faux Frets, coûts de pré Transport ou de Transport terrestre, surestaries, surestaries sur le Conteneur, frais de stationnement, frais de détention, contribution de sauvetage et avarie commune et tous autres frais et charges de quelque nature qu'ils soient en relation avec les Marchandises ou le Marchand, et pour tous les frais et dépenses engagés suite à l'exercice du privilège et de la vente, ainsi que pour toute dette de quelque nature qu'elle soit, due par le Marchand au Transporteur.

Sans préjudice de ce qui précède, le Transporteur sera en droit d'exercer son privilège sur la cargaison du Marchand, pour n'importe lequel des événements ci-dessus mentionnés, et ce même s'ils concernent le post Transport, le pré Transport, et/ou le Transport terrestre quel qu'il soit et/ou tout moyen visant à mettre en œuvre un tel Transport et tout entreposage. Le Transporteur dispose également d'un privilège sur la Marchandise transportée au titre du présent connaissance, en paiement de toutes les sommes (incluant le Fret) dues au titre d'autres transports effectués par le Transporteur.

Si durant une période raisonnable aucune demande n'est présentée aux fins de restitution de la Marchandise, ou si à l'appréciation unique de Transporteur cette Marchandise va se détériorer ou de perdre sa valeur, alors le Transporteur a la possibilité de faire vendre cette Marchandise aux enchères, vendre ou abandonner la Marchandise ou en disposer autrement, et ce aux seuls risques de coûts du Marchand. Rien dans cet article ne saurait interdire au Transporteur de recouvrer du Marchand, la différence entre le montant dû par lui au Transporteur, et le montant obtenu par l'exercice des droits donnés au Transporteur en vertu de la présente Clause.

14. AVARIE COMMUNE ET SAUVETAGE

- (1) En cas d'accident, danger, dommage, ou désastre, survenus avant ou après le début du voyage et résultant d'une cause quelconque, y compris la négligence, le Marchand contribuera avec le Transporteur au règlement de tous les sacrifices, pertes ou dépenses d'avarie commune et paiera le sauvetage et les frais spéciaux engagés au regard des Marchandises. Tous les frais liés à une avarie commune ou à un acte de sauvetage, engagés pour éviter des dommages à l'environnement, seront réputés être des frais d'avarie commune.
- (2) Toute avarie commune sur un navire opéré par le Transporteur sera réglée conformément aux Règles d'York et d'Anvers, de 1974 ou de tout amendement ultérieur, et payé à Marseille en toute monnaie au choix du Transporteur. Toute avarie commune sur un navire non opéré par le Transporteur (que ce soit un navire de mer ou un bateau de navigation intérieure) sera réglée conformément aux termes requis par l'opérateur de ce navire. Dans un cas comme dans l'autre, le Marchand remettra préalablement à la livraison si le Transporteur le demande, une contribution provisoire en espèces ou toute autre garantie que le Transporteur considérera comme suffisante pour couvrir la contribution estimée des Marchandises à l'avarie commune avant la livraison si le Transporteur le demande ou, si le Transporteur ne le demande pas, dans les trois mois suivant la livraison des Marchandises, que le Marchand ait été ou non avisé du privilège du Transporteur lors de la livraison. Le Transporteur ne sera pas tenu d'exercer son privilège pour les contributions d'avarie commune dues au Marchand.
- (3) La conversion en monnaie d'ajustement sera calculée au taux qui prévaudra à la date de paiement pour les débours et à la date d'achèvement du déchargement du navire pour les allocations, valeurs de participation, etc...
- (4) Si un navire assistant est la propriété ou est exploité par le Transporteur, l'assistance sera rémunérée de la même manière que si le ou les navires assistants avaient appartenu à des tiers.
- (5) Dans les cas où le Capitaine considérerait que des services d'assistance sont nécessaires, le Marchand accepte que le Capitaine agisse en tant que son agent pour fournir ces services aux Marchandises, et que le Transporteur agisse en tant que son agent pour régler l'indemnité d'assistance.
- (6) Si le Marchand s'oppose ou conteste le paiement de la contribution relative à l'Avarie Commune, à l'assistance ou au sauvetage, aux charges d'assistance ou de sauvetage et/ou charges spéciales relatives aux Marchandises ou si sont règlement à la contribution fait défaut durant une période de trois mois à compter du rapport de règlement d'avarie commune, le Marchand sera redevable d'un intérêt moratoire, à compter de la fin de cette période de trois mois et équivalent à 2% par an au dessus du taux d'intérêt légal du lieu ou cet ajustement est déclaré.

15. BOTH-TO-BLAME COLLISION

Si le Navire entre en collision avec un autre navire en raison de la négligence de cet autre navire et de tout acte, négligence, défaut du Commandant, membre d'équipage, pilote ou employé du Transporteur dans la navigation ou la gestion du Navire, le Marchant compensera le Transporteur contre toute perte ou responsabilité à l'égard de l'autre navire ou de son armateur dans la mesure où cette perte ou responsabilité se rapporte à une réclamation du Marchant payé ou payable par l'autre navire ou son armateur au Marchant et compensée, recouverte par l'autre navire ou son armateur par le biais de la réclamation de ce dernier à l'égard du Navire ou du Transporteur. Cet article s'appliquera également quelque soit le type de transport ou objet flottant avec lequel le Navire entre en collision et à l'égard de toute personne en charge de cet objet flottant.

16. CONNAISSEMENT DE GROUPE

- (1) Les Marchandises ne seront livrées, au Marchand, pour tout Conteneur de groupage, que si tous les Connaissements relatifs aux Marchandises placées dans le Conteneur ont été remis au Transporteur, l'autorisant à livrer à un seul Marchand et en un seul lieu de livraison. Si tel n'est pas le cas, le Transporteur pourra dépoter le Conteneur et, s'agissant des Marchandises pour lesquelles les Connaissements auront été remis, les livrer au Marchand sur une base LCL. Cette opération constituera la livraison conforme, mais ne sera effectuée que contre paiement par le Marchand de tous les frais afférents aux Marchandises LCL (tels que définis dans le tarif), ainsi que les frais effectivement engagés, pour toutes prestations supplémentaires rendues.
- (2) Si ce Connaissance concerne un Conteneur de groupage, ce qui résulte d'une mention spéciale apposée au recto, les Marchandises décrites au recto correspondent à une partie des Marchandises regroupées dans ledit Conteneur. S'il est demandé au Transporteur de livrer les Marchandises à plus d'un Marchand et si tout ou partie des Marchandises du Conteneur consiste en Marchandises en vrac ou en Marchandises indéterminées, ou susceptibles d'être mélangées, non marquées, non identifiables, les porteurs des Connaissements devront en prendre livraison (y compris de toute partie avariée) et supporter tout manquant dans les proportions que le Transporteur déterminera à sa seule discrétion ; une telle livraison constituera une livraison conforme.

17. DESCRIPTION DE LA MARCHANDISE ET NOTIFICATION

Le Transporteur, ses agents et employés ne seront en aucun cas tenus responsables d'une insuffisance d'emballage, d'inexactitudes, oblitération ou absence de marques, numéros, adresses ou description, ni de la livraison défectueuse causée par des marques ou contremarques ou des numéros, ni encore du défaut de notification au réceptionnaire de l'arrivée des Marchandises, en dépit d'usages portuaires contraires.

18. MISE EN CONTENEUR PAR LE TRANSPORTEUR ET CHARGEMENT EN PONTEE

- (1) Le Transporteur a la faculté de mettre les Marchandises en Conteneurs et de les empoter avec d'autres Marchandises conteneurisées.
- (2) Les Marchandises mises en Conteneurs ou non, peuvent être transportées en pontée ou en cale, sans préavis au Marchand. En l'absence de la mention «en cale» sur le recto du connaissement ou par ailleurs, la Marchandise sera considérée comme transportée en pontée. Toutes ces Marchandises, qu'elles soient transportées en cale ou en pontée, contribueront à l'avarie commune et seront considérées comme des Marchandises au sens des Règles de La Haye ou du US COGSA et seront transportées conformément à ces Règles.
- (3) Dans le cas où les Marchandises mentionnées au recto comme étant transportées en pontée le sont effectivement, les Règles de La Haye ne s'appliqueront pas et le Transporteur ne sera tenu d'aucune responsabilité pour toutes pertes, dommages ou retard, qu'elle qu'en soit la cause. Nonobstant les termes ci-dessus, si la responsabilité du Transporteur est mise en cause, celle-ci sera limitée aux règles de responsabilité applicable selon les termes du présent Connaissance.

19. ANIMAUX VIVANTS

Les Règles de La Haye ne s'appliquent pas au Transport d'animaux vivants qui sont transportés aux seuls risques du Marchand. Le Transporteur ne sera tenu d'aucune responsabilité pour toute blessure, maladie, mort, retard ou destruction qu'elle qu'en soit la cause. Si le Capitaine considère qu'un animal est susceptible de causer des dommages à toute Personne, à tout autre animal, à tout bien à bord, de retarder le navire ou d'empêcher la poursuite du voyage, cet animal pourra être abattu et jeté par dessus bord sans responsabilité du Transporteur. Le Marchand indemniserà le Transporteur de toutes dépenses supplémentaires, qu'elle qu'en soit la cause, encourues lors du Transport de tout animal vivant.

20. MARCHANDISES DANGEREUSES

- (1) Aucune Marchandise dangereuse, inflammable ou dommageable ou pouvant le devenir (y compris les matières radioactives), susceptible d'endommager quelque bien que ce soit, ne pourra être remise au Transporteur sans son consentement écrit, et sans que les Conteneurs ou les emballages contenant ces Marchandises ainsi que les Marchandises elles-mêmes aient été distinctement marqués extérieurement, de façon à indiquer leur nature et leur caractère dangereux et se conformer ainsi à toute loi, réglementation ou instruction applicables. Si ces Marchandises sont remises au Transporteur sans son consentement écrit et/ou sans marquage, ou si, dans l'opinion du Transporteur elles sont ou peuvent devenir dangereuses, inflammables ou dommageables, elles peuvent à tout moment être détruites, vendues, abandonnées ou rendues inoffensives, sans indemnité pour le Marchand et sans préjudice des droits du Transporteur au paiement du Fret.
- (2) Le Marchand garantit que les Marchandises sont correctement emballées de manière à supporter les risques du Transport, eu égard à leur nature et conformément aux lois ou règlements applicables au Transport.

- (3) Qu'il ait connaissance ou non de la nature des Marchandises, le Marchand devra indemniser le Transporteur de toutes réclamations, pertes, dommages ou dépenses résultant du Transport de ces Marchandises.
- (4) Aucune disposition de cette Clause n'aura pour effet de priver le Transporteur de tous droits prévus par ailleurs.

21. MARCHANDISES PERISSABLES

- (1) Les Marchandises périssables doivent être transportées dans des Conteneurs ordinaires sans protection, précaution ou toute autre mesure particulière à moins qu'il soit inscrit au verso de ce Connaissance que les Marchandises seront transportées dans un Conteneur réfrigéré, chauffant, électriquement ventilé ou tout autre Conteneur équipé spécialement, ou doivent recevoir une attention particulière. Le Marchand s'engage à ne pas remettre au Transporteur des Marchandises empotées dans des Conteneurs par lui-même ou pour son compte sans avoir avisé préalablement et par écrit le Transporteur de la nature de ces Marchandises et de la température à laquelle le point de consigne du Conteneur doit être réglé. Il s'engage à ce que les Marchandises soient correctement empotées dans le Conteneur et que le point de consigne du Conteneur soit réglé correctement avant la réception des Marchandises par le Transporteur et, si nécessaire, que la cargaison soit pré refroidie avant le chargement dans le Conteneur. L'attention du Marchand est attirée sur le fait que les Conteneurs réfrigérés ne sont pas faits pour refroidir la cargaison qui n'a pas été comme indiqué ci-dessus empotée à la température adéquate et le Transporteur ne sera pas responsable des conséquences d'une Marchandise arrivée à une température plus élevée que celle requise pour le Transport. Si les recommandations ci-dessus ne sont pas observées le Transporteur ne sera pas responsable de toutes pertes ou dommages aux Marchandises.
- (2) Le terme « bon état et conditionnement apparents » lorsqu'il est utilisé dans ce Connaissance par référence aux Marchandises qui nécessitent un refroidissement ne signifie pas que le Transporteur lorsqu'il a reçu les Marchandises a vérifié qu'elles étaient à la bonne température.
- (3) Le Transporteur ne sera en aucun cas responsable des dommages provoqués par la condensation.

22. INSPECTION PAR LES AUTORITES

Si, sur ordre des autorités locales, un Conteneur doit être ouvert pour inspection des Marchandises, le Transporteur ne sera pas responsable des pertes ou dommages survenus du fait de l'ouverture, du dépotage, de l'inspection ou de l'empotage. Le Transporteur pourra recouvrer le coût de ces opérations auprès du Marchand.

23. CONTENEURS EMPOTES PAR LE CHARGEUR

Si un Conteneur n'a pas été empoté par ou pour le compte du Transporteur :

- (1) Le Transporteur ne sera pas responsable des pertes ou dommages aux Marchandises causés par :
- (a) la manière dont le Conteneur a été empoté ou
 - (b) l'inadaptation des Marchandises au Transport dans le Conteneur fourni, ou
 - (c) l'inadaptation ou l'état défectueux du Conteneur ou le mauvais réglage de tout système de réfrigération, sous réserve que, si le Conteneur a été fourni par ou pour le compte du Transporteur, cette inadaptation ou cet état défectueux pouvait être décelé par une inspection du Marchand avant ou pendant l'empotage du Conteneur, ou
 - (d) l'empotage de Marchandises réfrigérées qui ne sont pas à la température voulue pour le Transport ou la mauvaise indexation de la température par le Chargeur.
- (2) Le Chargeur est responsable de l'empotage et de l'apposition de scellés sur tout Conteneur empoté par ses soins et, lorsqu'un Conteneur empoté par le Chargeur est livré par le Transporteur avec les scellés apposés par le Chargeur intacts, le Transporteur ne sera responsable d'aucun manquant de Marchandises constatés à la livraison.
- (3) Le Marchand indemniserà le Transporteur de toutes pertes, dommages, préjudices ou dépenses qu'elle qu'en soit l'origine résultant d'un ou plusieurs des cas visés à la Clause 23 (1), ceci étant, si les pertes, dommages, préjudices ou dépenses résultent du cas visé à la Clause 23 (1) (c), le Marchand ne sera pas tenu d'indemniser le Transporteur sauf s'il pouvait déceler l'inadaptation ou l'état défectueux du Conteneur.

24. ETAT DES MARCHANDISES AFFECTANT LE TRANSPORT

S'il apparaît à tout moment que, en raison de leur état, les Marchandises ne peuvent être transportées convenablement en toute sécurité ou qu'elles ne pourront poursuivre le voyage sans que des dépenses supplémentaires soient engagées ou sans que des mesures particulières soient prises, le Transporteur peut sans préavis (et en tant qu'agent uniquement) prendre toute mesure et/ou engager toute dépense supplémentaire pour transporter ou poursuivre le Transport concerné, et/ou abandonner le Transport et/ou vendre ou aliéner les Marchandises et/ou les entreposer à terre ou à bord, sous abri ou non en tout lieu, selon ce que le Transporteur jugera le plus opportun. Ces abandons, ventes ou aliénations seront réputés constituer une livraison régulière aux termes de ce Connaissance. Le Marchand indemniserà le Transporteur de toute dépense supplémentaire ainsi encourue.

25. DESCRIPTION DES MARCHANDISES

- (1) Ce Connaissance constitue la preuve de la prise en charge par le Transporteur du nombre total de Conteneurs, ou tous autres colis ou unités de charge mentionnés dans la case du recto intitulé « Nbre total de Conteneurs ou de Colis reçu par le Transporteur » en bonne condition et en bon état apparents sauf indication contraire.
- (2) A l'exception de ce qui est stipulé à la Clause 25 (1), le Transporteur déclare n'avoir aucune connaissance du poids, du contenu, des mesures, de la quantité, de la qualité, de la description, de l'état, des marques, du nombre ou de la valeur des Marchandises et le Transporteur ne sera tenu d'aucune responsabilité pour ces descriptions ou mentions.

- (3) Toute référence relative à un crédit documentaire, à une licence d'importation, à un contrat de vente, à une facture, au numéro de commande et généralement à tout élément de tout contrat auquel le Transporteur n'est pas partie, mentionnés au recto de ce Connaissance, est incluse seulement à la demande du Marchand et pour sa convenance. Le Marchand reconnaît que de telles mentions ne constituent pas une indication de valeur et en aucun cas n'augmentent la responsabilité du Transporteur. Le Marchand accepte, en outre, d'indemniser le Transporteur de toutes conséquences résultant de l'insertion de ces mentions au Connaissance.

Le Marchand reconnaît que, sauf application de la Clause 8 (3), le Transporteur n'a pas connaissance de la valeur des Marchandises.

26. RESPONSABILITE DU CHARGEUR ET DU MARCHAND

- (1) Toutes les personnes répondant à la définition du Marchand visée à la Clause 1 seront indéfiniment et solidairement responsables à l'égard du Transporteur du bon accomplissement des obligations auxquelles s'est engagé le Marchand dans le cadre de ce Connaissance. Une telle responsabilité doit inclure mais ne pas se limiter aux frais de justice, aux frais raisonnables d'avocats compris dans l'ensemble des sommes dues au Transporteur.
- (2) Le Chargeur garantit qu'il a vérifié lors de la remise de ce Connaissance les mentions relatives aux Marchandises, et que ces mentions, et tous autres éléments fournis par ou pour le compte du Chargeur, sont exacts. Le Chargeur garantit aussi que les Marchandises sont licites et qu'il ne s'agit pas de contrebande.
- (3) Le Marchand indemniserà le Transporteur de toutes pertes, dommages, amendes et dépenses résultant de l'imprécision ou de l'inexactitude des mentions visées à la Clause 26 (2) ou de toute autre cause en relation avec les Marchandises dont le Transporteur n'est pas responsable.
- (4) Le Marchand se conformera à toutes les réglementations ou aux demandes des autorités douanières, portuaires ou autres et supportera tous les droits, taxes, amendes, impositions, dépenses et pertes (y compris le Fret supplémentaire) supportés du fait du non respect des réglementations ou demandes visées ci-dessus, ou du fait d'un marquage, numérotage ou lieu de destination des Marchandises illicite, incorrect ou insuffisant. Le Marchand indemniserà le Transporteur en conséquence.
- (5) Si les Conteneurs fournis par ou pour le compte du Transporteur sont déposés dans les magasins du Marchand, ce dernier devra retourner les Conteneurs vides, préalablement nettoyés, au lieu ou place désigné par le Transporteur, ses préposés ou ses agents, dans le délai prescrit. Si un Conteneur n'est pas retourné dans ce délai, le Marchand devra payer toutes surestaries, pertes ou dépenses causées par sa défaillance.
- (6) Les Conteneurs remis au Marchand pour empotage et dépotage ou dans tout autre but, sont laissés aux seuls risques du Marchand lorsqu'ils sont sous son contrôle. Le Marchand

indemniser le Transporteur pour toutes pertes et/ou dommages survenus à ces Conteneurs. Le Marchand est réputé connaître les dimensions de tout Conteneur qui lui est remis.

27. SOUS-TRAITANCE ET GARANTIE

- (1) Le Transporteur est autorisé à sous-traiter tout ou partie du Transport.
- (2) Le Marchand s'engage à ce qu'aucune réclamation ou action ne soit intentée contre toute Personne (autre que le Transporteur) ayant effectué ou entrepris tout ou partie du Transport (y compris tout Sous-Traitant du Transporteur), qui imposerait ou tenterait d'imposer à une telle Personne ou à tout navire lui appartenant, une responsabilité quelconque en rapport avec les Marchandises ou avec le Transport, que cette responsabilité résulte ou non de la négligence de la part de cette Personne. Si néanmoins une réclamation ou une action de ce type est intentée, le Marchand s'engage à indemniser le Transporteur de toute conséquence pouvant en résulter. Sans préjudice de ce qui précède, toute Personne visée ci-dessus bénéficiera de tout droit, exonération, limitation et immunité de quelque nature que ce soit bénéficiant au Transporteur, comme si ces dispositions avaient été stipulées expressément en sa faveur. En concluant ce contrat et pour ce qui concerne ces dispositions, le Transporteur agit non seulement pour son propre compte mais également en tant qu'agent et mandataire de cette Personne.
- (3) Les dispositions de la Clause 27 (2), qui incluent mais ne se limitent pas aux engagements du Marchand concerné par le présent Connaissance, s'appliqueront aux réclamations ou allégations de quelque nature que ce soit, dirigées contre tout affréteur d'espace sur le navire transporteur.
- (4) Aucune des dispositions contenues ci dessus ne peuvent être utilisées par un de leurs bénéficiaires pour s'exonérer de sa responsabilité à l'égard du Transporteur pour sa faute ou négligence.
- (5) En outre, le Marchand s'engage à ce qu'aucune réclamation ou action relative aux Marchandises, qui imposerait ou tenterait d'imposer au Transporteur une responsabilité quelconque en relation avec les Marchandises ou leur Transport, que cette responsabilité résulte ou non d'une négligence, ne soit faite par toute Personne autrement que selon les clauses et conditions de ce Connaissance. Si néanmoins, une telle réclamation ou action était faite, le Marchand s'engage à indemniser le Transporteur de toutes les conséquences pouvant en résulter.

28. MODIFICATION DU CONTRAT

Aucun préposé ou agent du Transporteur n'aura autorité pour modifier ou annuler aucun des termes de ce Connaissance à moins qu'une telle modification ou annulation n'ait été expressément autorisée par écrit par le Transporteur.

29. VALIDITE

Dans le cas où l'une quelconque des dispositions de ce Connaissance ne serait pas conforme à une convention internationale ou à une loi nationale à laquelle on ne peut déroger par un contrat, la disposition en question serait, mais dans cette mesure seulement, réputée nulle et non écrite.

30. LOI ET JURIDICTION

(1) Loi applicable

Sous réserve des dispositions contraires prévues par le présent titre, tout litige né à l'occasion de l'interprétation ou de l'exécution de ce Connaissance sera réglé conformément à la **loi française**.

(2) Attribution de compétence

Toute action en justice née du contrat de transport, que constitue le présent Connaissance, sera portée devant le **Tribunal de Commerce de Marseille**, à l'exclusion de toute autre juridiction.

Annexe 13

Articles 81 et 82 du Traité de l'Union européenne, règlement 1017/68, règlement 40565/86 et règlement 611/2005

| | |
|--------------------------|-------|
| Articles 81 | p. 1 |
| Articles 82 | p. 3 |
| Règlement 40565/86 | p. 5 |
| Règlement 1017/68 | p.15 |
| Règlement 611/2005 | p. 23 |

12002E081

**Traité instituant la Communauté européenne (version consolidée Nice) -
Troisième partie: Les politiques de la communauté - Titre VI: Les règles
communes sur la concurrence, la fiscalité et le rapprochement des législations
- Chapitre 1: Les règles de concurrence - Section 1: Les règles applicables aux
entreprises - Article 81 - Article 85 - Traité CE (version consolidée Maastricht) -
Article 85 - Traité CEE**

*Journal officiel n° C 325 du 24/12/2002 p. 0064- 0065
Journal officiel n° C 340 du 10/11/1997 p. 0208- version consolidée
Journal officiel n° C 224 du 31/08/1992 p. 0028- version consolidée
(traité CEE - pas de publication officielle disponible)*

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Troisième partie: Les politiques de la communauté

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des législations

Chapitre 1: Les règles de concurrence

Section 1: Les règles applicables aux entreprises

Article 81

Article 85 - Traité CE (version consolidée Maastricht)

Article 85 - Traité CEE

Article 81

1. Sont incompatibles avec le marché commun et interdits tous accords entre entreprises, toutes décisions d'associations d'entreprises et toutes pratiques concertées, qui sont susceptibles d'affecter le commerce entre États membres et qui ont pour objet ou pour effet d'empêcher, de restreindre ou de fausser le jeu de la concurrence à l'intérieur du marché commun, et notamment ceux qui consistent à:

- a) fixer de façon directe ou indirecte les prix d'achat ou de vente ou d'autres conditions de transaction;
- b) limiter ou contrôler la production, les débouchés, le développement technique ou les investissements;
- c) répartir les marchés ou les sources d'approvisionnement;
- d) appliquer, à l'égard de partenaires commerciaux, des conditions inégales à des prestations équivalentes en leur infligeant de ce fait un désavantage dans la concurrence;
- e) subordonner la conclusion de contrats à l'acceptation, par les partenaires, de prestations supplémentaires qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

2. Les accords ou décisions interdits en vertu du présent article sont nuls de plein droit.

3. Toutefois, les dispositions du paragraphe 1 peuvent être déclarées inapplicables:

- à tout accord ou catégorie d'accords entre entreprises,
- à toute décision ou catégorie de décisions d'associations d'entreprises,

et

- à toute pratique concertée ou catégorie de pratiques concertées

qui contribuent à améliorer la production ou la distribution des produits ou à promouvoir le progrès technique ou économique, tout en réservant aux utilisateurs une partie équitable du profit qui en résulte, et sans:

- a) imposer aux entreprises intéressées des restrictions qui ne sont pas indispensables pour atteindre ces objectifs;
- b) donner à des entreprises la possibilité, pour une partie substantielle des produits en cause, d'éliminer la concurrence.

12002E082

Traité instituant la Communauté européenne (version consolidée Nice) - Troisième partie: Les politiques de la communauté - Titre VI: Les règles communes sur la concurrence, la fiscalité et le rapprochement des législations - Chapitre 1: Les règles de concurrence - Section 1: Les règles applicables aux entreprises - Article 82 - Article 86 - Traité CE (version consolidée Maastricht) - Article 86 - Traité CEE

Journal officiel n° C 325 du 24/12/2002 p. 0065- 0065

Journal officiel n° C 340 du 10/11/1997 p. 0209- version consolidée

Journal officiel n° C 224 du 31/08/1992 p. 0029- version consolidée (traité CEE - pas de publication officielle disponible)

Traité instituant la Communauté européenne (version consolidée Nice)

Troisième partie: Les politiques de la communauté

Titre VI: Les règles communes sur la concurrence, la fiscalité et le rapprochement des législations

Chapitre 1: Les règles de concurrence

Section 1: Les règles applicables aux entreprises

Article 82

Article 86 - Traité CE (version consolidée Maastricht)

Article 86 - Traité CEE

Article 82

Est incompatible avec le marché commun et interdit, dans la mesure où le commerce entre États membres est susceptible d'en être affecté, le fait pour une ou plusieurs entreprises d'exploiter de façon abusive une position dominante sur le marché commun ou dans une partie substantielle de celui-ci.

Ces pratiques abusives peuvent notamment consister à:

- a) imposer de façon directe ou indirecte des prix d'achat ou de vente ou d'autres conditions de transaction non équitables;
- b) limiter la production, les débouchés ou le développement technique au préjudice des consommateurs;

c) appliquer à l'égard de partenaires commerciaux des conditions inégales à des prestations équivalentes, en leur infligeant de ce fait un désavantage dans la concurrence;

d) subordonner la conclusion de contrats à l'acceptation, par les partenaires, de prestations supplémentaires qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

Réglement 4056/86

*(Published in the Official Journal. Only the published text is authentic:
OJ L 378, 31.12.1986, p. 4.)*

COUNCIL REGULATION (EEC) No 4056/86 [\(1\)](#) OF 22 DECEMBER 1986

laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84(2) and 87 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament, [\(2\)](#)

Having regard to the opinion of the Economic and Social Committee, [\(3\)](#)

Whereas the rules on competition form part of the Treaty's general provisions which also apply to maritime transport; whereas detailed rules for applying those provisions are set out in the Chapter of the Treaty dealing with the rules on competition or are to be determined by the procedures laid down therein;

Whereas according to Council Regulation No 141, [\(4\)](#) Council Regulation No 17 [\(5\)](#) does not apply to transport; whereas Council Regulation (EEC) No 1017/68 [\(6\)](#) applies to inland transport only; whereas, consequently, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 in maritime transport; whereas, moreover, the Commission lacks such powers of its own to take decisions or impose penalties as are necessary for it to bring to an end infringements established by it;

Whereas this situation necessitates the adoption of a Regulation applying the rules of competition to maritime transport; whereas Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conference [\(7\)](#) will result in the application of the Code of Conduct to a considerable number of conferences serving the Community; whereas the Regulation applying the rules of competition to maritime transport foreseen in the last recital of Regulation (EEC) No 954/79 should take account of the adoption of the Code; whereas, as far as conferences subject to the Code of Conduct are concerned, the Regulation should supplement the Code or make it more precise;

Whereas it appears preferable to exclude tramp vessel services from the scope of this Regulation, rates for these services being freely negotiated on casebycase basis in accordance with supply and demand conditions;

Whereas this Regulation should take account of the necessity, on the one hand to provide for implementing rules that enable the Commission to ensure that competition is not unduly distorted within the common market, and on the other hand to avoid excessive regulation of the sector;

Whereas this Regulation should define the scope of the provisions of Articles85 and 86 of the Treaty, taking into account the distinctive characteristics of maritime transport; whereas trade between Member States may be affected where restrictive practices or abuses concern international maritime transport, including intraCommunity transport, from or to Community ports; whereas such restrictive practices or abuses may influence competition, firstly, between ports in different Member States by altering their respective catchment areas, and secondly, between activities in those catchment areas, and disturb trade patterns within the common market;

Whereas certain types of technical agreement, decisions and concerted practices may be excluded from the prohibition on restrictive practices on the ground that they do not, as a general rule, restrict competition;

Whereas provision should be made for block exemption of liner conferences; whereas liner conferences have a stabilizing effect, assuring shippers of reliable services; whereas they contribute generally to providing adequate efficient scheduled maritime transport services and give fair consideration to the interests of users; whereas such results cannot be obtained without the cooperation that shipping companies promote within conferences in relation to rates and, where appropriate, availability of capacity or allocation of cargo for shipment, and income; whereas in most cases conferences continue to be subject to effective competition from both nonconference scheduled services and, in certain circumstances, from tramp services and from other modes of transport; whereas the mobility of fleets, which is a characteristic feature of the structure of availability in the shipping field, subjects conferences to constant competition which they are unable as a rule to eliminate as far as a substantial proportion of the shipping services in question is concerned;

Whereas, however, in order to prevent conferences from engaging in practices which are incompatible with Article85(3) of the Treaty, certain conditions and obligations should be attached to the exemption;

Whereas the aim of the conditions should be to prevent conferences from imposing restrictions on competition which are not indispensable to the attainment of the objectives on the basis of which exemption is granted; whereas, to this end, conferences should not, in respect of a given route, apply rates and conditions of carriage which are differentiated solely by reference to the country of origin or destination of the goods carried and thus cause within the Community deflections of trade that are harmful to certain ports, shippers, carriers or providers of services ancillary to transport; whereas, furthermore, loyalty arrangements should be permitted only in accordance with rules which do not restrict unilaterally the freedom

of users and consequently competition in the shipping industry, without prejudice, however, to the right of a conference to impose penalties on users who seek by improper means to evade the obligation of loyalty required in exchange for the rebates, reduced freight rates or commission granted to them by the conference; whereas users must be free to determine the undertakings to which they have recourse in respect of inland transport or quayside services not covered by the freight charge or by other charges agreed with the shipping line;

Whereas certain obligations should also be attached to the exemption; whereas in this respect users must at all times be in a position to acquaint themselves with the rates and conditions of carriage applied by members of the conference, since in the case of inland transports organized by shippers, the latter continue to be subject to Regulation (EEC) No1017/68; whereas provision should be made that awards given at arbitration and recommendations made by conciliators and accepted by the parties be notified forthwith to the Commission in order to enable it to verify that conferences are not thereby exempted from the conditions provided for in the Regulation and thus do not infringe the provisions of Articles85 and 86;

Whereas consultations between users or associations of users and conferences are liable to secure a more efficient operation of maritime transport services which takes better account of users' requirements; whereas, consequently, certain restrictive practices which could ensue from such consultations should be exempted;

Whereas there can be no exemption if the conditions set out in Article85(3) are not satisfied; whereas the Commission must therefore have power to take the appropriate measures where an agreement or concerted practice owing to special circumstances proves to have certain effects incompatible with Article85(3); whereas, in view of the specific role fulfilled by the conferences in the sector of the liner services, the reaction of the Commission should be progressive and proportionate; whereas the Commission should consequently have the power first to address recommendations, then to make decisions;

Whereas the automatic nullity provided for in Article85(3) in respect of agreements or decisions which have not been granted exemption pursuant to Article85(3) owing to their discriminatory or other features applies only to the elements of the agreement covered by the prohibition of Article85(1) and applies to the agreement in its entirety only if those elements do not appear to be severable from the whole of the agreement; whereas the Commission should therefore, if it finds an infringement of the block exemption, either specify what elements of the agreement are by the prohibition and consequently automatically void, or indicate the reasons why those elements are not severable from the rest of the agreement and why the agreement is therefore void in its entirety;

Whereas, in view of the characteristics of international maritime transport, account should be taken of the fact that the application of this Regulation to certain restrictive practices or abuses may result in conflicts with the laws and rules of certain third countries and prove harmful to important Community trading and shipping interests; whereas consultations and, where appropriate, negotiations authorized by the Council should be undertaken by the Commission with those countries in pursuance of the maritime transport policy of the Community;

Whereas this Regulation should make provision for the procedures, decisionmaking powers and penalties that are necessary to ensure compliance with the prohibitions laid down in Article85(1) and Article86, as well as the conditions governing the application of Article85(3);

Whereas account should be taken in this respect of the procedural provisions of Regulation (EEC) No 1017/68 applicable to inland transport operations which takes account of certain distinctive features of transport operations viewed as a whole;

Whereas, in particular, in view of the special characteristics of maritime transport, it is primarily the responsibility of undertakings to see to it that their agreements, decisions and concerted practices conform to the rules on competition, and consequently their notification to the Commission need not be made compulsory;

Whereas in certain circumstances undertakings may, however, wish to apply to the Commission for confirmation that their agreements, decisions and concerted practices are in conformity with the provisions in force; whereas a simplified procedure should be laid down for such cases,

HAS ADOPTED THIS REGULATION:

SECTION I

Article1

Subjectmatter and scope of the Regulation

1. This Regulation lays down detailed rules for the application of Articles85 and 86 of the Treaty to maritime transport services.

2. It shall apply only to international maritime transport services or to one or more Community ports, other than tramp vessel services.

3. For the purposes of this Regulation:

(a) 'tramp vessel services' means the transport of goods in bulk or in breakbulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other form of contract for nonregularly scheduled or nonadvertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand;

(b) 'liner conference' means a group of two or more vesseloperating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services;

(c) 'transport user' means an undertaking (e.g. shippers, consignees, forwarders, etc.) provided it has entered into, or demonstrates an intention to enter into, a

contractual or other arrangement with a conference of shipping line for the shipment of goods, or any association of shippers.

Article 2

Technical agreements

1. The prohibition laid down in Article 85(1) of the Treaty shall not apply to agreements, decisions and concerted practices whose sole object and effect is to achieve technical improvements or cooperation by means of:

(a) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations;

(b) the exchange or pooling for the purpose of operating transport services, of vessels, space on vessels or slots and other means of transport, staff, equipment or fixed installations;

(c) the organization and execution of successive or supplementary maritime transport operations and the establishment or application of inclusive rates and conditions for such operations;

(d) the coordination of transport timetables for connecting routes;

(e) the consolidation of individual consignments;

(f) the establishment or application of uniform rules concerning the structure and conditions governing the application of transport tariffs.

2. The Commission shall, if necessary, submit to the Council proposals for the amendment of the list contained in paragraph 1.

Article 3

Exemption for agreements between carriers concerning the operation of scheduled maritime transport services

Agreements, decisions and concerted practices of all or part of the members of one or more liner conferences are hereby exempted from the prohibition in Article 85(1) of the Treaty, subject to the condition imposed by Article 4 of this Regulation, when they have as their objective the fixing of rates and conditions of carriage, and, as the case may be, one or more of the following objectives:

(a) the coordination of shipping timetables, sailing dates or dates of calls;

(b) the determination of the frequency of sailings or calls;

(c) the coordination or allocation of sailings or calls among members of the conference;

(d) the regulation of the carrying capacity offered by each member;

(e) the allocation of cargo or revenue among members.

Article 4

Condition attaching to exemption

The exemption provided for in Articles 3 and 6 shall be granted subject to the condition that the agreement, decision or concerted practice shall not, within the common market, cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and in the area covered by the agreement, decision or concerted practice, rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified.

Any agreement or decision or, if it is severable, any part of such an agreement or decision not complying with the preceding paragraph shall automatically be void pursuant to Article 85(2) of the Treaty.

Article 5

Obligations attaching to exemption

The following obligations shall be attached to the exemption provided for in Article 3:

1. Consultations

There shall be consultations for the purpose of seeking solutions on general issues of principle between transport users on the one hand and conferences on the other concerning the rates, conditions and quality of scheduled maritime transport services.

These consultations shall take place whenever requested by any of the abovementioned parties.

2. Loyalty arrangements

The shipping lines' members of a conference shall be entitled to institute and maintain loyalty arrangements with transport users, the form and terms of which shall be matters for consultation between the conference and transport users' organizations. These loyalty arrangements shall provide safeguards making explicit the rights of transport users and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

Loyalty arrangements must comply with the following conditions:

(a) Each conference shall offer transport users a system of immediate rebates or the choice between such a system and a system of deferred rebates:

- under the system of immediate rebates each of the parties shall be entitled to terminate the loyalty arrangement at any time without penalty and subject to a period of notice of not more than six months; this period shall be reduced to three months when the conference rate is the subject of a dispute;

- under the system of deferred rebates neither the loyalty period on the basis of which the rebate is calculated nor the subsequent loyalty period required before payment of the rebate may exceed six months; this period shall be reduced to three months where the conference rate is the subject of a dispute.

(b) The conference shall, after consulting the transport users concerned, set out:

(i) a list of cargo and any portion of cargo agreed with transport users which is specifically excluded from the scope of the loyalty arrangement; 100% loyalty arrangements may be offered but may not be unilaterally imposed;

(ii) a list of circumstances in which transport users are released from their obligation of loyalty; these shall include:

- circumstances in which consignments are dispatched from or to a port in the area covered by the conference but not advertised and where the request for a waiver can be justified, and

- those in which waiting time at a port exceeds a period to be determined for each port and for each commodity or class of commodities following consultation of the transport users directly concerned with the proper servicing of the port.

The conference must, however, be informed in advance by the transport user, within a specified period, of his intention to dispatch the consignment from a port not advertised by the conference or to make use of a nonconference vessel at a port served by the conference as soon as he has been able to establish from the published schedule of sailings that the maximum waiting period will be exceeded.

3. Services not covered by the freight charges

Transport users shall be entitled to approach the undertakings of their choice in respect of inland transport operations and quayside services not covered by the freight charge or charges on which the shipping line and the transport user have agreed.

4. Availability of tariffs

Tariffs, related conditions, regulations and any amendments thereto shall be made available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents. They shall set out all the conditions concerning loading and discharge, the exact extent of the services covered by the freight charge in proportion to the sea transport and the land transport or by any other charge levied by the shipping line and customary practice in such matters.

5. Notification to the Commission of awards at arbitration and recommendations

Awards given at arbitration and recommendations made by conciliators that are accepted by the parties shall be notified forthwith to the Commission when they resolve disputes relating to the practices of conferences referred to in Article 4 and in points 2 and 3 above.

Article 6

Exemption for agreements between transport users and conferences concerning the use of scheduled maritime transport services

Agreements, decisions and concerted practices between transport users, on the one hand, and conferences, on the other hand, and agreements between transport users which may be necessary to that end, concerning the rates, conditions and quality of liner services, as long as they are provided for in Article 5(1) and (2) are hereby exempted from the prohibition laid down in Article 85(1) of the Treaty.

Article 7

Monitoring of exempted agreements

1. Breach of an obligation

Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Section II:

- address recommendations to the persons concerned;
- in the event of failure by such persons to observe those recommendations and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption according to Article 11(4) or withdraws the benefit of the block exemption which they enjoyed.

2. Effects incompatible with Article 85(3)

(a) Where, owing to special circumstances as described below, agreements, decisions and concerted practices which qualify for the exemption provided for in Articles 3 and 6 have nevertheless effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty, the Commission, on receipt of a complaint or on its own initiative, under the conditions laid down in Section II, shall take the measures described in (c) below. The severity of these measures must be in proportion to the gravity of the situation.

(b) Special circumstances are, inter alia, created by:

(i) acts of conferences or a change of market conditions in a given trade resulting in the absence or elimination of actual or potential competition such as restrictive practices whereby the trade is not available to competition; or

(ii) acts of conference which may prevent technical or economic progress or user participation in the benefits;

(iii) acts of third countries which:

- prevent the operation of outsiders in a trade,

- impose unfair tariffs on conference members,

- impose arrangements which otherwise impede technical or economic progress (cargosharing, limitations on type of vessels).

(c) (i) If actual or potential competition is absent or may be eliminated as a result of action by a third country, the Commission shall enter into consultations with the competent authorities of the third country concerned, followed if necessary by negotiations under directives to be given by the Council, in order to remedy the situation.

If the special circumstances result in the absence or elimination of actual or potential competition contrary to Article 85(3)(b) of the Treaty the Commission shall withdraw the benefit of the block exemption. At the same time it shall rule on whether and, if so, under what additional conditions and obligations an individual exemption should be granted to the relevant conference agreement with a view, inter alia, to obtaining access to the market for nonconference lines;

(ii) If, as a result of special circumstances as set out in (b), there are effects other than those referred to in (i) hereof, the Commission shall take one or more of the measures described in paragraph 1.

Article 8

Effects incompatible with Article 86 of the Treaty

1. The abuse of a dominant position within the meaning of Article 86 of the Treaty shall be prohibited, no prior decision to that effect being required.

2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case the conduct of conferences benefiting from the exemption laid down in Article 3 nevertheless has effects which are incompatible with Article 86 of the Treaty, it may withdraw the benefit of the block exemption and take, pursuant to Article 10, all appropriate measures for the purpose of bringing to an end infringements of Article 86 of the Treaty.

3. Before taking a decision under paragraph 2, the Commission may address to the conference concerned recommendations for termination of the infringement.

Article 9

Conflicts of international law

1. Where the application of this Regulation to certain restrictive practices or clauses is liable to enter into conflict with the provisions laid down by law, regulation or administrative action of certain third countries which would compromise important Community trading and shipping interests, the Commission shall, at the earliest opportunity, undertake with the competent authorities of the third countries concerned, consultations aimed at reconciling as far as possible the abovementioned interest with the respect of Community law. The Commission shall inform the Advisory Committee referred to in Article 15 of the outcome of these consultations.

2. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with an Advisory Committee as referred to in Article 15 and within the framework of such directives as the Council may issue to it.

3. In exercising the powers conferred on it by this Article, the Council shall act in accordance with the decisionmaking procedure laid down in Article 84(2) of the Treaty.

(1) OJ L 378, 31.12.1986, p. 4.

(2) OJ C 172, 2.7.1984, p. 178; OJ C 255, 13.10.1986, p. 169.

(3) OJ C 77, 21.3.1983, p. 13; OJ C 344, 31.12.1985, p. 31.

(4) OJ 124, 28.11.1962, p. 2751/62.

(5) OJ 13, 21.2.1962, p. 204/62.

(6) OJ L 175, 23.7.1968, p. 1.

(7) OJ L 121, 17.5.1979, p. 1.

***(Published in the Official Journal. Only the published text is authentic:
OJ L 175, 23.7.1968, p. 1 (Special Edition 1968 I, p. 302).)***

COUNCIL REGULATION (EEC) No 1017/68 OF 19 JULY 1968

applying rules of competition to transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 87 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament, [\(1\)](#)

Having regard to the Opinion of the Economic and Social Committee, [\(2\)](#)

Whereas Council Regulation No 141 [\(3\)](#) exempting transport from the application of Regulation No 17 [\(4\)](#) provides that the said Regulation No 17 shall not apply to agreements, decisions and concerted practices in the transport sector the effect of which is to fix transport rates and conditions, to limit or control the supply of transport or to share transport markets, nor to dominant positions, within the meaning of Article 86 of the Treaty, on the transport market;

Whereas, for transport by rail, road and inland waterway, Regulation No 1002/67/EEC [\(5\)](#) provides that such exemption shall not extend beyond 30 June 1968;

Whereas the establishing of rules of competition for transport by rail, road and inland waterway is part of the common transport policy and of general economic policy;

Whereas, when rules of competition for these sectors are being settled, account must be taken of the distinctive features of transport;

Whereas, since the rules of competition for transport derogate from the general rules of competition, it must be made possible for undertakings to ascertain what rules apply in any particular case;

Whereas, with the introduction of a system of rules on competition for transport, it is desirable that such rules should apply equally to the joint financing or acquisition of transport equipment for the joint operation of services by certain groupings of undertakings, and also to certain operations in connection with transport by rail, road or inland waterway of providers of services ancillary to transport;

Whereas, in order to ensure that trade between Member States is not affected or competition within the common market distorted, it is necessary to prohibit in principle for the three modes of transport specified above all agreements between undertakings, decisions of associations of undertakings and concerted practices

between undertakings and all instances of abuse of a dominant position within the common market which could have such effects;

Whereas certain types of agreement, decision and concerted practice in the transport sector the object and effect of which is merely to apply technical improvements or to achieve technical cooperation may be exempted from the prohibition on restrictive agreements since they contribute to improving productivity; whereas, in the light of experience following application of this Regulation, the Council may, on a proposal from the Commission, amend the list of such types of agreement;

Whereas, in order that an improvement may be fostered in the sometimes too dispersed structure of the industry in the road and inland waterway sectors there should also be exempted from the prohibition on restrictive agreements those agreements, decisions and concerted practices providing for the creation and operation of groupings of undertakings in these two transport sectors whose object is the carrying on of transport operations, including the joint financing or acquisition of transport equipment for the joint operation of services; whereas such overall exemption can be granted only on condition that the total carrying capacity of a grouping does not exceed a fixed maximum, and that the individual capacity of undertakings belonging to the grouping does not exceed certain limits so fixed as to ensure that no one undertaking can hold a dominant position within the grouping; whereas the Commission must however, have power to intervene if, in specific cases, such agreements should have effects incompatible with the conditions under which a restrictive agreement may be recognized as lawful, and should constitute an abuse of the exemption; whereas, nevertheless the fact that a grouping has a total carrying capacity greater than the fixed maximum, or cannot claim the overall exemption because of the individual capacity of the undertakings belonging to the grouping, does not in itself prevent such a grouping from constituting a lawful agreement, decision or concerted practice if it satisfies the conditions therefor laid down in this Regulation;

Whereas, where an agreement, decision or concerted practice contributes towards improving the quality of transport services, or towards promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand may be subject to considerable temporal fluctuation, or towards increasing the productivity of undertakings or towards furthering technical or economic progress, it must be made possible for the prohibition to be declared not to apply, always provided, however, that the agreement, decision or concerted practice takes fair account of the interests of transport users, and neither imposes on the undertakings concerned any restriction not indispensable to the attainment of the above objectives nor makes it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned, having regard to competition from alternative modes of transport;

Whereas it is desirable until such time as the Council, acting in pursuance of the common transport policy, introduces appropriate measures to ensure a stable transport market, and subject to the condition that the Council shall have found that a state of crisis exists, to authorize, for the market in question, such agreements as are needed in order to reduce disturbance resulting from the structure of the transport market;

Whereas, in respect of transport by rail, road and inland waterway, it is desirable that Member States should neither enact nor maintain in force measures contrary to this Regulation concerning public undertakings or undertakings to which they grant special or exclusive rights; whereas it is also desirable that undertakings entrusted with the operation of services of general economic importance should be subject to the provisions of this Regulation in so far as the application thereof does not obstruct, in law or in fact, the accomplishment of the particular tasks assigned to them, always provided that the development of trade is not thereby affected to such an extent as would be contrary to the interests of the Community; whereas the Commission must have power to see that these principles are applied and to address the appropriate directives or decisions for this purpose to Member States;

Whereas the detailed rules for application of the basic principles of this Regulation must be so drawn that they not only ensure effective supervision while simplifying administration as far as possible but also meet the needs of undertakings for certainty in the law;

Whereas it is for the undertakings themselves, in the first instance, to judge whether the predominant effects of their agreements, decisions or concerted practices are the restriction of competition or the economic benefits acceptable as justification for such restriction and to decide accordingly, on their own responsibility, as to the illegality or legality of such agreements, decisions or concerted practices;

Whereas, therefore, undertakings should be allowed to conclude or operate agreements without declaring them; whereas this exposes such agreements to the risk of being declared void with retroactive effect should they be examined following a complaint or on the Commission's own initiative, but does not prevent their being retroactively declared lawful in the event of such subsequent examination;

Whereas, however, undertakings may, in certain cases, desire the assistance of the competent authorities to ensure that their agreements, decisions or concerted practices are in conformity with the rules applicable; whereas for this purpose there should be made available to undertakings a procedure whereby they may submit applications to the Commission and a summary of each such application is published in the Official Journal of the European Communities, enabling any interested third parties to submit their comments on the agreement in question; whereas, in the absence of any complaint from Member States or interested third parties and unless the Commission notifies applicants, within a fixed time limit, that there are serious doubts as to the legality of the agreement in question, that agreement should be deemed exempt from the prohibition for the time already elapsed and for a further period of three years;

Whereas, in view of the exceptional nature of agreements needed in order to reduce disturbances resulting from the structure of the transport market, once the Council has found that a state of crisis exists, undertakings wishing to obtain authorization for such an agreement should be required to notify it to the Commission; whereas authorization by the Commission should have effect only from the date when it is decided to grant it; whereas the period of validity of such authorization should not exceed three years from the finding of a state of crisis by the Council; whereas renewal of the decision should depend upon renewal of the finding of a state of crisis

by the Council; whereas, in any event, the authorization should cease to be valid not later than six months from the bringing into operation by the Council of appropriate measures to ensure the stability of the transport market to which the agreement relates;

Whereas, in order to secure uniform application within the common market of the rules of competition for transport, rules must be made under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the measures required for the application of such rules of competition;

Whereas for this purpose the Commission must have the cooperation of the competent authorities of the Member States and be empowered throughout the common market to request such information and to carry out such investigations as are necessary to bring to light any agreement, decision or concerted practice prohibited under this Regulation, or any abuse of a dominant position prohibited under this Regulation;

Whereas, if, on the application of the Regulation to a specific case, a Member State is of the opinion that a question of principle concerning the common transport policy is involved, it should be possible for such questions of principle to be examined by the Council; whereas it should be possible for any general questions raised by the implementation of the competition policy in the transport sector to be referred to the Council; whereas a procedure must be provided for which ensures that any decision to apply the Regulation in a specific case will be taken by the Commission only after the questions of principle have been examined by the Council, and in the light of the policy guidelines that emerge from that examination;

Whereas, in order to carry out its duty of ensuring that the provisions of this Regulation are applied, the Commission must be empowered to address to undertakings or associations of undertakings recommendations and decisions for the purpose of bringing to an end infringements of the provisions of this Regulation prohibiting certain agreements, decisions or practices;

Whereas compliance with the prohibitions laid down in this Regulation and the fulfilment of obligations imposed on undertakings and associations of undertakings under this Regulation must be enforceable by means of fines and periodic penalty payments;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity to submit their comments beforehand, and it must be ensured that wide publicity is given to decisions taken;

Whereas it is desirable to confer upon the Court of Justice, pursuant to Article 172, unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas it is expedient to postpone for six months, as regards agreements, decisions and concerted practices in existence at the date of publication of this

Regulation in the Official Journal of the European Communities, the entry into force of the prohibition laid down in the Regulation, in order to make it easier for undertakings to adjust their operations so as to conform to its provisions;

Whereas, following discussions with the third countries' signatories to the Revised Convention for the Navigation of the Rhine, and within an appropriate period of time from the conclusion of those discussions, this Regulation as a whole should be amended as necessary in the light of the obligations arising out of the Revised Convention for the Navigation of the Rhine;

Whereas the Regulation should be amended as necessary in the light of the experience gained over a threeyear period; whereas it will in particular be desirable to consider whether, in the light of the development of the common transport policy over that period, the scope of the Regulation should be extended to agreements, decisions and concerted practices, and to instances of abuse of a dominant position, not affecting trade between Member States,

HAS ADOPTED THIS REGULATION:

Article1

Basic provision

The provisions of this Regulation shall, in the field of transport by rail, road and inland waterway, apply both to all agreements, decisions and concerted practices which have as their object or effect the fixing of transport rates and conditions, the limitation or control of the supply of transport, the sharing of transport markets, the application of technical improvements or technical cooperation, or the joint financing or acquisition of transport equipment or supplies where such operations are directly related to the provision of transport services and are necessary for the joint operation of services by grouping within the meaning of Article4 of road or inland waterway transport undertakings, and to the abuse of a dominant position on the transport market. These provisions shall apply also to operations of providers of services ancillary to transport which have any of the objects or effects listed above.

Article2(6)

Prohibition of restrictive practices

Subject to the provisions of Articles3 to 6, the following shall be prohibited as incompatible with the common market, no prior decision to that effect being required: all agreements between undertakings, decisions by associations of undertakings and concerted practices liable to affect trade between Member States which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix transport rates and conditions or any other trading conditions;

- (b) limit or control the supply of transport, markets, technical development or investment;
- (c) share transport markets;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of additional obligations which, by their nature or according to commercial usage, have no connection with the provision of transport services.

Article3

Exception for technical agreements

1. The prohibition laid down in Article2 shall not apply to agreements, decisions or concerted practices the object and effect of which is to apply technical improvements or to achieve technical cooperation by means of:

- (a) the standardization of equipment, transport supplies, vehicles or fixed installations;
- (b) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;
- (c) the organization and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations, including special competitive rates;
- (d) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;
- (e) the coordination of transport timetables for connecting routes;
- (f) the grouping of single consignments;
- (g) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.

2. The Commission shall, where appropriate, submit proposals to the Council with a view to extending or reducing the list in paragraph1.

Article4

Exemption for groups of small and mediumsized undertakings

1. The agreements, decisions and concerted practices referred to in Article 2 shall be exempt from the prohibition in that Article where their purpose is:

- the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities;
- the joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the aforesaid groupings;

always provided that the total carrying capacity of any grouping does not exceed:

- 10000 tonnes in the case of road transport,
- 500000 tonnes in the case of transport by inland waterway.

The individual capacity of each undertaking belonging to a grouping shall not exceed 1000 tonnes in the case of road transport or 50000 tonnes in the case of transport by inland waterway.

2. If the implementation of any agreement, decision or concerted practice covered by paragraph 1 has, in a given case, effects which are incompatible with the requirements of Article 5 and which constitute an abuse of the exemption from the provisions of Article 2, undertakings or associations of undertakings may be required to make such effects cease.

Article 5

Nonapplicability of the prohibition

The prohibition in Article 2 may be declared inapplicable with retroactive effect to:

- any agreement or category of agreement between undertakings,
- any decision or category of decision of an association of undertakings, or
- any concerted practice or category of concerted practice which contributes towards:
 - improving the quality of transport services; or
 - promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand are subject to considerable temporal fluctuation;
or
 - increasing the productivity of undertakings; or
 - furthering technical or economic progress;

and at the same time takes fair account of the interests of transport users and neither:

(a) imposes on the transport undertakings concerned any restriction not essential to the attainment of the above objectives; nor

(b) makes it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned.

Article 6

Agreements intended to reduce disturbances resulting from the structure of the transport market

1. Until such time as the Council, acting in pursuance of the common transport policy, introduces appropriate measures to ensure a stable transport market, the prohibition laid down in Article 2 may be declared inapplicable to any agreement, decision or concerted practice which tends to reduce disturbances on the market in question.

2. A decision not to apply the prohibition laid down in Article 2, made in accordance with the procedure laid down in Article 14, may not be taken until the Council, either acting by a qualified majority or, where any Member State considers that the conditions set out in Article 75(3) of the Treaty are satisfied, acting unanimously, has found on the basis of a report by the Commission, that a state of crisis exists in all or part of a transport market.

3. Without prejudice to the provisions of paragraph 2, the prohibition in Article 2 may be declared inapplicable only where:

(a) the agreement, decision or concerted practice in question does not impose upon the undertakings concerned any restriction not indispensable to the reduction of disturbances; and

(b) does not make it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned.

(1) OJ 205, 11.12.1964, p. 3505/64.

(2) OJ 103, 12.6.1965, p. 1792/62.

(3) OJ 124, 28.11.1962, p. 2751/62 (Special Edition 195962, p. 291).

(4) OJ 13, 21.2.1962, p. 204/62 (Special Edition 195962, p. 87).

(5) OJ 306, 16.12.1967, p. 1.

(6) **Documents concerning the accession** 'with regard to the UK the prohibition imposed by Art. 2 of this Regulation shall apply from 1 July 1973 to agreements, decisions and concerted practices in existence at the date of accession which come within the field of application of this prohibition as a result of accession'.

(OJ L 73, 27.3.1972, p. 138).

COMMISSION REGULATION (EC) No 611/2005**of 20 April 2005****amending Regulation (EC) No 823/2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) ⁽¹⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation ⁽²⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Commission Regulation (EC) No 823/2000 ⁽³⁾ grants a general exemption to liner shipping consortia from the prohibition contained in Article 81(1) of the Treaty, subject to certain conditions.
- (2) Regulation (EC) No 823/2000 will expire on 25 April 2005. On the basis of the Commission's experience in applying that Regulation, it appears that the justifications for a block exemption for consortia are still valid. The application of Regulation (EC) No 823/2000 should therefore be extended for a further five years.
- (3) However, in some respects the provisions of Regulation (EC) No 823/2000 are not sufficiently attuned to current practice applied in the industry. It is therefore appropriate to introduce some minor amendments in order to make Regulation (EC) No 823/2000 more suitable

for its purpose, pending the outcome of the review of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ⁽⁴⁾, following which more substantial amendments may prove necessary.

- (4) In particular, Regulation (EC) No 823/2000 provides that consortium agreements must give member companies the right to withdraw from the consortium without financial or other penalty, subject to certain conditions concerning the period of notice to be given. Practice has shown that it is unclear how this provision is to be interpreted in the event that the date of entry into force of the consortium agreement is earlier than the date the service actually starts, for example, when vessels are unavailable, or still under construction. Specific provision should therefore be made for that situation.
- (5) It is justifiable for consortia to seek security for new investments committed to an existing service. Therefore, the possibility for the parties to a consortium agreement to enter into a 'non-withdrawal' clause should also apply where the parties to an existing consortium agreement have agreed to make substantial new investments and the costs of such new investments justify a new 'non-withdrawal' clause.
- (6) Regulation (EC) No 823/2000 provides that the exemption is subject to compliance with certain conditions, including the existence of effective price competition between the members of the conference within which the consortium operates due to the fact that the members are expressly authorised by the conference agreement to apply independent rate action to any freight rate provided for in the conference tariff. It has been brought to the Commission's attention that independent rate action can no longer be considered as a common general market practice. Instead, individual confidential contracts are now more important on various trades. Such confidential contracts may also bring about effective competition between liner conference members. The existence of individual confidential contracts should therefore also be regarded as an indicator of effective price competition between the members of the conference.

⁽¹⁾ OJ L 55, 29.2.1992, p. 3. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

⁽²⁾ OJ C 319, 23.12.2004, p. 2.

⁽³⁾ OJ L 100, 20.4.2000, p. 24. Regulation as last amended by Regulation (EC) No 463/2004 (OJ L 77, 13.3.2004, p. 23).

⁽⁴⁾ OJ L 378, 31.12.1986, p. 4. Regulation as last amended by Regulation (EC) No 1/2003.

- (7) Regulation (EC) No 823/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 823/2000 is amended as follows:

1. In Article 2 the following points 6 and 7 are added:

‘6. “commencement of the service” means the date on which the first vessel sails on the service or, when there has been substantial new investment, the date on which the first vessel sails under the conditions directly arising from that substantial new investment;

7. “substantial new investment” means investment which results in the building, purchase or long-term charter of vessels, which are specifically designed, required and substantial for the operation of the service and which constitutes at least half of the total investment made by the consortium members in relation to the maritime transport service offered by the consortium.’;

2. In Article 5 point (a) is replaced by the following:

‘(a) there is effective price competition between the members of the conference within which the consortium operates, due to the fact that the members are expressly authorised by the conference agreement, whether by virtue of a statutory obligation or otherwise, to apply independent rate action to any freight rate provided for in the conference tariff and/or to enter into individual confidential contracts; or’;

3. In Article 8 point (b) is replaced by the following:

‘(b) the consortium agreement must give member companies the right to withdraw from the consortium without

financial or other penalty such as, in particular, an obligation to cease all transport activity in the trade or trades in question, whether or not coupled with the condition that such activity may be resumed only after a certain period has elapsed. This right shall be subject to a maximum notice period of six months which may be given after an initial period of 18 months starting from the date of entry into force of the consortium agreement or the agreement to make a substantial new investment in the joint maritime service. If the date of entry into force of the agreement is earlier than the date of commencement of the service, the initial period shall not be more than 24 months starting from the date of entry into force of the consortium agreement or the date of entry into force of the agreement to make a substantial new investment in the joint maritime service.

However, in the case of a highly integrated consortium which has a net revenue pool and/or high level of investment due to the purchase or charter by its members of vessels specifically for the purpose of setting up the consortium, the maximum notice period shall be six months, which may be given after an initial period of 30 months starting from the date of entry into force of the consortium agreement or the agreement to make a substantial new investment in the joint maritime service. If the date of entry into force of the agreement is earlier than the date of commencement of the service, the initial period shall not be more than 36 months starting from the date of entry into force of the consortium agreement or the date of entry into force of the agreement to make a substantial new investment in the joint maritime service.’;

4. In the second paragraph of Article 14, the date ‘25 April 2005’ is replaced by ‘25 April 2010’.

Article 2

This Regulation shall enter into force on 26 April 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 April 2005.

For the Commission
Neelie KROES
Member of the Commission