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5th Edition

Original Title Page

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)

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NOTE

This Agreement Was Last Republished
With Effect As From 31 December 1998

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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

Nippon Yusen Kaisha
NYK Line
CPO Box 1250
Tokyo, 100-91, Japan

A.P. Moller-Maersk Sealand
50 Esplandaden
1098 Copenhagen K, Denmark
(FMC Agreement No. 07622)

Hapag-Lloyd Container Line GmbH
Ballindamm 25
20095 Hamburg, Germany

Atlantic Container Line AB
Sydatlanten, Skandiahamnen
403 36 Gothenburg, Sweden

Orient Overseas Container Line Limited
Harbour Center
25 Harbour Road
Wanchai, Hong Kong

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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 non-Baltic ports in Russia, Mediterranean ports and ports in Spain and Portugal) and points in Europe via said non-excluded European ports other than points in 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".

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.

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(b) Administration and Operation of Agreement

Provide for the operation of this Agreement and administrative services in connection 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

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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

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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

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(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

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purpose of operating transport services, of rates and conditions for such operations; (iv) the coordination of transport timetables for connecting routes; (v) the consolidation of individual 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.

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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.

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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.

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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.

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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.

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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

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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.

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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.

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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

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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.

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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;

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(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

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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 discussed with or 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 he 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 uniformally applicable to all participating carrier SC parties. Under ASCs and MSCs, the Shipper party shall have the right to chose 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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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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(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

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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; legal

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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.

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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

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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.

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EXECUTION OF AGREEMENT

Wherefore, the Parties have caused this 5th Edition to the Agreement to be executed by their duly authorized representatives as witnessed below.

ATLANTIC CONTAINER LINE AB

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

A.P. MOLLER-MAERSK SEALAND

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

P&O NEDLLOYD LIMITED

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

NIPPON YUSEN KAISHA

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

ORIENT OVERSEAS CONTAINER LINE LIMITED

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

MEDITERRANEAN SHIPPING CO., S.A.

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

HAPAG-LLOYD CONTAINER LINIE GmbH

By: _____

Name: Howard A. Levy

Title: Attorney-In-Fact

New York, NY
December 13, 2001

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