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FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY

# AUSTRALIA/UNITED STATES CONTAINERLINE ASSOCIATION

A Conference Agreement Among
Ocean Common Carriers

FMC Agreement No. _____

This Agreement has not previously been published.

EFFECTIVE
MAY 24 1993
UNDER THE
SHIPPING ACT
OF 1984
Federal Maritime Commission

Australia/United States
ContainerLine Association
FMC Agreement No. _____

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APPENDIX A


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# AUSTRALIA/UNITED STATES CONTAINERLINE ASSOCIATION

## ARTICLE 1 -- NAME OF THE AGREEMENT

The full name of this Agreement is the "Australia/United States ContainerLine Association" (the "Agreement").

## ARTICLE 2 -- PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to promote service, stability and efficiency in the trade from Australia to the United States ("the trade").

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## ARTICLE 3 -- PARTIES TO THE AGREEMENT

The names and addresses of the Parties to this Agreement are set out in Appendix A.

## ARTICLE 4 -- GEOGRAPHICAL SCOPE OF THE AGREEMENT

This Agreement covers the trade direct or via transshipment from ports and points in Australia, on the one hand, to ports and points in the United States (including Alaska and Hawaii, and all U.S. possessions and territories but excluding American Samoa), on the other hand.

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ARTICLE 5 -- OVERVIEW OF AGREEMENT AUTHORITY

5.1 Subject to the provisions of this Agreement, the Parties are authorized to meet, to exchange information and data, to consider and discuss and to reach consensus upon the following matters:

(a) The rates, charges (including any demurrage, detention and other charges relating to the receiving, handling, storage and delivery of cargo), classifications, terms and conditions applicable to the transportation of cargo in the trade, any rules and regulations applicable to those rates, charges, classifications, terms and conditions, and service contract rates, charges, terms and conditions as per Article 14 hereof;

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(b) Cargo movements, seasonability and other fluctuations of traffic flows and related data bearing on the level and frequency of liner services, including, without limitation, services offered by non-parties, required by shippers both in Australia and the United States;

(c) Practices in connection with the receipt, carriage, handling and delivery of cargo, including cargo classifications and cargo space accommodations, the operation by the Parties and non-parties of vessels, containers, equipment and facilities in the

trade, and the centralization of cargo at Australian outports and transshipment of same by feeder vessel, rail or motor carrier. The Parties will abide by the provisions of the Trade Practices Act of 1974 (Cth) in reaching any such consensus;

(d) Political and economic policies affecting the shipment of cargo in the trade; port development, and commercial and governmental practices affecting the carriage of cargo in the trade;

(e) The offering, negotiation and execution of service contracts as per Article 14 hereof; and

(f) Any other matter which is necessary to give effect to this Agreement, and which is in conformity with the applicable laws.

5.2 The Parties are further authorized:

(a) To exercise the authority under Article 5.1 in connection with the presentation (jointly or separately) of a common position to any Australian statutory corporation, board or shipper group concerning such matters as the negotiation, award,

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implementation and designation of carriers to carry cargoes in the trade;

(b) To meet with designated shipper bodies and to negotiate upon minimum levels of shipping services, including frequency of sailings, cargo carrying capacity and ports of call; and

(c) To charter space on their respective vessels in the Trade to/from each other at such rates and on such terms and conditions as they may from time to time agree.

5.3 The Parties, or any of them, may agree upon any routine administrative matter relating to the operation or implementation of this Agreement.

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ARTICLE 6 -- OFFICIALS OF AGREEMENT AND DELEGATION OF AUTHORITY

6.1 The Parties may select an Agreement Chairman, who (or whose nominated representative) shall have the following functions:

(a) to preside at meetings of the Parties;

(b) to file minutes and other documents as may be required by the rules of the Federal Maritime Commission;

(c) to apply on behalf of the Parties under the Trade Practices Act 1974 (Cth) for the provisional and final registration of the Agreement and of any amendment or associated agreement;

(d) to give notice of any change in negotiable shipping arrangement or of any other affecting event, as may be required under the Trade Practices Act 1974 (Cth).

6.2 The Parties shall jointly nominate a representative authorized to sign on behalf of each Party and file this Agreement and any amendments thereto with the Federal Maritime Commission which representative may delegate this authority to counsel.

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6.3 The Parties may also employ administrative personnel, attorneys and other persons to perform services in connection with this Agreement, and otherwise provide for administrative and housekeeping matters.

ARTICLE 7 -- MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

7.1 Any vessel operating common carrier by water that regularly operates liner vessels in transportation services in the trade may become a Party to this Agreement by signing the Agreement or a counterpart copy thereof, and upon filing, as required by any applicable law, a modification hereof adding such carrier as a new Party to this Agreement.

7.2 A Party may only be expelled from this Agreement for abandonment of service, or for breach of an obligation of that Party under this Agreement, and only in accordance with the following procedure:

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(a) A detailed statement setting forth reasons for the proposed expulsion shall be furnished by the complaining Party, and a copy of that statement submitted to the Federal Maritime Commission;

(b) The offending Party shall have the right to make a statement and to tender documents in its defense at a meeting called to consider the issue;

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(c) Expulsion of the offending Party requires a two-thirds majority of the other Parties;

(d) If the offending Party submits the matter to arbitration under Article 17 within 14 days of that meeting, the decision to expel that Party is suspended pending the decision of the arbitrator.

7.3 A Party may withdraw from this Agreement without penalty at any time upon 48 hours written notice to the other Parties, and upon providing a copy of that notice to the Federal Maritime Commission and to the Registrar of Liner Shipping under the Trade Practices Act 1974 (Cth). Withdrawal does not affect any existing obligation of that Party under Article 16 or 17.

ARTICLE 8 -- MEETING AND VOTING PROCEDURES

8.1 Meetings of the Agreement shall be held at such times and in such places as may be determined by the Parties. All Parties shall be provided with notice of such meetings.

8.2 The unanimous agreement of all Parties entitled to vote shall be required for any amendment or modification of this Agreement and for any Agreement action or decision with respect to tariff rules (including scope of the tariff). Any other matter, including but not limited to tariff rates, service contracts and time-volume rates, shall, except as

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otherwise provided herein, require the agreement of a majority of the Parties entitled to vote.

8.3 Failure to have a sailing in the trade for a period of three (3) consecutive months shall be regarded as an abandonment of service, and any Party whose service has been abandoned shall have no vote on any matter included herein until its service shall have been resumed and it has loaded and sailed a vessel, except that service shall not be deemed to be abandoned in the event of national emergencies, strike, warlike operations, embargoes, blockades, boycotts, regulations of any governmental authority or force majeure.

ARTICLE 9 -- DURATION AND TERMINATION OF AGREEMENT

This Agreement enters into force on the first day it may be lawfully implemented under each of the applicable laws and shall continue in effect indefinitely unless terminated under Article 8.2.

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ARTICLE 10 -- POLICING AND ENFORCEMENT

The Agreement shall, at the request of any Party, employ an independent neutral body to police fully the obligations of the Agreement and its Parties.

ARTICLE 11 -- PROHIBITED ACTS

The Agreement shall not boycott or take any other concerted action resulting in an unreasonable refusal to deal or engage in any other predatory practice designed to eliminate the participation or deny the entry, in the trade of a common carrier not a party of the Agreement, a group of common carriers, an ocean tramp or a bulk carrier.

ARTICLE 12 -- CONSULTATION, SHIPPERS' REQUESTS AND COMPLAINTS

12.1 Shippers' requests and complaints may be made by filing a statement thereof with the Agreement Chairman or his representative. Such statement shall set forth the purpose, nature and basis of the submission, and shall include all information deemed by the shipper to be relevant. The statement shall be distributed promptly to each Party of the Agreement.

12.2 A shipper's request or complaint shall be considered promptly by the Agreement, and the Agreement shall promptly notify the shipper of its decision on the request or complaint.

12.3 The procedures for filing shippers' requests and complaints shall be set forth in the Agreement tariff.

12.4 The Agreement may from time to time negotiate with Government or private shippers, corporations, boards, shipper councils, or other persons or organizations to the extent

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required or permitted by applicable law. Such persons or organizations may submit written statements to the Agreement Chairman requesting a meeting or consultation, and setting forth matters to be addressed. Within a reasonable time thereafter, the Agreement Chairman shall initiate a meeting or consultation, orally or in writing, with the requesting entity in order to attempt to amicably resolve any such matter.

ARTICLE 13 -- INDEPENDENT ACTION

13.1 Any Party may take independent action on any rate or service item which has been jointly established pursuant to this Agreement upon five (5) calendar days notice of the Agreement Chairman or his representative. The time period shall commence upon receipt by the Chairman or his representative, during normal business hours, of a written notice of a Party's intention to exercise independent action. The Chairman, or his representative, shall publish the rate or service item in the Agreement tariff(s) for use by the Party, to be effective no later than the date requested in the written notice. The rate or service item shall be subject to all provisions of this Agreement regarding adherence to tariffs.

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13.2 At any time following the giving of notice of an independent action by a Party, any other Party may elect to adopt the independent rate or service item effective on or after the

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effective date announced by the Party taking independent action, by providing written notice of such intention to the Agreement Chairman or his representative. If another Party decides to adopt the independent rate or service item, then the Chairman or his representative shall publish the rate or service item on behalf of that Party.

13.3 Except as permitted by paragraph 13.2 of this Article, no Party may alter or amend the terms of any service or rate item on which independent action may be taken, whether or not such item has been or is the subject of independent action, and whether or not that action has become effective, without first providing notice in accordance with paragraph 13.1 of this Article.

13.4 Upon receipt of a Party's notice of independent action, the Chairman or his representative shall promptly advise all Parties of the notice and its contents. At any time before or after a Party has given notice of independent action, and at any time before or after an independent action becomes effective, the Parties may discuss the proposed or effective independent action for the purpose of reaching an agreement or compromise and may take any action in response to the announced independent action, including action to implement any agreement or compromise; provided, however, that any matter decided by the Parties shall be in accordance with the terms of this Agreement

and, unless adopted without modification by the Parties, no proposed or effective independent action of any Party shall be canceled or altered without such Party's consent. Nothing in this Article shall require a Party proposing independent action to: (i) attend any meeting called by the Parties to discuss the independent action; and/or (ii) compromise the independent action.

ARTICLE 14 -- SERVICE CONTRACTS

14.1 The Parties may together negotiate and enter into joint service contracts, including time-volume and time-revenue contracts (hereinafter jointly referred to as "joint service contracts"), with individual shippers, shippers' associations, shippers' boards or groups authorized by law and/or other groups of shippers. Prior to the execution of any joint service contract by the Parties, any Party may elect not to participate, or to limit its participation therein, in which event the service contract shall so specify. Notwithstanding any other provision of this Agreement, no Party may exercise independent action to deviate, in any respect whatsoever, from the terms and conditions of any

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joint service contract which has been entered into by the Parties. Each joint service contract entered into by the Agreement shall be filed in accordance with such rules and regulations as the U.S. Federal Maritime Commission may from time to time prescribe and registered, if necessary, under the Trade Practices Act 1974 (Cth).

14.2 Any Party, either individually or jointly with any other Party or Parties, may negotiate, offer and/or enter into a service contract for the transportation of cargo in the trade (any such contract entered into by a single Party or jointly by multiple Parties is hereinafter referred to as an " individual service contract" ). The Parties are authorized, but not required, to discuss and agree upon any and all terms of their respective individual service contracts and to exchange and discuss any and all information and data concerning their respective individual service contracts. The Parties are authorized to discuss, agree upon, adopt, revise and implement voluntary guidelines relating to the terms and procedures of individual service contracts. Any such voluntary guidelines adopted by the Parties shall explicitly state that the Parties have the right not to follow the guidelines and shall be submitted confidentially to the Federal Maritime Commission.

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ARTICLE 15 -- CONFIDENTIALITY

Except as may be required under the applicable laws or as otherwise agreed between the Parties, no Party shall disclose to any person, except its own representatives and its own or this Agreement's legal representatives, the view or position of any Party on any matter considered under this Agreement.

ARTICLE 16 -- EXPENSES

Each Party will bear the expenses of its own representatives in connection with this Agreement. All other expenses incurred in the carrying out of this Agreement, including any fees or costs of consultants or other service, will be apportioned as the Parties from time to time agree, and in default of agreement in equal shares.

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ARTICLE 17 -- ARBITRATION

17.1 Subject to Article 17.5, a Party to this Agreement may refer any question as to the meaning or effect of this Agreement to arbitration by a sole arbitrator in accordance with and subject to this Article and (to the extent that this Article makes no provision) to the UNCITRAL Arbitration Rules. The arbitrator's decision shall be final and is not subject to appeal.

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17.2 In determining any such dispute the arbitrator shall apply the laws of New South Wales.

17.3 The appointing and administering body shall be the Australian Chamber of Shipping. The language of the arbitration shall be English and the place of arbitration shall be Sydney in the State of New South Wales.

17.4 The following rules apply to the arbitration:

(a) Except by agreement of the Parties to the arbitration there will be no prehearing discovery.

(b) The arbitrator shall decide the matter only on the basis of evidence submitted to him, which evidence shall be supplied to the other Parties to the arbitration, who shall be given the opportunity to submit evidence in rebuttal, explanation or mitigation, and to cross-examine any witness.

17.5 Article 17.1 does not apply:

(a) If the Parties to the dispute or difference agree in writing that it is to be resolved by some other means, and

(b) (where the agreed means involve arbitration or other proceedings outside Australia) if the Australian Minister administering the Trade Practices Act 1974 (Cth) also agrees in writing.

17.6 This Article excludes any right of appeal that a Party would otherwise have under Part V of the Commercial Arbitration Act 1984 (NSW), to the full extent permitted by that Act.

17.7 This Article does not affect the jurisdiction of the Federal Maritime Commission under the U.S. Shipping Act of 1984.

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ARTICLE 18 -- MISCELLANEOUS

In this Agreement "applicable law" means the U.S. Shipping Act 1984, and the Australian Trade Practices Act 1974 (Cth). This Agreement shall be binding upon and inure to the benefit of only the Parties hereto.

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APPENDIX A

PARTIES TO THE AGREEMENT

The Parties to the Australia/United States ContainerLine Association are as follows:

1. Hamburg-Sudamerikanische
   Dampfschifffahrts-Gesellschaft
   Eggert & Amsinck (Columbus Line)
   Ost-West Strasse 59
   2000 Hamburg 11, Federal Republic of Germany

2. P&O Nedlloyd Limited
   One Meadowlands Plaza
   East Rutherford, NJ 07073

3. Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited
   3601 S. Harbor Boulevard
   Santa Ana, CA 92704

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ContainerLine Association
FMC Agreement No. 202-011407-004

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IN WITNESS WHEREOF, the Parties have agreed to amend this Agreement as per the attached pages as of this 14th day of April, 1999.

AUSTRALIA/UNITED STATES
CONTAINERLINE ASSOCATION

By: Marc J. Fink

Marc J. Fink
Authorized to execute pursuant
to Article 6.2

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