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The Pacific East Coast Express Agreement

(formerly the
P&O Nedlloyd/FMC Agreement 232-011694 Cross Space Charter and Sailing Agreement)

FMC Agreement No. 232-011701-004

2nd Edition

A Cross Space Charter Agreement

Termination Date: See Article 9

Original Effective Date: May 3, 2000

EFFECTIVE
JUN 30 2002
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

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JUN 30 2002

ARTICLE 1. NAME OF AGREEMENT

This Agreement shall be known as the Pacific East Coast Express Agreement (the "Agreement" or "PEX").

ARTICLE 2. PURPOSE OF AGREEMENT

The purpose of this Agreement is to enable the Lines to provide efficient ocean common carrier services with greater cost effectiveness and operational efficiency in the Trade (as hereinafter described).

ARTICLE 3. PARTIES TO AGREEMENT

The parties hereto are:

1. CMA CGM, S.A. ("CMA CGM")
   4, Quai D'Arenc
   P.O. Box 2403
   13215 Marseilles
   Cedex 2 - France

2. China Shipping Container Lines ("CSG")
   700 Dong Da Ming Road
   Shipping Tower, 5th Floor
   Shanghai, PRC

3. P&O Nedlloyd Limited/P&O Nedlloyd B.V. (as one Line) ("PONL")
   Beagle House
   Braham Street
   London E1 8EP United Kingdom

   CMA CGM, CSG and PONL shall collectively be referred to as Lines and individually as a Line.

ORIGINAL

ARTICLE 4. GEOGRAPHIC SCOPE

The geographic scope of this Agreement shall cover the trade between United States ports in the Eastport, ME/Key West, FL range, inclusive, and U.S. inland and coastal ports served via such ports, on the one hand, and (a) ports of Panama and Jamaica, (b) ports in the Far East in the Japan/Hong Kong range, inclusive of inland and coastal points served via such ports, on the other hand, and vice versa. The foregoing scope is hereinafter referred to as the "Trade").

ARTICLE 5. AGREEMENT AUTHORITY

The Lines are authorized to consult and agree upon the deployment and utilization of vessels in the Trade including, without limitation, sailing schedules, service frequency, ports to be served, port rotation, type, size and capacity of vessels to be operated by each Line in all or any portion of the Trade, the addition, withdrawal, substitution or replacement of vessels in the Trade, and the terms of any such addition, withdrawal, substitution or replacement. The Lines are authorized to charter vessels to and from each other or from other persons for use in the Trade on such terms and conditions as they may from time to time agree.

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Service

The PEX service shall deploy initially nine (9) Vessels of a nominal capacity of 2700 up to 3300 TEUs, offering a weekly service on a rotation as the Parties may agree from time to time.

With effect from Amendment 5, the port rotation shall be Busan - Shanghai - Xiamen - Yantian - Hong Kong - (Keelung or Kaoshiung) - Panama Canal - Panama - Port Everglades - Savannah - New York - Norfolk- Kingston - Panama - Panama Canal - Busan

The Parties may agree at a later stage to increase the size of the vessels deployed up to 4000 teus, subject to unanimous consent. Such upgrading of the vessels in the fleet shall not be subject to further amendment to this Agreement.

The Parties will notify the FMC of any change in the initial port rotation or of any increase in the size of the vessels deployed.

Notwithstanding that no Line shall operate another service with the same schedule port rotations as under this Agreement, there shall be no restriction on any Line enhancing its coverage of the Trade by way of upgrading or otherwise changing its other existing services or by adding new services or making other arrangements with third Lines.

5.2 Provision of Vessels

A. Each Line shall provide three vessels in the service under this Agreement.

B. Lines may substitute Vessels so long as there is no disruption to the service, that the minimum capacity and service speed requirements are met, and that a minimum of thirty, (30) days' notice has been given. Each Line will remain responsible to the other Lines for all costs of positioning and transshipment arising from the substitution of its respective Vessels.

5.3 Vessel Scheduling and Performance

A. From time to time the Lines will agree a sailing schedule for the Service based on a pro-forma schedule covering the voyage rotation set out in clause 5.1 in the round voyage time of 63 days. Each Line shall maintain the sailing schedule and shall use maximum efforts to remedy any failure to comply in accordance with the decisions taken by the Lines. Lines will from time to time agree

on the financial and other implications of any failure to maintain the sailing schedule.

5.4 Slot Allocation

A. The Lines agree that allocations shall be based on a Standard Capacity which shall be agreed by the Lines based on the number of Slots which can be made available at 10 gwtonnes per Slot on the Vessels deployed in the Service.

B. The allocations to each Line shall be calculated based on:-

1. Each Line shall be entitled to approximately one-third of the total number of slots available on each sailing in the Trade in accordance with the provisions of this Article.

2. On individual sailings the Line providing the Vessel shall guarantee the availability of the Slot and deadweight allocation to the other Line even if this means a reduction in his own allocations, unless otherwise agreed.

3. Lines further agree that the main principle of the agreement is that the Lines exchange space and deadweight based on the tonnage deployment of each Line, so that the space and deadweight entitlement is equivalent to the slots (based on space and deadweight) contributed by each Line.

C All slots exchanged on a structural basis shall be regarded as taken on a used/not used basis round voyage.

D The Line not providing the Vessel will be entitled to use its allocation of space on the Vessel up to its guaranteed Slot allocation or its allocation of deadweight whichever is reached first.

E Each Line shall receive on each vessel, an allocation of reefer plugs and 45' space, or minimum 20' or maximum 40' capacity in the ratio of the actual provision of any capacity by each Line over the total fleet.

5.5 Use of Slots

A. Each Line shall be entitled to use its 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. Overall schedule integrity not to be compromised.

B. Unused Slots within a Line's entitlement may be sold or sub-chartered *ad hoc* to any vessel operating common carrier (V.O.C.C.) in accordance with applicable regulatory requirements, always provided that there is prior consultation with the other Lines and that the other Lines have had first refusal of such unused Slots.

C. A Line requiring additional Slots should first approach the other Lines to ascertain whether they have unused Slots to sell. If however the other Lines are unable to fulfil the requirement or if there is insufficient time to consult with other Lines without losing the opportunity to carry cargo, then Slots may be acquired from non-party Lines on an *ad hoc* basis in accordance with applicable regulatory requirements.

D. Slots purchased or sold *ad hoc* between the Lines under this clause shall be on a used only voyage leg basis and shall be paid for as determined under Clause 5.6 below.

E. (1) IN RELATION TO ANY THIRD PARTIES NOT INCLUDING FULLY OWNED SUBSIDIARIES: No Party shall assign its rights, including its rights to utilize the Container Slots or subcharter such container slots,

transfer or delegate its duties as per this Agreement in any way to any other person or entity without the prior written consent of the other Parties.

(2) FULLY OWNED SUBSIDIARIES: No Party shall assign its rights or transfer or delegate its duties under this Agreement to a fully owned subsidiary without the prior written consent of the other Parties, which shall not be unreasonably witheld.

F. In the event that a Vessel Operator is able to load more than the nominal capacity/deadweight of a particular Vessel as a result of the conditions appertaining to an individual voyage then the Vessel Operator may but shall not be obliged to offer such additional space to the other Lines. If such space is taken up by the other Lines, then they shall pay for any such additional Slots at the agreed *ad hoc* Slot rate.

G. Space on Vessels in the Pacific East Coast Express Service shall be provided upon the terms of a Cross Charterparty, which will be agreed by the Lines.

H. Each Line will bear all costs for the vessels it provides, including, but not limited to, daily running costs, charter hire, bunkers, port charges, dry docking, repairs and insurance.

5.6 Financial Arrangements

A. The consideration for each Line supplying Slots/deadweight to the other Lines shall be the exchange of Slots/deadweight among the Lines to each other.

B. In the event that one Line sells Slots to another Line under this Agreement financial recompense shall be made to the providing Line on the basis of an *ad hoc* Slot fee as the Lines may from time to time

agree. The Lines may agree separate rates for shorter sectors of the round voyage and for the movement of empty containers. In establishing fees for ad hoc sales and purchases of Slots, the Lines will use standard reference prices for ships, bunkers and port costs and shall no exchange vessel operating costs with one another.

5.7 Liability

Prior to the start of the Service the Lines shall agree on the liability relationship between the individual Lines. The liability terms may be changed from time to time as the Lines may agree.

5.8 Separate marketing

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.

5.9 Administration

A. The Lines will develop working procedures to handle communication channels, systems and procedures as well as other general items dealing with the day-to-day operation of the PEX Service and so far not being covered under the Agreement.

B. The Lines 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 Line operating the Vessel shall have the deciding vote and take the operational decision as relevant always taking into account views expressed by the other Line in any preceding discussions.

C. The Lines are authorized to discuss and agree upon

administrative matters and related issues interstitial to the authority contained in this Agreement, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, cargo claim procedures, record keeping, responsibility for loss or damage, bill of lading clauses, the establishment and operation of committees, the interchange of information and data, including EDI communications, regarding all matters within the scope of this Agreement, terms and conditions for *force majeure* relief, insurance, indemnification, consequences for delays, liabilities, and treatment of hazardous and/or dangerous cargoes.

D. Pursuant to 46 C.F.R. §572.407, any further agreement between the Lines cannot take effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns routine operational or administrative matters or is interstitial to the authority contained herein.

5.10 Terminal selection

A. The Lines shall work towards the use of one ocean terminal at each port of call, in accordance with such criteria as the Lines may from time to time agree.

B. Provided that the agreed criteria are satisfied, preference will be given to terminals owned by Lines.

C. Consideration to be given to fulfillment of a Line's existing terminal contracts.

5.11 Disclaimer of partnership

This Agreement is not intended to create a partnership or joint liability under any jurisdiction.

ARTICLE 6. DELEGATION OF AUTHORITY

A. 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:

1. Any authorized officer or representative of a Line

2. Legal counsel for each of the Lines.

ARTICLE 7. MEMBERSHIP AND WITHDRAWAL

A. Additional ocean common carriers may become parties to this Agreement upon the unanimous consent of the Lines.

B. If at any time during the term of this Agreement there shall be a change in control or material change in ownership of a Line (for purposes of this provision the "Affected Line") and any other Line is of the opinion that such change is likely to materially prejudice the cohesion or viability of the Service, then such other Line may within three months of the coming into effect of such change give not less than three (3) months notice in writing to the Affected Line and any other Line terminating this Agreement.

For purposes of this provision, 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.

C. If at any time during the term of this Agreement a Line (for purposes of this provision the "Affected Line") becomes bankrupt, insolvent or has a receiving order made against it, suspends payments, or continues 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 such 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 any other Line is of the opinion that the results may be materially detrimental to the Service, or that sums may be owed by the Affected line to any other Line and may not be paid in full or their payment may be delayed, then such other Line may terminate the Agreement upon thirty (30) days' notice in writing to the Affected Line and any other Line.

ARTICLE 8. VOTING AND AMENDMENTS

A Actions taken pursuant to this Agreement shall be by unanimous consent of the Lines.

B. Amendments to this Agreement shall be in writing and signed by the Lines and shall not be effective until filed and effective under the Shipping Act of 1984, as amended.

ARTICLE 9. EFFECTIVE DATE, DURATION AND TERMINATION

A. This Agreement shall be effective the later of the date it becomes effective under the Shipping Act of 1984, as amended, or (ii) with the first sailing on or around July 6, 2002 from Busan in the Eastbound

direction and shall continue in effect indefinitely. Any Line may withdraw from the Agreement upon six months' prior written notice to the other Lines provided that such notice shall not be given before December 31, 2003 to take effect no earlier than June 30, 2004. Notwithstanding the foregoing, the earliest date on which termination may become effective shall be after completion of the roundtrip voyage of the last ship in the twelfth cycle after the inception of this agreement, due to sail eastbound from the first Asian loading port on or about 24tJuly 2004.

B. This Agreement may be terminated at any time upon mutual agreement of the Lines.

C. In the event of a termination the Lines shall give prompt written notice to the FMC.

D. The termination of this Agreement shall not terminate or otherwise affect any accrued obligations of one Line to the other Line under this Agreement which arose prior to such termination.

ARTICLE 10. APPLICABLE LAW

This Agreement shall be governed and construed in accordance with the laws of England except that nothing shall relieve the Lines of their obligation to comply with the Shipping Act of 1984, as amended. However, any dispute between the Lines relating to loss or damage to cargo and containers shall be dealt with under terms and conditions to be agreed.

ARTICLE 11. NOTICES

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by registered mail or courier service to the address of the other Line as set forth in Article 3 hereof.

ARTICLE 12. LANGUAGE

This Agreement and all notices, communications or other writings made in connection therewith shall be in the
English language. No Line shall have any obligation to translate such matter into any other language and the wording and meaning of any such matters in the English language shall govern and control.

ARTICLE 13. ARBITRATION

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.

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 or 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 or Line.

The Lines further agree that where the amount in dispute is US$ 100,000 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).

ARTICLE 14. CONFIDENTIALITY

Except as required by law, the terms and conditions of this Agreement or any implementation thereof shall be confidential as between the Lines and the contents

thereof may not be made public without the mutual consent of the Lines.

ARTICLE 15. ASSIGNMENT

No Line shall assign its rights and obligations under this Agreement, in whole or in part, without the prior written consent of the other Lines, which consent shall not be unreasonably withheld. This Agreement shall be binding on the Line's successors or assigns.

ARTICLE 16. FORCE MAJEURE

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.

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.

ARTICLE 17. Severability

If any provision of this Agreement, as presently state 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. Additional Authority

The Lines are authorized to discuss and agree on the following matters:

(a) The charter of Vessels from one another or jointly from third Lines.

(b) The operation of feeder and transhipment vessels as may be required.

(c) 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.

(d) 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.

SIGNATURE PAGE

In witness whereof, the Lines have executed this Amendment 5 by their authorized representative.

CMA CGM, S.A.

By: Neal M. Mayer (ydc)
Name: Neal M. Mayer
Title: Attorney-in-Fact
Date: May 23, 2003

China Shipping Container Lines

By: Neal M. Mayer (ydc)
Name: Neal M. Mayer
Title: Attorney-in-Fact
Date: May 23, 2003

P&O Nedlloyd Limited/P&O Nedlloyd B.V.
(acting as one Line)

By: Neal M. Mayer (ydc)
Name: Neal M. Mayer
Title: Attorney-in-Fact
May 23, 2003

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