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FEDERAL MARITIME COMMISSION

THE CONTAINER TRADES STATISTICS AGREEMENT

A Cooperative Working Agreement

FMC Agreement No. 012048

Expiration Date: None

This Agreement Has Not Been Published Previously



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ARTICLE 1: NAME OF THE AGREEMENT

This agreement shall be known as the Container Trades Statistics Agreement (“the Agreement”).

ARTICLE 2: PURPOSES OF THE AGREEMENT

The purposes of the Agreement are to: (i) authorize the parties to implement an information collection and processing system relating to maritime transport services in the Trade (as hereinafter defined); (ii) to exchange and subject to safeguards and restrictions discuss such information when adequately aggregated or deemed historic; (iii) to issue reports based on such aggregated/historic information and/or on information from publicly available sources; (iv) to establish and/or maintain one or more separate entities for purposes of facilitating the centralizing, compiling, aggregating, and exchanging of said information, and for other lawful purposes; and (v) to cause one or more of said entities to enter into one or more contracts with one or more third parties for the provision of services in connection the centralizing, compiling, aggregating, and exchanging of such information, or for other lawful purposes.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (individually a “Party” and jointly the “Parties”) are listed in Appendix A hereto.

ARTICLE 4: GEOGRAPHIC SCOPE

The scope of this Agreement is the trade between all ports in the United States and all ports in the European Union (the “Trade”), including the ocean portion of cargo movements originating and/or terminating at inland locations in the United States and the European Union.¹

ARTICLE 5: AUTHORITY

5.1 The Parties are authorized to form, maintain and/or dissolve such entities as they deem necessary or appropriate for the exercise of the authority contained herein. Without limiting the foregoing, the Parties initially shall form and/or maintain (i) a Belgian non-profit association known (in English) as the European Liner Affairs Association (“ELAA”), which shall be governed in accordance with its Articles of Association; and (ii) a UK company to be known as Container Trades Statistics, Ltd. (“CTS”). CTS shall be governed in accordance with its Articles of Incorporation and its bylaws. The Parties are authorized to establish representative offices of the foregoing entities in such locations as they deem appropriate.

¹ Although the activities described herein shall be undertaken with respect to trades between the European Union and countries other than the United States, such trades are not within the scope of the U.S. Shipping Act or the jurisdiction of the Federal Maritime Commission (“FMC”) and therefore are not included in this Agreement.

5.2 The Parties are authorized to gather, compile, aggregate, exchange, and disseminate the following data:

(a) Demand Forecasts – Periodic forecasts of demand for containerized vessel space in the Trade for dry and reefer cargoes, to be prepared using past aggregated cargo volumes derived from the volume database described in Article 5.2(c) below, econometric forecasting, the experience of the Parties, and publicly available sources.

(b) Supply Side Forecasts – Periodic forecasts of the supply of containerized vessel space in the Trade, to be prepared using information available to the public such as reports and data prepared by third parties, container vessel liner schedules, announcements about new vessels and services, and other information published by lines.

(c) Volume Database – A database of the volume of dry and reefer cargo moved by the Parties in each direction in the Trade, capable of generating reports for various periods of time and various portions of the Trade. The database is capable of generating individual Party and aggregated volumes to/from each port/country in the Trade. Any reports of individual Party volumes will be disseminated only per trade direction and only when they are considered historical. The dissemination of reports of aggregated volumes to/from each port/country in the Trade will be subject to safety mechanisms ensuring that current data is not disseminated and that disaggregation of recent data is not possible.

(d) Price Index – A periodic index split by dry and reefer cargo reflecting aggregate average revenue per TEU (i.e., such as ocean freight, BAF, CAF and THC) earned by the Parties per trade direction (westbound/eastbound or northbound/southbound), This index shall be constructed based on a single revenue number, and shall not break out surcharges separately. The dissemination of the price index will be subject to safety mechanisms ensuring that current data is not disseminated and that disaggregation of recent data is not possible.

(e) Special *Ad Hoc* Reports – Subject to applicable legal requirements, such special, *ad hoc* reports as may be agreed from time to time.

5.3 The Parties are authorized to meet and discuss the foregoing data; provided, however, that these data are made available to the public as the

Parties may agree from time to time and that commercially sensitive issues are not discussed. The Parties may neither confirm nor contest the supply forecasts or otherwise disclose commercially sensitive information during such meetings. A reasonable fee may be charged for the forecasts and/or reports made available to the public.

5.4 The Parties are authorized to cause one or more of the entities formed pursuant to this Agreement to enter into one or more contracts with service providers in order to implement this Agreement, including contracts pursuant to which such service providers gather data from the Parties, compile it, and disseminate it to the Parties. Dissemination of data is subject to safety mechanisms ensuring that individual volumes are not disseminated before they have become historical and that current aggregated data are not disseminated and that recent aggregated volume and price data cannot be disaggregated.

5.5 Each of the Parties hereby agrees that it shall provide the data described in Article 5.2 (as it may be amended from time to time) to the designated service provider(s) in a timely manner, in the form and at the intervals agreed upon by the Parties and the service provider, and that such data shall be accurate. In the event a Party fails to provide data, provides data that is untimely, inaccurate, or in the incorrect format, it will be notified in writing of such deficiency(ies) by the ELAA's Executive Director. In the event of persistent breach the ELAA may impose one or more of the following measures:

- (i) Disclose the identity of the member providing erroneous submissions of data at trade association meetings;
- (ii) In case forecasts and reports need to be rectified and re-launched in consequence of the erroneous data submissions, mention the identity of the member causing the correction;
- (iii) temporarily block the non-complying member's access to data for the trades for which it has provided erroneous data; and
- (iv) In case a member continuously and intentionally provides erroneous data: (i) the ELAA may at its discretion recover all damage that can be proven or, by default, what is estimated to be equitable, relating to the erroneous data input and (ii) the ELAA's board may – if deemed necessary to uphold the credibility of the ELAA information exchange – suspend the member's membership for a period at its discretion.

5.6 Aggregated and individual volume data relating to the Trade which complies with the safety mechanisms referred to in Article 5.2. above will be disseminated to Parties who are in compliance with their obligations under this Agreement on such terms as the Parties may agree from time to time. Such data shall be used by the Parties only for their respective individual purposes, and shall not be provided to any third parties (except in accordance with Article 5.3 hereof).

5.7 The Parties are not authorized hereunder to discuss or agree upon the vessel capacity to be deployed by any of them. The Parties are not

authorized hereunder to discuss or agree upon the rates, charges, or terms and conditions of transport to be offered by any of them.

5.8 It is the intent of the Parties that the authority contained in this Agreement be interpreted, exercised and implemented in a manner that is consistent with the guidelines of the European Commission on the application of Article 81 of the EC Treaty to maritime transport services, especially with the safety mechanisms laid down herein.

ARTICLE 6: ADMINISTRATION OF AGREEMENT

6.1 The Agreement shall be administered by such individual(s) and/or entities as the Parties may designate from time to time. Each individual and/or entity so designated shall be responsible for those duties assigned him/her by the Parties from time to time.

6.2 Upon action taken by the Parties hereunder, Agreement counsel is hereby authorized to prepare amendments to this Agreement and information relating thereto, and to execute and file same with the Federal Maritime Commission.

ARTICLE 7: MEMBERSHIP

Any ocean common carrier (as that term is defined by the U.S. Shipping Act of 1984, as amended) may, provided they meet the eligibility requirements of ELAA, become a Party to this Agreement. Members of ELAA that are not

ocean common carriers in the U.S. trades may participate in ELAA and entities created hereunder, but shall not become Parties to this Agreement.

ARTICLE 8: VOTING

Each Party shall have one vote. Except as otherwise provided herein, decisions hereunder shall be decided by a simple majority of the Parties.

ARTICLE 9: DURATION, RESIGNATION AND EXPULSION

9.1 This Agreement shall become effective on the date it enters into effect under the U.S. Shipping Act of 1984, as amended, shall have an initial term of three (3) years, and shall remain in effect indefinitely thereafter. This Agreement may be terminated by the unanimous vote of the Parties, less one.

9.2 Any Party may resign from this Agreement on not less than six months' advance written notice to the individual or entity designated under Article 6.1 hereof, such notice to become effective only on January 1 of the year following that in which notice of resignation was given. A Party may not resign from this Agreement if it remains a member of ELAA and acts as an ocean common carrier in the Trade.

9.3 A Party shall be expelled from this Agreement automatically if it is expelled from the ELAA in accordance with the bylaws thereof or rules adopted pursuant thereto.

ARTICLE 10: ARBITRATION

Any dispute related to the existence, interpretation, execution of any rights and obligations of the Members under this Agreement shall be conducted:

- in London (UK);
- in the English language; and
- by three arbiters, amongst which one lawyer admitted to the bar in Belgium and one lawyer from a jurisdiction of the Member with whom the dispute arises, with an appropriate knowledge of contract law of the respective jurisdictions, all appointed and approved by both the ELAA and the non-complying Member; the latter arbiter will be appointed by the London Court of International Arbitration and in according to its rules.

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SIGNATURE PAGE

IN WITNESS WHEREOF the Parties have caused this Agreement to be
executed by their duly authorized representatives as of this 29th day of August,
2008.

A.P. Moller-Maersk A/S
trading under the name of Maersk Line

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

China Shipping Container Lines
Co., Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

COSCO Container Lines
Company Limited

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

CMA CGM S.A.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Compañia Sudamericana de
Vapores S.A.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Evergreen Line Joint Service
Agreement

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Hamburg Südamerikanische
Dampfschiffahrtsgesellschaft KG

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Hanjin Shipping Co., Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

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SIGNATURE PAGE (continued)

Hapag-Lloyd Aktiengesellschaft

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Hyundai Merchant Marine Co.,
Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Independent Container Line Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Kawasaki Kisen Kaisha, Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Mediterranean Shipping Company S.A.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Mitsui O.S.K. Lines, Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Nippon Yusen Kaisha

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Orient Overseas Container Line
Limited

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

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SIGNATURE PAGE (continued)

Pacific International Lines (PTE) Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

United Arab Shipping Company
(SAG)

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-Fact

Yangming Marine Transport Corp.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

Zim Integrated Shipping
Services, Ltd.

By: Stanley O. Sher
Name: Stanley O. Sher
Title: Attorney-in-fact

PARTIES TO THE AGREEMENT

A.P. Moller-Maersk A/S trading under the name of Maersk Line
50 Esplanaden
DK-1098 Copenhagen K
Denmark

China Shipping Container Lines Co., Ltd.
Room A, B, C, D, Floor 27
No. 450 Fu Shan Road, Pu Dong New Area
Shanghai, China

CMA CGM S.A.
4, Quai D'Arenc
P.O. Box 2409
13215 Marseilles Cedex 02
France

COSCO Container Lines Company Ltd.
378 Daming Road(E)
Shanghai 200080
People's Republic of China

Compañia Sudamericana de Vapores S.A.
Plaza Sotomayor 50
Valparaiso, Chile

Evergreen Line Joint Service Agreement, FMC No. 011982 ("ELJSA")
No. 163, Sec. 1, Hsin-Nan Road
Luchu Hsian, Taoyuan Hsien, 338, Taiwan

Hamburg Südamerikanische Dampfschiffahrtsgesellschaft KG
Ost-West-Strasse 59
Hamburg, Germany

Hanjin Shipping Co., Ltd.
25-11, Yoido-dong, Youngdeungpo-ku
Seoul, Korea

PARTIES TO THE AGREEMENT (continued)

Hapag-Lloyd Aktiengesellschaft
Ballindamm 25
20095 Hamburg, Germany

Hyundai Merchant Marine Co., Ltd.
66 Jeokseon-Dong, Jongno-Gu
Seoul 110-052, Korea

Independent Container Line Ltd.
Kipdorp 57
2000 Antwerp, Belgium

Kawasaki Kisen Kaisha, Ltd.
Hibiya Central Building
2-9, Nishi-Shinbashi 1-Chome
Minato-ku, Tokyo 105
Japan

Mediterranean Shipping Company S.A.
40, Av Eugene Pittard
CH-1206 Geneva

Mitsui O.S.K. Lines, Ltd.
1-1, Toranomom 2-Chome
Minato-ku, Tokyo 105-91
Japan

Nippon Yusen Kaisha
Yusen Building
3-2, Marunouchi 2-Chome
Chiyoda-ku, Tokyo 100-91
Japan

Orient Overseas Container Line Limited
31st Floor, Harbor Centre
25 Harbor Road
Wanchai, Hong Kong

Pacific International Lines (PTE) Ltd.
140 Cecil Street #03-00 PIL Building
Singapore 069540

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PARTIES TO THE AGREEMENT (continued)

United Arab Shipping Company (SAG)
505 South Avenue
Cranford, NJ 07016

Yangming Marine Transport Corp.
271 Ming De 1st Road
Chidu, Keelung, Taiwan 206
Republic of China

Zim Integrated Shipping Services, Ltd.
9 Andrei Sakharov Street
“Matam” – Scientific Industries Center
P.O.B. 1723
Haifa, 31016
Israel