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FEDERAL MARITIME COMM

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WEST COAST OF SOUTH AMERICA
DISCUSSION AGREEMENT

FMC AGREEMENT NO. 203-011426-034
(2nd Edition)

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ARTICLE 1: FULL NAME OF THE AGREEMENT

This Agreement shall be known as the West Coast of South America Discussion Agreement, hereinafter called "the Agreement."

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement shall be to promote rate stability, reduce destructive competition, and facilitate efficiencies and cooperation in providing services in the trade.

ARTICLE 3: PARTIES TO THE AGREEMENT

The ~~P~~ parties to this Agreement are set forth in Appendix A hereto and are hereinafter individually referred to as a "Member ~~Party~~" and collectively as "Members ~~Parties~~". Unless otherwise indicated in Appendix A, all Members shall be Members of both Sections defined in Article 4 hereof.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of the Agreement shall extend, via direct service or transshipment, between, on the one hand, Atlantic and Gulf Coast ports of the continental United States (including ports in Puerto Rico and the U.S. Virgin Islands) and inland or coastal points in the continental United States served via U.S. Atlantic and Gulf Coast ports and inland points in Puerto Rico and the U.S. Virgin Islands and, on the other hand:

(a) (i) ports in Ecuador, Peru, Chile and on the Pacific Coast of Colombia; (ii) inland and coastal points in Ecuador, Colombia, Peru and Chile served via such ports; (iii) in-transit cargo to/from Bolivia via ports in Peru and Chile; and (iv) in-transit cargo to/from Argentina via ports in Chile (the "West Coast of South America Section"); and

(b) ports on the northern (Caribbean) coast of Colombia and inland and coastal points in Colombia served via such ports (the "Colombia Section").

~~1. Atlantic and Gulf Coast ports of the continental United States,~~

~~2. Inland or coastal points in the continental United States via U.S. Atlantic and Gulf Coast ports,~~

~~3. Ports and inland points in Puerto Rico and the U.S. Virgin Islands,~~

~~and, on the other hand:~~

~~1. Ports in Ecuador, the Pacific Coast of Colombia, Peru or Chile,~~

~~2. In-transit cargo to and from Bolivia via ports in Peru and Chile,~~

~~3. Inland or coastal points in Ecuador, Colombia, Peru and Chile and inland points in Bolivia,~~

~~4. In-transit cargo to and from Argentina via ports in Chile,~~

Each of the foregoing is sometimes referred to herein as a "Section" and the Sections together are hereinafter called "the Trade".

ARTICLE 5: AGREEMENT AUTHORITY

5.01. This Agreement authorizes, but does not require, the Members of each Section ~~Parties hereto~~, through their respective officials, employees, agents and other representatives and with regard to transportation services in that Section ~~the Trade~~, to meet, discuss, otherwise communicate and consult, exchange information and points of view, endeavor to cooperate and reach voluntary and non-binding consensus and accord with respect to the establishment, maintenance, revision and cancellation of or otherwise concerning:

(a) Rates, including differential, time/volume, volume incentive, local, proportional (whether origin or destination based), tariff, non-tariff, through, joint, minimum, joint and/or individual service contract and all other kinds of rates;

(b) Charges, including surcharges, arbitraries and outport differentials, detention, per diem, demurrage, handling, bill of lading, and all other kinds of charges;

(c) Classifications;

(d) Rules and practices, including those relating to:

(1) The terms and conditions under which rates or charges may be paid or credit may be extended to shippers, including the currency or currencies of payment, the period (including any credit period) within which payment must be made, and the denial of credit to any shipper failing to comply with such terms and conditions;

(2) The receipt, handling, storage and delivery of cargo;

(3) Payment of compensation including the amount and terms and conditions of payment thereof to ocean transportation intermediaries as defined in Section 3(17)(A) of the Shipping Act of 1984 as amended;

(4) Free time and the positioning, return and interchange of containers, chassis or other cargo handling equipment;

(5) The number and location of any container yards, freight stations and other cargo or equipment depots;

(6) Consolidation and equalization allowances and other absorptions and payments, including the amounts, terms and conditions of payment, and practices relating thereto;

(e) Any other term or condition with respect to the carriage of cargo;

(f) Preparation, compilation, interchange and/or transmission of tariff and service contract materials and other publications, reports and information pertaining thereto;

(g) Discussions and agreements with shippers, shippers' associations and other shipper groups;

(h) Competitive or other conditions, including inland, equipment and other costs of services offered by carriers;

(i) The compilation and distribution of records, statistics and other information;

(j) The adoption of administrative, procedural and other rules and practices in furtherance of the purposes of this Agreement;

(k) Filing and effective dates of tariff, service contract and other commercial actions, public announcements thereof and notice to each other with respect thereto; and

(l) Other matters as are elsewhere authorized by this Agreement and activities as may be interstitial to and in implementation of the matters authorized by this Agreement.

(m) Discussions regarding competitive conditions in that Section ~~the Trade~~ and the need or desirability for neutral body or self-policing services, cargo inspection, documentation audit and billing and collection of free time, demurrage and detention charges and services related thereto.

5.02. This Agreement does not authorize any common tariffs. The Members ~~Parties~~ are not required hereunder to agree upon, or if they do agree, to adhere to any uniform rates, charges, practices, conditions of service, or other decisions. Each Member ~~Party~~ shall designate a point or points of entry for receipt of all inter-Member ~~Party~~ communications in connection with the operation of this Agreement.

5.03. The Members of a Section ~~Parties~~ may meet in person, by telephone or conduct business by written, e-mail, Internet, telex or telefax exchanges or polls. At any meeting and in order to foster a consensus, all Members of a Section ~~carriers~~ may communicate directly with one another and express their views with respect to any matter authorized by Article 5 hereof.

5.04. ~~To further assist in reaching a consensus, a~~ All Members ~~Parties~~ may communicate directly or indirectly with some or all of the other Members ~~carrier Parties~~ and exchange information with them, with respect to any matter authorized by Article 5 herein.

5.05. The Members of any Section ~~Parties~~, or any two or more of them may jointly enter into service contracts for cargo moving in the Trade. The Members of a Section ~~Parties~~ may adopt voluntary guidelines relating to the terms and procedures of a Member's or Members' ~~Party's or Parties'~~ service contracts which guidelines shall be submitted confidentially to the Federal Maritime Commission.

5.06. Notwithstanding anything to the contrary in Articles 5.01, 5.03, and 5.05 hereof, the authority set forth in the aforementioned Articles may be exercised jointly by Members of both Sections with respect to matters of common interest to both Sections. In furtherance of the foregoing, the Members of the Sections are authorized to meet together, discuss, exchange information, reach voluntary, non-binding agreement on, and/or adopt voluntary service contract guidelines applicable to matters within the scope of those Articles.

5.07. ~~5.06.~~ The Members ~~Parties~~ may charter space to, from and among each other on vessels owned or operated by them on such terms and conditions as they shall agree. The Members ~~Parties~~ may also jointly establish sailing schedules, port rotation, limit sailing and jointly advertise each others vessels, provided however that any such activities in which the Members ~~Parties~~ shall engage pursuant to this Article 5.07 ~~5.06~~ shall be on an ad hoc, interim (defined to mean for a period not to exceed ninety (90) days), sporadic or emergency basis, it being understood that all on-going space charter arrangements (and other activities) shall be pursuant to separate and

discreet agreement filed with the Federal Maritime Commission.

5.08. ~~5.07.~~ The Agreement shall submit to the FMC separate and sequentially numbered confidential minute records on a quarterly calendar year basis reporting all charter arrangements entered into between or among the Members pursuant hereto and specifying, for each such arrangement, (i) the names of the chartering and underlying Members ~~carrier Parties~~; (ii) the amount of space chartered expressed in twenty foot equivalent container united (TEU's); (iii) the commencement and termination dates; and (iv) the port or ports from or to which it applies. If no such arrangement was entered into during any reporting period, the report for that period shall so state.

5.09. ~~5.08.~~ In addition to any other authorities established elsewhere in this Agreement, two or more of the Member(s) may meet and otherwise communicate to exchange views, discuss, and consider proposals with respect to rationalization of vessels and/or vessel capacity operated, or which is being planned to be operated, by any one or more Members in all or any portion of the Trade. For purposes of this Article, the term "rationalization" includes arrangements or agreements to: slot charter vessel capacity; cross charter vessel capacity; jointly share or operate vessels and vessel capacity; add or remove vessels or vessel capacity from availability for use in all or any portion of the Trade; reduce, increase or otherwise modify sailing schedules, port calls, or transit times; allocate vessels or vessel capacity for contract and non-contract cargo, for particular routings, particular commodities, for particular equipment sizes or types, or based on cargo weight or other transportation related characteristics; establish a pooling arrangement for cargo (based on commodity, weight, measure, revenue, or container units, hereafter "cargo units") with Member(s) being allocated shares of anticipated cargo units; and to exchange individual, group and tradewide data, reports, plans, projections, and all other information regarding, relevant and/or useful to any or all Member(s) for purposes of the activities provided for hereunder. Pursuant to 46 C.F.R. §535.408(b) ~~407~~, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns matters within the scope of the aforementioned regulation. ~~routine operational or administrative matters.~~

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY

(a) The Members may appoint a Chairman or Chairmen to preside over meetings of the Members within in a Section or as the Agreement. ~~The Chairman of the Agreement shall be responsible for taking minutes of meetings and filing any reports with the Federal Maritime Commission as may be required.~~ The Members ~~Parties~~ may appoint a Secretariat to provide administrative and housekeeping functions in connection with the operation of this Agreement, delegate such authority to persons performing those services as may be necessary for that purpose and apportion any expenses in connection with administration of the Agreement between

or among them. The Secretariat shall be responsible for taking minutes of meetings and filing any reports with the Federal Maritime Commission as may be required.

(b) Upon action taken by the Members in accordance with this Agreement, each of the Members hereof appoint, in writing, Agreement counsel as attorney-in-fact and agent authorized to execute and file amendments to this Agreement with the Federal Maritime Commission.

ARTICLE 7: MEMBERSHIP

(a) Subject to Article 11 hereof, any ocean common carrier which is regularly engaged as an ocean common carrier in the Trade, directly or by transshipment, or which furnishes evidence of ability and an intention in good faith to institute and maintain a regular service in the Trade, may hereafter become a Member of either or both Sections of ~~or Party to~~ this Agreement by signing the Agreement or a counterpart copy thereof and furnishing the same to the Chairman. Prompt notice of admission to membership shall be furnished to the Federal Maritime Commission by an amendment to this Agreement and no admission shall be effective prior to the date a Member's ~~Party's~~ admission is effective in accordance with the regulations of the Federal Maritime Commission.

(b) No ocean common carrier which has complied with the conditions set forth in this Article and those in Article 11 (if applicable) shall be denied admission or readmission to membership. Advice of any denial of admission to membership, together with a statement of the reasons therefore, shall be furnished promptly to the Federal Maritime Commission.

(c) Each applicant for admission shall sign a copy of this Agreement. Upon dissolution of the Agreement, all sums of money remaining in the Agreement treasury, after payment of all expenses, shall be divided among the Members at the time of dissolution pro rata.

(d) A Member which is a joint venture or consortium of two or more ocean common carriers but operated as a single entity shall be treated as a single Member for all purposes under this Agreement.

(e) Any Member may resign without penalty from the Agreement or any Section of this Agreement effective not less than thirty (30) days after filing a written notice with the Agreement office, which shall promptly serve the notice on the other Members. Notice of the resignation of any Member shall be furnished promptly to the Federal Maritime Commission by amendment to this Agreement.

(f) The filing of a notice of resignation shall not, until the resignation becomes effective, relieve a Member of its obligations under this Agreement, but a

Member shall not, after filing of a notice of resignation, be entitled to receive information regarding any Agreement activity.

(g) Computation of outstanding obligations of any resigning Member, unless otherwise agreed to by the remaining Members, shall include all financial obligations entered into by the Agreement at the time the Member became a Member of ~~Party to~~ the Agreement and subsequent thereto up to the effective date of the Member's resignation. The resigning Member shall also be responsible for its share of the current year's administration fee, plus the next three (3) months fee towards any financial obligations that the Agreement undertook while it was a Member or to which the Agreement became a Party to while it was a Member.

(h) No Member may be expelled against its will from the Agreement except for failure to maintain an ocean common carrier service within the scope of this Agreement (said failure to be determined according to the minimum sailing requirements set forth in paragraph (j) below) or for failure to abide by the terms and conditions of Article 11 hereof. Expulsion for failure to maintain an ocean common carrier service must be authorized by unanimous vote of all Members entitled to vote, excluding the Member whose expulsion is at issue. Expulsion for failure to comply with the conditions of Article 11 hereof shall be automatic.

(i) No expulsion shall become effective until a detailed statement setting forth the reasons therefore has been furnished to the expelled Member and a copy thereof has been submitted to the Federal Maritime Commission.

(j) In the event that a Member shall fail to have a sailing within the scope of this Agreement during any period of ninety (90) consecutive days, strikes and force majeure excepted, such Member shall thereupon not be entitled to privileges on any and all Agreement matters, and the right to receive information regarding any Agreement activity and participate in Agreement meetings after such Member has loaded cargo and sailed vessel in the Trade. Failure to have a sailing within the scope of the Trade during any period of one hundred twenty (120) consecutive days, strikes a force majeure excepted, shall constitute cause for expulsion.

ARTICLE 8: VOTING

Except as provided in Articles 7 and 10 hereof, ~~T~~ there is no voting under this Agreement. Any consensus or agreement reached by some or all Members ~~Parties~~ hereunder shall be a matter of voluntary adherence by those Members ~~Parties~~ choosing to so agree. Provided, however, that any matter submitted to Agreement shall be acted upon within two business days following the day of its receipt by the Members ~~Parties~~.

ARTICLE 9: DURATION AND TERMINATION OF THE AGREEMENT

This Agreement shall enter into force, and may be implemented, as of the first day it becomes effective pursuant to the Shipping Act of 1984. This Agreement shall continue in effect indefinitely until cancelled by the Members ~~Parties~~. ~~Any Party may terminate its membership in the Agreement by giving thirty (30) days written notice to the other Parties. Notice of withdrawal of a Party shall be promptly furnished to the Federal Maritime Commission.~~

ARTICLE 10: AMENDMENTS AND EXECUTION

This Agreement may be modified by unanimous agreement of the Members ~~Parties~~ and any modification hereto shall be executed in writing. If it is executed by separate counterparts, each such counterpart shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 11: MEMBERS' OBLIGATIONS

(a) It shall be the obligation of all Members to pay invoices for Agreement expenses issued by the Secretariat within forty-five (45) days of the issuance of such invoices.

(b) In the event a Member fails to pay any invoice for Agreement expenses within the time specified in Article 11(a), the Secretariat shall issue that Member a delinquency notice advising the Member that it has fifteen (15) days to pay the invoice(s) identified in such notice and post a letter of credit in a form acceptable to the Secretariat and in the amount of $25,000 on which the Secretariat shall be able to draw for payment of any future invoices issued to that Member that are not paid within the time provided in Article 11(a) hereof.

(c) In the event a Member fails to pay any invoice(s) or post the letter of credit in accordance with Article 11(b), the Secretariat shall notify the Member that it has been expelled from the Agreement and the Secretariat shall, by copy of such notice sent to Agreement counsel, instruct counsel to file an amendment to the Agreement with the Federal Maritime Commission deleting the Member as a party to the Agreement. It is understood that expulsion pursuant to this Article 11(c) shall in no way relieve the expelled Member from any of its obligations to the Agreement, including the payment of outstanding invoices, and the Secretariat is authorized to take action to collect any amounts due and owing from the expelled Member.

(d) Any Member expelled from this Agreement pursuant to this Article 11 shall not be readmitted to the Agreement until it has paid in full all outstanding invoices and posted a letter of credit in a form acceptable to the Secretariat and in the amount

of $25,000 on which the Secretariat shall be able to draw for payment of any future invoices issued to that Member and not paid within the time indicated in Article 11(a) hereof.

Members of the West Coast of South America Agreement ~~Lines~~:

A.P. MOLLER-MAERSK A/S trading under the name of
Maersk Sealand
Esplanaden 50
DK-1098 Copenhagen
Denmark

Compania Chilena De Navigacion
Interoceania, S.A.
Plaza de la Justicia Nr. 59
Valparaiso, Chile

Compania Sud Americana De
Vapores, S.A.
P.O. Box 49-V
Valparaiso, Chile

Hamburg-Sűdamerikanische Dampfschifffahrtsgesellschaft
KG
Ost-West-Strasse 59
Hamburg, Germany

APL Co. PTE Ltd.*
1111 Broadway
Oakland, CA 94607-5500

Seaboard Marine Ltd.
1300 N.W. 78th Avenue
Miami, FL

Trinity Shipping Line, S.A.*
8347 N.W. 68th Street
Miami, FL 33166

Mediterranean Shipping Company, SA*
40 Avenue Eugene Pittard
1206 Geneva, Switzerland

P&O Nedlloyd B.V./P&O Nedlloyd Limited*
One Meadowlands Plaza
12th Floor
East Rutherford, NJ 07073

South Pacific Shipping Company, Ltd.*
d/b/a Ecuadorian Line
Claredon House
Church Street-West
Hamilton 5-31 Bermuda

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

* Member of West Coast of South America Section only

Lykes Lines Limited, LLC**(through May 31, 2005. Effective June 1, 2005, name changes to CP Ships USA LLC)
401 E. Jackson Street
Suite 3300
Tampa, FL 33602

Frontier Liner Services, Inc.**
8600 NW 53rd Terrace, Suite 204
Miami, FL 33166

King Ocean Services Limited, Inc.**
7570 N.W. 14th Street
Miami, FL 33126

** member of Colombia Section only