6ib

RECEIVED
03 MAR -7 PM 4:46
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

UNITED STATES/AUSTRALASIA
DISCUSSION AGREEMENT

(3RD EDITION)

EFFECTIVE
APR 21 2003
UNDER THE
SHIPPING ACT
OF 1984
Federal Maritime Commission

FMC NO.: 203-011117-030

CLASSIFICATION: COOPERATIVE WORKING AGREEMENT

EXPIRATION DATE: NONE

LAST REPUBLICATION (EFFECTIVE) DATE: July 6, 1987

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

TABLE OF CONTENTS

Article		Page
1.	Full Name of the Agreement	1
2.	Purpose of the Agreement	1
3.	Parties to the Agreement	1
4.	Geographic Scope of the Agreement	1
5.	Agreement Authority	1
6.	Official of the Agreement and Delegations of Authority	4
7.	Membership, Withdrawal, Readmission And Expulsion	5
8.	Voting	5
9.	Duration and Termination of the Agreement	5
10.	Confidentiality	5

APPENDIX A (Parties to the Agreement)

APPENDIX B (Minimum Levels of Service)

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

RECEIVED
03 APR -3 PM 4:08
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

ARTICLE 1 -- FULL NAME OF THE AGREEMENT

The full name of this Agreement is the United States/Australasia Discussion Agreement.

ARTICLE 2 -- PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to promote service, stability and efficiency in the Trade (as defined in Article 4) by authorizing the parties to exchange information, to discuss matters of mutual interest and concern in the Trade, to reach voluntary and non-binding agreements upon rates, rules, terms and conditions of common carrier service in the Trade, to enter into joint service contracts, and to discuss and formulate cooperative service arrangements in the Trade.

ARTICLE 3 -- PARTIES TO THE AGREEMENT

The names and addresses of the parties to this Agreement are set forth in Appendix A hereof.

ARTICLE 4 -- GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the trade (the "Trade") from all ports and interior and coastal points in the United States, via direct, transshipment or intermodal service, to all ports and interior and coastal points in Australia and New Zealand to the extent permitted by applicable legislation.

ARTICLE 5 -- AGREEMENT AUTHORITY

5.1. (a) The parties, or any of them, are authorized, but not required, to meet, collect and exchange information (including but not limited to trade statistics and expected supply of and/or demand for liner transportation services in the Trade), and discuss and reach consensus or agreement upon uniform or differential transportation rates, charges, surcharges, classifications, rules, service items including arranging or not arranging inland transport to the extent permitted by applicable legislation, freight forwarder compensation, credit and per diem terms and conditions (including detention and demurrage), rates and terms of service contracts, practices, general revenue recovery and restoration, identification, recovery, reduction or containment of carrier costs in the Trade, and any other term or condition relating without limitation to any aspect of ocean transportation or common carrier service in the Trade, whether or not such rates, charges, surcharges, classifications, etc. are required to be included in a tariff or a service contract. Matters subject to this authority include, but are not limited to, port-to-port rates, overland rates, volume rates, port area intermodal rates,

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 APR 21 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

through rates, interior point intermodal rates and minilandbridge rates for service in the Trade and substituted (alternate port) services, as well as discussion and implementation of specific rates, charges, and conditions, and adjustments thereof, and/or differentials among parties' rate levels, negotiations, bids and proposals applicable to cargo or pursuant to or in relation to particular service contracts, existing or proposed.

(b) The parties are not authorized to publish a common tariff hereunder, but may agree to aggregate the volume of cargo for purposes of time volume rates separately published in their individual tariffs; provided, however, that the agreement to aggregate cargo must be unanimous. In addition, while the parties may agree on a Minimum Level of Service as set forth in Appendix B hereof for purposes of satisfying Australian legal requirements, the parties are not authorized to agree on adding or removing capacity from the Trade.

(c) The parties are authorized to negotiate, offer, enter into or amend, or decline to offer or enter into or amend, Agreement service contracts with one or more shippers, as that term is defined by the Shipping Act of 1984, as amended, for the movement of cargo in the Trade. The Agreement and each individual party (except those who elect not to participate) shall be made a party to each service contract entered into by the Agreement. Prior to the execution of any Agreement service contract, any party may elect not to participate, or to limit its participation therein, by so advising the Chairman (including a statement of any such limitations). Any such election by a party not to participate or to limit its participation shall be specified in the service contract. Any party may, if the service contract so provides, withdraw from further participation in a service contract after a shipper has met the service contract's minimum quantity commitment of cargo, upon at least thirty (30) days' notice to the Agreement and the shipper. The parties may adopt, repeal or amend standards or guidelines for the negotiation of all or a portion of the Agreement's service contracts by representatives of the parties (subject to deviations or alterations as the parties may authorize from time to time). No party participating in an Agreement service contract may unilaterally deviate from the terms of that service contract.

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 PR 2 1 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

(d) Any two or more parties may negotiate and enter into service contracts with one or more shippers, as that term is defined in the Shipping Act of 1984, as amended, for the movement of cargo in the Trade. Such contracts shall be referred to herein as "multi-carrier service contracts." The parties involved in any multi-carrier service contract shall be responsible for filing any such contract with the Federal Maritime Commission and for publishing any essential items of such contracts as required by the Shipping Act of 1984, as amended, and any applicable FMC regulations.

(e) The parties are authorized to discuss and agree upon voluntary guidelines relating to the terms and procedures of their individual and multi-carrier service contracts. Any such guidelines shall explicitly state the right of the parties to not follow the guidelines. Any such guidelines shall be confidentially submitted to the Commission.

(f) The parties shall have no obligation to adhere, other than voluntarily, to any consensus or agreement reached under the authority of this Article 5.1 and no penalties shall be applicable for failure to adhere to any consensus or agreement reached hereunder. If any party shall decide not to adhere to any such consensus or agreement, it shall endeavor to promptly notify each other party of such decision, but failure to so notify may not be penalized.

5.2 The parties, or any of them, are authorized to meet, exchange information, and to discuss, negotiate and agree upon the formulation of any lawful agreement permitting the rationalization of service, equipment or capacity in all or any part of the Trade, by joint service, or otherwise; provided that no such agreement may become effective until all governmental conditions required to be fulfilled prior to its effectiveness shall have been fulfilled.

5.3 The parties, or any of them, are authorized to charter space on their respective vessels in the Trade to/from each other on an *ad hoc*, emergency or interim (i.e., for a period not to exceed 90 days) basis at such rates as may be agreed to from time to time by a two-thirds vote of all parties. Other terms and conditions of such space charter arrangements shall be determined by the parties involved, unless two-thirds of the parties vote to establish such terms and conditions, in which case they shall govern any such arrangements. The parties may also exchange, interchange and lease empty containers, chassis and other like equipment among themselves, at rates, terms and conditions as may be agreed to by the parties involved, unless two thirds of the parties vote to establish such terms and conditions, in which case they shall govern any such arrangements. Provided, however, that nothing in this Agreement shall be construed to prohibit any party or parties from chartering space or exchanging equipment among themselves or with other parties under rates, terms and conditions established pursuant to an agreement filed with the Federal Maritime

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 APR 2 1 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

Commission and effective pursuant to the Shipping Act of 1984, even if such rates, terms, and conditions are different from those established pursuant to this paragraph 5.3. Provided, further, that any on-going space charter arrangement involving two or more of the parties shall be authorized by a separate agreement filed with the FMC. To the extent that any charter arrangements have been entered into between or among the parties pursuant to this Article 5.3, the parties shall submit to the Federal Maritime Commission a semi-annual report containing the following information: (a) names of the parties involved in the charter, (b) TEU measurement of all cargo carried during the reporting period pursuant to such arrangement, (c) sailing date (or in case the arrangement involves more than one sailing, the commencement date and the termination date) and (d) port(s) from and to which the arrangement applies; or state "None."

5.4 In furtherance of the foregoing, parties may meet together; may adopt administrative rules (including procedures for the conduct of meetings and the sharing of expenses incurred hereunder); may appoint committees with such authority as the parties shall delegate to them; may retain consultants or other third parties; may compile and distribute or exchange information relating to trade conditions, costs or revenues of the parties or other persons, or any other matter pertaining to the Trade; and may meet with shippers, shipper groups or other persons. Action under this Agreement (including adoption of any modification to this Agreement) may be taken at any meeting or by written or oral approval, but no modification of this Agreement may be adopted unless approved by all the parties hereto.

ARTICLE 6 -- OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 The parties may appoint a chairman and may employ administrative personnel (including a secretariat), attorneys and other persons to perform services in connection with this Agreement and otherwise provide for administrative and housekeeping arrangements.6.2 The following individuals each has the authority on behalf of the parties hereto to file this Agreement with the Federal Maritime Commission, and execute and file any modification to this Agreement agreed to by the parties and to submit any associated materials in support thereof, as well as the authority to delegate same;

(a) The Agreement secretariat;

(b) Legal counsel for this Agreement and each of the parties hereto.

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 APR 2 1 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

ARTICLE 7 -- MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

(a) Any ocean common carrier providing service in the Trade may hereafter become a party to this Agreement by signing the Agreement or a counterpart copy thereof.

(b) No party may be expelled from this Agreement against its will or otherwise terminated as a party except for abandonment of service. No expulsion shall become effective until a detailed statement setting forth the reasons therefor has been furnished to the expelled party.

(c) Any party may withdraw from this Agreement at any time upon 10 days' written notice to the other parties.

(d) No such change in membership shall become effective until the fulfillment of all governmental conditions required to be fulfilled prior to the effectiveness thereof.

ARTICLE 8 -- VOTING

Each party shall have one vote under this Agreement. Agreement service contracts shall require a majority vote of the parties and amendments to this Agreement shall require the vote set forth in Article 5.4 hereof.

ARTICLE 9 -- DURATION AND TERMINATION OF THE AGREEMENT

The original Agreement entered into force on July 6, 1987 and shall continue in effect indefinitely unless it is amended and such amendment shall come into effect as required by applicable legislation or unless terminated by unanimous vote of the membership.

ARTICLE 10 -- CONFIDENTIALITY

Except as may be duly required by governmental regulations, compulsory process of law, or otherwise agreed, no party shall disclose to any person, except its own representatives and its own or this Agreement's attorneys, the view or position of any party on any matter considered under this Agreement.

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 APR 2 1 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

UNITED STATES/AUSTRALASIA
DISCUSSION AGREEMENT
FMC No. 011117-036 (3RD EDITION)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereby agree this 31st day of May, 2005, to amend the Agreement as set forth in the attached page and to file the same with the U.S. Federal Maritime Commission.

P&O NEDLLOYD LIMITED

Wayne Rohde
Attorney-in-fact

CMA CGM

Wayne Rohde
Attorney-in-fact

HAMBURG-SUDAMERIKANISCHE DAMPFSCHIFFFAHRTSGESELL-SCHAFT KG

Wayne Rohde
Attorney-in-fact

COMPAGNIE MARITIME MARFRET S.A.

Wayne Rohde
Attorney-in-fact

WALLENIUS WILHELMSEN LINES AS

Wayne Rohde
Attorney-in-fact

FESCO OCEAN MANAGEMENT LIMITED d/b/a Fesco Australia North America Line

Wayne Rohde
Attorney-in-fact

CP SHIPS USA, LLC

Wayne Rohde
Attorney-in-fact

EFFECTIVE MAY 31 2005

UNITED STATES/AUSTRALASIA
DISCUSSION AGREEMENT
FMC No. 011117-036 (3RD EDITION)

SIGNATURE PAGE (continued)

AUSTRALIA-NEW ZEALAND
DIRECT LINE, a division
of CP Ships (UK) Limited

Wayne Rohde
Attorney-in-fact

A.P. MOLLER-MAERSK A/S trading
under the name of Maersk Sealand

Wayne Rohde
Attorney-in-fact

SAFMARINE CONTAINER LINES NV

Wayne Rohde
Attorney-in-fact

EFFECTIVE MAY 31 2005

APPENDIX A

The parties to the United States/Australasia Discussion Agreement are as follows:

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

Hamburg-Südamerikanische
Dampfschifffahrtsgesellschaft KG
Ost-West-Str. 59-61
20457 Hamburg
Germany

Compagnie Maritime Marfret S.A. ("Marfret")
13 Quai de La Joliette
13002 Marseille
France

CMA CGM
4, quai d'Arenc
13215 Marseilles
France

CP Ships USA, LLC
401 East Jackson Street
Suite 1100
Tampa, FL 33602

Australia-New Zealand Direct Line, a division
of CP Ships (UK) Limited
401 East Jackson St., Suite 1100
Tampa, FL 33602

Wallenius Wilhelmsen Lines AS
Strandveien 20
P.O. Box 33, N-1324
Lysaker, Norway

Fesco Ocean Mangement Limited d/b/a
Fesco Australia North America Line
821 Second Avenue, Suite #1100
Seattle, Washington, 98104

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

Safmarine Container Lines NV*
De Gerlachekaai 20
Antwerp, Belgium 2000

*Maersk Sealand and Safmarine shall act as a single party

APPENDIX B

MINIMUM LEVELS OF SERVICE

1. Extent of Undertaking to Provide Minimum Level of Service

With a view to providing adequate, economic and efficient shipping services, Member Lines agree, subject to the conditions set out in this Appendix, to provide the minimum level of service specified in Paragraph 3.

2. Basis of Providing Minimum Level of Service

The Minimum Service Level in this Appendix is subject to Force Majeure (including strikes, actual conflict or civil disturbance) wherever occurring.

The minimum level of service specified in Paragraph 3 is established having regard to actual trading and operational conditions in the 12 months to 30 April, 2003. In the event that any of these conditions change to a degree which could prevent the achievement of the specified minimum level of service, the Member Lines have the right, with prior notice to the relevant Designated Shipper Body, to provide proportionately a lower level of service for a period not exceeding 90 days.

If the present Appendix is not amended in respect of the minimum service level within the 90 day period, Member Lines will take whatever action is necessary to provide the minimum level of service specified in Paragraph 3.

3. Statement of Minimum Service Levels

The minimum service level for the purpose of this Agreement on the basis in Paragraph 2 is as follows:

a. Minimum Capacity and Service
The Member Lines collectively undertake to maintain sufficient tonnage in the trade to provide 140,500 TEUs and 165 sailings per annum on a regular basis together with sufficient containers in good working order and condition.

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005 APR 21 2003
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

b. Loading Ports
(by direct service or indirect service).

Los Angeles
Oakland
Seattle
Philadelphia
New York
Savannah

c. Discharge Ports
(by direct service or indirect service).

Melbourne
Sydney
Brisbane

d. Other Ports
Ports other than those stipulated in 3b and 3c above may be served directly or indirectly by the Lines. Additional freight or on-carrying charges may apply.

4. Amendment

This Appendix is subject to amendment by Member Lines after negotiation, if required, with the relevant Designated Shipper Body, currently the Importers Association of Australia.

FMC Agreement No.: 011117-036 Effective Date: Tuesday, May 31, 2005
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017
JUN 1 0 2004