FMC Agreement No.: 011223-004 Effective Date: Friday, March 15, 1991
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ORIGINAL

203-011223-004

AMENDMENT OF
FMC AGREEMENT NO. 203-011223

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WHEREAS, the Parties wish to amend the Transpacific Stabilization Agreement, FMC No. 203-011223, as amended previously (the "Agreement"), in furtherance of the purpose stated in subarticle 2.1 of the Agreement, to permit the Parties to provide more efficient freight transport service to the Trade by improving the economical use of their vessels through voluntary, mutual chartering of available capacity thereon, especially on short or no advance notice as needs arise;

NOW, THEREFORE, in accordance with subarticle 8.2, the Parties have taken action upon the unanimous vote of all of them to amend the Agreement as reflected by First Revised Page Nos. 1 and 11c and Original Page Nos. 33-37, which are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this amendment of the Agreement to be executed on their behalf by their duly authorized representative.

TRANSPACIFIC STABILIZATION AGREEMENT

By: Robert A. Peavy / DNB
Name: Robert A. Peavy
Title: Counsel to the Agreement
(Pursuant to authorization under subarticle 6.9)

Date signed: January 29, 1991

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5.14 Each Party is authorized, as needs arise, to charter, cross-charter, subcharter and exchange (collectively, "charter") capacity on vessels operated in the Trade by another Party or Parties on such commercial terms (including trading or exchange of space or equipment, assumption of equipment lease costs, or monetary payments) as may be mutually agreed between them to reflect market circumstances at the time of the charter. Such chartering is authorized hereunder pursuant to the rules and procedures set forth in Appendix E to this Agreement. No Party has any obligation under this Agreement to charter capacity on its vessels to any other Party, except as Parties may from time to time mutually agree.

ARTICLE 6 - AGREEMENT OFFICIALS AND DELEGATIONS OF AUTHORITY

6.1 The Administrative Committee shall be charged with overseeing and effecting the administrative and housekeeping functions of the Agreement, including, but not limited to, screening amd making recommendations to the Parties concerning the selection of the Secretariat and the Auditor, establishing the format of reports to be furnished by the Secretariat and the Auditor under this Article and by the Parties under Article 10, recommending procedures for

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APPENDIX D (cont'd.)

call or other aspects of its operations for the purpose of implementing this Agreement, describe these; or state "None."

5. To the extent that any Party has declined to accept cargo for carriage in its vessels for no other reason than that such carriage would have caused the Party to exceed its Maximum Allowed Capacity under the Agreement, describe the circumstances, including the nature of the cargo and number of TEUs involved; or state "None."

6. To the extent that any charter arrangements have been entered into between or among the Parties pursuant to subarticle 5.14 and Appendix E of the Agreement, describe each such arrangement, including (a) names of the Charterer and the Owner, (b) TEU measurement of all Cargo carried during an Accounting 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."

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APPENDIX E

RULES AND PROCEDURES FOR CHARTER ACTIVITIES

In implementation of subarticle 5.14 of the Agreement, the Parties hereby establish the following rules and procedures governing their voluntary, mutual chartering, cross-chartering, subchartering and exchange (collectively, "chartering") of available capacity on their respective vessels operated in the Trade.

1. Definitions

A Party who charters vessel capacity from another Party is referred to as a "Charterer" and a Party whose vessel capacity is chartered by another Party is referred to as an "Owner".

2. Parties' Rights and Obligations

(a) A Party may advise any other Party at any time of the need for, or the availability of, vessel capacity for charter pursuant to this Agreement. Except as provided in paragraph (b) below, an Owner may charter to another Party capacity under the Owner's operational control on any transpacific, feeder, relay or other vessel utilized for transportation of Cargo (as defined in subarticle 2.2(d) of the Agreement).

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(b) Any Party not entitled to vote on Agreement matters by reason of subarticle 8.3 may not charter vessel capacity from another Party pursuant to this Agreement until its right to vote is restored; and, no Party shall so charter capacity to any Party not entitled to vote.

(c) A charter of capacity hereunder shall be of a duration not longer than 90 days, or until completion of a voyage commenced during such 90-day period on which capacity is chartered, whichever is later.

(d) A Charterer shall pay any monetary obligations incurred to an Owner hereunder no later than the time agreed between the Owner and the Charterer, but if not otherwise agreed no later than 30 days after the ocean transportation on a particular vessel is completed.

(e) Nothing herein shall be construed as a demise or partial demise of any vessel of any Party. At all times during any voyage on which cargo, containers or other equipment are carried pursuant to a charter hereunder, the Master, his delegates, the officers and crew shall be and remain the employees and agents of the Owner and not the employees or agents of the Charterer.

(f) Cargo shipped under a charter pursuant to this Agreement shall be consigned to the Charterer and transported by the Owner on a contract basis.

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(g) For purposes of implementing charters under this Agreement, any Party who participates in a charter or similar arrangement in the Trade with another Party or Parties pursuant to a separate agreement filed and effective in accordance with the regulations of the FMC shall be permitted to discuss and agree on common positions regarding charters hereunder.

(h) Applicable laws, regulations, orders, resolutions and such other governmental policies requiring cargo to be carried in whole or in part by a national-flag carrier shall be observed, or appropriate waivers obtained.

3. "MAC" Compliance

(a) In determining the Parties' compliance with their Maximum Allowed Capacity requirements pursuant to subarticles 5.1 through 5.8 of the Agreement, the TEU measurement of all Cargo carried during an Accounting Period pursuant to a charter hereunder shall be divided into equal 50/50 shares, and each such share shall be counted toward the respective Maximum Allowed Capacity of the Charterer and the Owner.

(b) The Parties upon recommendation of the Administrative Committee pursuant to subarticle 10.1 shall establish suitable, timely reporting to the Secretariat of charter activities under the Agreement.

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4. Responsibility for Loss or Damage

Owners assume liability as provided in the United States Carriage of Goods by Sea Act, 46 U.S.C. §§1301-1315 ("COGSA"), for containers, chassis, proprietary cargoes or other equipment while in the custody and under the control of Owners. Such items shall be considered "goods" within the meaning of COGSA, and Owners' liability to Charterers for loss or damage thereto shall be determined in accordance with the provisions of COGSA. However, Owners shall not be responsible for loss or damage to cargo in the container or other equipment or to the container or other equipment itself that does not result from any act or omission of Owners or their agents or employees, or the master, officers or crew of Owners' vessel.

Owners shall bear and pay for, and at their sole cost and expense, defend, protect, indemnify and save harmless Charterers from any legal liability for loss or damage to cargo, containers or other equipment carried under the terms of this Agreement while in the custody or under the control of Owners. Notwithstanding the foregoing, in the event of any conflict between the terms and conditions of any charter, bill of lading or other transportation agreement between an Owner and a Charterer, and the terms and conditions of this Article 4, such other agreement shall take precedence over this Article.

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5. Insurance

Owners will, as to their vessels, provide, pay for and provide any Charterer of capacity on their vessels with satisfactory evidence of, full form Hull, P & I, war risk and financial responsibility for oil pollution insurance within ten days after receipt of request therefor from such Charterer. The amounts of such insurance and deductibles thereunder will be placed and maintained in accordance with prudent shipowning practice. Owners further agree to provide any Charterer with written notice prior to cancellation of any such insurance and prompt notice of any change, modification or non-renewal of such insurance or non-payment of premiums therefor.

6. Resolution of Disputes

Except as otherwise specifically provided in a charter arrangement under this Agreement, any dispute or claim (other than for cargo loss or damage) arising thereunder which is not amicably settled by the Parties to the charter shall be resolved by arbitration in accordance with Article 13 of the Agreement.

7. Amendment

These rules and procedures may be modified and amended only in accordance with subarticle 8.2 and upon the effectiveness of an appropriate amendment of the Agreement pursuant to the regulations of the FMC.