Australia/United States
Discussion Agreement

FMC Agreement
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(Second Edition)

Original
Title Page

Australia/United States Discussion Agreement

(Second Edition)

A Discussion Agreement

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UNDER THE
SHIPPING ACT
OF 1984
Federal Maritime Commission

AUSTRALIA/UNITED STATES DISCUSSION AGREEMENT

1. NAME OF THE AGREEMENT

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

2. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to promote service, stability and efficiency in the outwards liner cargo shipping trade from Australia to the United States ("the trade") by:

(a) authorizing the parties to discuss and exchange information with regard to matters of mutual interest and concern in the trade, with a view, inter alia, to reaching a non-binding consensus upon rates, rules, terms and conditions of common carrier service in the trade;

(b) further authorizing the parties to give effect to any consensus arrived at under paragraph (a); and

(c) authorizing the parties to agree upon a common position with respect to the matters referred to in paragraph (a) to present to various statutory corporations, boards and shipper bodies in connection with the negotiation of minimum levels of service as set out in Appendix B hereto, the negotiation and award of carrier designations to carry cargoes in the trade, and related matters.

3. PARTIES TO THE AGREEMENT

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

4. GEOGRAPHICAL SCOPE OF THE AGREEMENT

This Agreement covers the trade from ports and points in Australia, on the one hand, to ports and points in the United States (including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands), on the other hand.

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5. OVERVIEW OF AGREEMENT AUTHORITY

5.1 The parties are authorized, but not required, to meet, to exchange information and data, to consider and discuss and to reach consensus upon the following matters:

(a) The rates, charges (including any demurrage, detention and other charges relating to the receiving, handling, storage and delivery of cargo), classifications, terms and conditions applicable to the transportation of cargo in the trade, service contract rates, charges, terms and conditions, and any rules and regulations applicable to those rates, charges, classifications, terms and conditions;

(b) Cargo movements, seasonability and other fluctuations of traffic flows and related data bearing on the level and frequency of liner services, including, without limitation, service offered by non-parties, required by shippers both in Australia and the United States;

(c) Practices in connection with the receipt, carriage, handling, and delivery of cargo, including cargo classifications and cargo space accommodations, the operation by the parties and non-parties of vessels, containers, equipment and facilities in the trade, and the centralisation of cargo at Australian outports and transshipment of same by feeder vessel, rail or motor carrier, and the parties will abide by the provisions of the Trade Practices Act 1974 (Cth) in reaching any such consensus;

(d) Political and economic policies affecting the shipment of cargo in the trade; port development, and commercial and governmental practices affecting the carriage of cargo in the trade; and

(e) any other matter which is necessary to give effect to this Agreement, and which is in conformity with the applicable laws.

5.2 The parties are further authorized:

(a) to exercise the authority under Article 5.1 in connection with the presentation (jointly or separately) of a common position to any Australian statutory corporation, board or shipper group concerning such matters as the negotiation, award, implementation and designation of carriers to carry cargoes in the trade; and

(b) to meet with designated shipper bodies and to negotiate upon minimum levels of shipping services as set out in Appendix B, including frequency of sailings, cargo carrying capacity and ports of call.

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5.3 The parties may adhere and give effect to any consensus reached under the authority of Article 5.1, but are not required by this Agreement, or by anything done pursuant to this Agreement, to give effect to any such consensus; and no common tariff shall be published under this Agreement.

5.4 The parties, or any of them, may agree upon any routine administrative matter relating to the operation or implementation of this Agreement.

6. OFFICIALS OF AGREEMENT AND DELEGATION OF AUTHORITY

6.1 The parties may select and Agreement Chairman, who (or whose nominated representative) shall have the following functions:

(a) to preside at meetings of the membership;

(b) to file minutes and other documents as may be required by the rules of the Federal Maritime Commission;

(c) to apply on behalf of the parties under the Trade Practices Act 1974 (Cth) for the provisions and final registration of the Agreement and of any amendment or associated agreement;

(d) to give notice of any change in negotiable shipping arrangement or of any other affecting event, as may be required under the Trade Practices Act of 1974 (Cth).

6.2 The parties shall jointly nominate a representative authorized to sign on behalf of each party and file this Agreement and any amendments thereto with the Federal Maritime Commission and the National Transportation Agency, which representative may delegate this authority to counsel.

6.3 The parties may also employ administrative personnel, attorneys and other persons to perform services in connection with this Agreement, and otherwise provide for administrative and housekeeping matters.

7. MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

7.1 Any vessel operating common carrier by water that regularly operates liner vessels in transportation services in the trade may become a party to this Agreement by signing the Agreement or a counterpart copy thereof, and upon filing, as required by any applicable law, a modification hereof adding such carrier as a new party to this Agreement.

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7.2 A party may only be expelled from this Agreement for abandonment of service, or for breach of any obligation of that party under this Agreement, and only in accordance with the following procedure:

(a) A detailed statement setting forth the reasons for the proposed expulsion shall be furnished by the complaining party, and a copy of that statement submitted to the Federal Maritime Commission;

(b) The offending party shall have the right to make a statement and to tender documents in its defense at a meeting called to consider the issue;

(c) Expulsion of the offending party requires a two-thirds majority of the other parties;

(d) If the offending party submits the matter to arbitration under Article 13 within 14 days of that meeting, the decision to expel that party is suspended pending the decision of the arbitrator.

7.3 A party may withdraw from this Agreement at any time upon 48 hours written notice to the other parties, and upon providing a copy of that notice to the Federal Maritime Commission. Withdrawal does not affect any existing obligation of that party under Article 12 or 13.

8. VOTING

8.1 This Agreement may be amended or terminated upon the affirmative vote of three-quarters of the parties at a meeting called for that purpose, provided that any party not present at that meeting has been given 48 hours notice of the proposed amendment or termination.

8.2 Except as provided in Articles 7.2 and 8.1, any consensus under this Agreement shall be adopted as far as possible by general agreement without any vote being taken, but if no agreement can be achieved, a consensus may be adopted by a majority vote of the parties.

8.3 Unless a party voting against a consensus under Article 8.2 notifies the other parties, directly or through the Agreement Chairman, to the contrary, it will be assumed that party does not adhere to the consensus.

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8.4 A party which adheres to a consensus for the purposes of Articles 8.2 or 8.3 but which decides, pursuant to Articles 2 and 5.3, no longer to adhere or give effect to that decision shall use its best efforts promptly to notify the other parties, directly or thought the Agreement Chairman, of its intention until further notice to discontinue that adherence.

9. DURATION AND TERMINATION OF AGREEMENT

This Agreement enters into force on the first day it may be lawfully implemented under each of the applicable laws, and shall continue in effect indefinitely unless terminated under Clause 8.1.

10. CONFIDENTIALITY

Except as may be required under the applicable laws or as otherwise agreed between the parties, 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.

11. RESERVATION OF RIGHTS: INDEPENDENT ACTION

Nothing in this Agreement is to be construed:

(a) as obligating any party to exchange information, to participate in any activity or meeting, to be or not be a party to any other agreement, or to adhere to any position, without its consent;

(b) as requiring adherence by any party for any period of time to any consensus reached under Articles 5.3 and 8.2; or

(c) as limiting the right of any party to continue or alter any tariff it publishes or to which it otherwise adheres, any service it provides, or any commercial practice in which it may engage.

12. EXPENSES

Each party will bear the expenses of its own representatives in connection with this Agreement. All other expenses incurred in the carrying out of this Agreement, including any fees or costs of consultants or other service, will be apportioned as the parties from time to time agree, and in default of agreement in equal shares.

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13. ARBITRATION

13.1 Subject to Article 13.5, a party to this Agreement may refer any question as to the meaning or effect of this Agreement to arbitration by a sole arbitrator in accordance with and subject to this Article and (to the extent that this Article makes no provision) to the UNCITRAL Arbitration Rules. The arbitrator's decision shall be final and is not subject to appeal.

13.2 In determining any such dispute the arbitrator shall apply the laws of New South Wales.

13.3 The appointing and administering body shall be the Australian Chamber of Shipping. The language of the arbitration shall be English and the place of arbitration shall be Sydney in the State of New South Wales.

13.4 The following rules apply to the arbitration:

(a) Except by agreement of the parties to the arbitration there will be no prehearing discovery.

(b) The arbitrator shall decide the matter only on the basis of evidence submitted to him, which evidence shall be supplied to the other parties to the arbitration, who shall be given the opportunity to submit evidence in rebuttal, explanation or mitigation, and to cross-examine any witness.

(c) The cost of the arbitration shall be borne equally by the parties to the dispute, and each party shall be liable to pay its own expenses of the arbitration.

13.5 Article 13.1 does not apply:

(a) If the parties to the dispute or difference agree in writing that it is to be resolved by some other means, and

(b) (where the agreed means involve arbitration or other proceedings outside Australia) if the Australian Minister administering the Trade Practices Act 1974 (Cth) also agrees in writing.

13.6 This Article excludes any right of appeal that a party would otherwise have under Part V of the Commercial Arbitration Act 1984 (NSW), to the full extent permitted by that Act.

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13.7 This Article does not affect the jurisdiction of the Federal Maritime Commission under the U.S. Shipping Act of 1984.

14. SERVICE CONTRACTS

14.1 The parties may together negotiate and enter into joint service contracts, including time-volume and time-revenue contracts (hereinafter jointly referred to as "joint service contracts"), with individual shippers, shippers' associations, shippers' boards or groups authorised by law and/or other groups of shippers (jointly referred to as "Shipper"). Prior to the execution of any joint service contract by the parties, any party may elect not to participate, or to limit its participation therein, in which event the service contract shall so specify. Notwithstanding any other provision of this Agreement, no party may deviate, in any respect whatsoever, from the terms and conditions of any joint service contract which has been entered into by the parties. Each joint service contract entered into by the Agreement shall be filed in accordance with such rules and regulations as the U.S. Federal Maritime Commission may from time to time prescribe and registered, if necessary, under the Trade Practices Act 1974 (Cth).

14.2 Any party, either individually or jointly with any other party or parties, may negotiate, offer and/or enter into a service contract for the transportation of cargo in the trade (any such contract entered into by a single party or jointly by multiple parties is hereinafter referred to as an "individual service contract"). The parties are authorized, but not required, to discuss and agree upon any and all terms of their respective individual service contracts and to exchange and discuss any and all information and data concerning their respective individual service contracts. The parties are authorized to discuss, agree upon, adopt, revise and implement voluntary guidelines relating to the terms and procedures of individual service contracts. Any such voluntary guidelines adopted by the parties shall explicitly state that the parties have the right not to follow the guidelines and shall be submitted confidentially to the Federal Maritime Commission.

15. MISCELLANEOUS

In this Agreement "applicable law" means the U.S. Shipping Act 1984, as amended, and the Australian Trade Practices Act 1974 (Cth). This Agreement shall be binding upon and enure to the benefit of only the parties hereto.

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APPENDIX A

Parties to the Agreement

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

Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft
KG (Columbus Line)
Ost-West Strasse 59
2000 Hamburg 11, Germany

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

Australia-New Zealand Direct Line, a
division of CP Ships (UK) Limited
3601 South Harbor Blvd.
Santa Ana, CA 92704 U.S.A.

LauritzenCool AB
Berga Backe 2
SE - 182 85
Danderyd, Sweden

Seatrade Group N.V.
Kaya Slamboyan
11-7 Willemstad P.O. Box 4918
Curacao, Netherlands Antilles

FESCO Ocean Management Inc.
11th Floor
801 Second Street
Seattle, Washington 98104

A.P. Moller-Maersk Sealand
50, Esplanaden
DK-1098 Copenhagen K
Denmark

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APPENDIX B

MINIMUM LEVEL OF SERVICE TO BE PROVIDED BY THE AUSTRALIA/UNITED STATES DISCUSSION AGREEMENT

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 the Conditions of the Member Lines' individual Tariffs (excluding the schedule of freight rates and charges) and 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 31 August 1999. 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:

West Coast USA	46,450 TEUs and 125 sailings
East Coast USA	14,000 TEUs and 32 sailings

per annum on a regular basis together with sufficient containers in good working order and condition.

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b. Loading Ports (by direct service or indirect service at base port rates at no extra cost to shippers/exporters).

Melbourne
Sydney
Brisbane

c. Discharge Ports (by direct service or indirect service at base port rates at no extra cost to shippers/exporters).

Houston
Los Angeles/Long Beach
Norfolk
Philadelphia
San Francisco/Oakland
Seattle/Tacoma

d. Other Ports

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

e. At the time of negotiating this Appendix B - Minimum Level of Service document the overall range of ports serviced, whether direct or indirect, contained in the current terms and conditions of the Member Lines individual Tariffs form part of this Agreement.

Any change to tariff arrangements is subject to negotiation if required, with the relevant Designated Shipper Body, currently the Australian Peak Shippers Association.

4. Amendment

This Appendix is subject to amendment by Member Lines after negotiation, if required, with the relevant Designated Shipper Body, currently the Australian Peak Shippers Association.

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