

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Petition No. P2-20

PETITION OF CMA CGM S.A., AMERICAN PRESIDENT LINES, LLC, APL CO. PTE. LTD. AND ANL SINGAPORE PTE LTD FOR A TEMPORARY EXEMPTION FROM STANDARD TARIFF & SERVICE CONTRACT FILING REQUIREMENTS

Pursuant to Rule 92 of the Commission’s Rules of Practice and Procedure, 46 C.F.R. § 502.92, CMA CGM S.A., American President Lines, LLC, APL Co. Pte. Ltd. and ANL Singapore Pte Ltd (hereinafter referred to collectively as “the CMA Group”) hereby urgently petition the Federal Maritime Commission (“FMC” or “Commission”) for a temporary exemption from 46 C.F.R. § 520.7(c), 46 C.F.R. § 520.8 (a)(1), 46 C.F.R. §520.8(4), 46 C.F.R. §530.8(a)(1), 46 C.F.R. §530.3(i) and 46 C.F.R §530.14(a). The CMA Group seeks this temporary exemption for the sole purpose of best serving its customers by requesting retroactive application of tariff publications and service contract filings impacted by the recent cyber-attack against the CMA Group, for a period of up to 60 days following the cyber-attack. As set forth herein, impacted publications include tariff rates, charges and rules; impacted filings include both original service contracts and amendments.

We recognize and appreciate the Commission’s gracious extension of 30-day flexibility for service contract and amendment filings as the shipping industry navigates the coronavirus pandemic. Given major system impacts due to the recent cyber-attack, we respectfully request authorization to retroactively apply agreed service contract rates and terms to shipments received by the CMA Group on or after September 27, 2020, for a period of 60 days. Similarly,

the CMA Group requests flexibility to retroactively apply tariff rates, charges and rules communicated to its customers but for which its systems are currently unable to facilitate tariff publication. The CMA Group seeks this flexibility to best serve its customers and will not use this flexibility to apply increased tariff rates or charges to customers absent an alternate form of written 30-day notice clearly communicated to customers. Granting this petition will allow the CMA Group to apply service contract rates agreed upon with customers and tariff terms offered to customers for shipments received before filing or publication can be accomplished, rather than requiring customers to pay higher tariff rates due to the CMA Group's inability to conduct timely service contract filings or tariff publications.

The Commission is authorized to exempt any specified activity of entities subject to the Shipping Act if the Commission finds that "the exemption will not result in substantial reduction in competition or be detrimental to commerce." 46 U.S.C. § 40103(a). As set forth below, the relief requested herein will benefit U.S. commerce, as opposed to inflicting harm, and will not serve to reduce competition.

As has been well documented in the mainstream news media and trade press, a malicious cyber-attack against the CMA Group severely inhibited the operation of the CMA Group's information systems starting on September 27, 2020. The CMA Group notified the Commission on September 28, 2020, the same morning the attack was discovered. The attack has impacted the CMA Group's ability to timely publish tariff rates and rules and to timely file service contracts and amendments. For example:

- American President Lines, LLC and APL Co. Pte. Ltd. (collectively "APL") have been unable to update their self-published tariff, AP1. APL has been unable to publish new rates and has been unable to amend existing rules. As an example, APL wanted to revise the effective date of its GRI that was scheduled to go into effect October 1, 2020 to November 1, 2020 but was unable to do so given lack of access to its tariff system. APL's lack of access to AP1 means that – once access is obtained - withdrawal of the October 1st GRI would result in not being able to apply a November 1st GRI with 30-day notice, though this change was intended to benefit customers;

- CMA CGM and ANL use a third-party publisher that is not impacted by the attack, but CMA CGM and ANL are unable to access quotes that have been given to customers in order to convert them into tariff line items for customers ready to book using those quotes. In the absence of relief, customers who book against their quotes will be invoiced at higher NOS rates because the quotes will not be converted to tariff line items prior to cargo receipt;
- CMA CGM and APL have new contracts and contract amendments set to go into effect October 1, 2020 as part of the recent changes to the transpacific trade.

Considering the foregoing, the CMA Group hereby requests relief from the Commission's regulations to allow tariff publications and service contract filings to have retroactive application so long as they are published and filed within 60 days following September 27, 2020.

In granting this petition the Commission will support the flow of U.S. commerce by allowing the CMA Group to honor rates, charges and rules offered to its customers. The CMA Group is leveraging currently functional systems to track its commitments to customers and minimize any negative impacts on customers from this cyber-attack. The flexibility to publish and file those commitments as soon as practicable is crucial to reducing potential burdens on customers. Granting this petition will serve to keep the global supply chain moving. The Commission will champion commerce by allowing the CMA Group to continue tariff and service contract filings necessary for the market flow of commerce to/from the United States. The relief requested herein will not reduce competition or be detrimental to commerce; quite the opposite is true, as it allows the CMA Group to continue offering sustainable transportation services to U.S. customers.

Given the extraordinary nature of this cyber-attack and its far-reaching impacts on the CMA Group's abilities to perform functions vital to ocean common carriers, the CMA Group appreciates the Commission's urgent consideration of this petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Draughn Arbona". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Draughn Arbona
Deputy General Counsel
CMA CGM (America) LLC
on behalf of the CMA Group