

**(S E R V E D)**  
**( JULY 10, 2015 )**  
**(FEDERAL MARITIME COMMISSION)**

**FEDERAL MARITIME COMMISSION**

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**MAERSK LINE A/S; APL CO. PTE LTD.; AMERICAN PRESIDENT LINES, LTD.; CMA CGM S.A. (“CMA CGM”); COSCO CONTAINER LINES COMPANY LIMITED; EVERGREEN LINE JOINT SERVICE AGREEMENT; HAMBURG-SUDAMERIKANISCHE; ALIANÇA NAVEGAÇÃO E LOGÍSTICA LTDA.; HANJIN SHIPPING CO., LTD.; HAPAG-LLOYD AG; HAPAG-LOYD USA; COMPANHIA LIBRA DE NAVEGACAO; COMPANIA LIBRA DE NAVEGACION URUGUAY S.A.; MITSUI O.S.K. LINES, LTD.; NIPPON YUSEN KAISHA LINE; KAWASAKI KISEN KAISHA, LTD.; HYUNDAI MERCHANT MARINE CO., LTD.; ZIM INTEGRATED SHIPPING SERVICES; CHINA SHIPPING CONTAINER LINES CO., LTD.; CHINA SHIPPING CONTAINER LINES (HONG KONG) CO., LTD.; MSC MEDITERRANEAN SHIPPING COMPANY SA; MATSON NAVIGATION COMPANY, INC.**

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**SECTION 15 ORDER REGARDING THE PACIFIC PORTS OPERATIONAL IMPROVEMENTS AGREEMENT AND MARINE TERMINAL SERVICES AND CHASSIS-RELATED ISSUES AT UNITED STATES PACIFIC COAST PORTS**

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Under the authority of section 15 of the Shipping Act of 1984 (Shipping Act or Act), codified at 46 U.S.C. § 40104, the Federal Maritime Commission (FMC or Commission) is requiring the vessel-operating common carrier (VOCC) members (and potential future VOCC members)<sup>1</sup> of the *Pacific Ports Operational Improvements Agreement* (PPOIA) (FMC Agreement No. 201227) to file with the Commission: (1) certain marine terminal services agreements that these members have entered into at U.S. Pacific Coast ports; and (2) information regarding the

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<sup>1</sup> On May 27, 2015, the parties filed an amendment to PPOIA that would add to the agreement China Shipping Container Lines, Co., Ltd., and China Shipping Container Lines (Hong Kong) Co., Ltd., acting as a single entity, as a VOCC party, and Ports America Outer Harbor Terminal, LLC, as a marine terminal operator (MTO) party. On June 24, 2015, the parties filed another amendment that would add MSC Mediterranean Shipping Company SA as a VOCC party. Accordingly, the Commission is including China Shipping Container Lines, Co., Ltd., China Shipping Container Lines (Hong Kong) Co., Ltd., and MSC Mediterranean Shipping Company SA as respondents to this Order.

parties' authority under PPOIA to meet, discuss, and agree on measures related to chassis at those ports.

PPOIA is a discussion agreement between the following parties: the *Ocean Carrier Equipment Management Association* (OCEMA) (FMC Agreement No. 011284); individual VOCCs (including most members of OCEMA as well as one VOCC outside of OCEMA); the *West Coast Marine Terminal Operator Agreement* (WCMTOA) (FMC Agreement No. 201143) and individual marine terminal operators (MTOs) (including all of the members of WCMTOA and several MTOs outside of WCMTOA). PPOIA was initially filed with the Commission, as required by the Act, on March 3, 2015, and became effective on April 17, 2015.<sup>2</sup>

Section 6(g) of the Act, codified at 46 U.S.C. § 41307(b), authorizes the Commission to determine whether an agreement such as PPOIA is likely, by a reduction in competition, to result in an unreasonable reduction in transportation service or an unreasonable increase in transportation costs. If the Commission makes such a determination, it may seek to enjoin, in whole or in part, the operation of the agreement.

The stated purpose of PPOIA is to permit the parties to address and cooperate on matters to alleviate congestion and improve the efficiency of operations at ports on the U.S. Pacific Coast. The potential market power of the agreement is considerable because its authority permits the parties to discuss and agree on almost every aspect of container handling operations at ports and terminals along the entire U.S. Pacific Coast. Further, the parties are most of the major buyers (VOCCs) and sellers (MTOs) of marine terminal services at these ports, and these same VOCCs and MTOs cooperate among themselves under broad discussion agreements with significant authority (OCEMA and WCMTOA). Therefore, matters agreed on under PPOIA may have a widespread impact on container operations at U.S. Pacific Coast ports.

In order to enable the Commission to determine the competitive effects of PPOIA under section 6(g), the Commission is seeking the submission of certain marine terminal service agreements, as well as additional information regarding the scope of the agreement's authority over matters related to chassis.

Marine terminal services agreements contain the specific terms and rates for terminal services that are negotiated between MTOs and VOCCs. Parties to these agreements are required to retain them and make them available to the Commission for inspection. *See* 46 C.F.R. §§ 535.301(d); 535.309. Commission staff previously requested a limited number of terminal services agreements. After reviewing the agreements submitted, the Commission has determined that additional agreements are needed to determine the competitive effects of PPOIA.

With respect to chassis, Articles V(a)(v) and (vi) of PPOIA describe the parties' authority to meet, discuss, and agree on a number of matters related to chassis, including, but not limited to, the use, location, maintenance, and repair of chassis. The Commission is seeking additional information regarding this authority based on several complaints regarding chassis inspection procedures being implemented by some MTOs. The complaining parties contend, among other

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<sup>2</sup> PPOIA was subsequently amended to include additional parties. This amendment became effective on April 30, 2015.

things, that the parties to PPOIA are violating the Shipping Act by using the agreement to implement the chassis inspection and repair provisions of the recent labor contract between the Pacific Maritime Association (PMA) and the International Longshore and Warehouse Union (ILWU). They further assert that these inspection and repair requirements unfairly burden intermodal motor carriers and chassis-leasing companies, and are having a negative impact on the motor carriers' ability to efficiently transport and deliver freight in a timely manner.

Based on the foregoing and because the Commission previously had difficulty obtaining information from certain PPOIA members through staff requests, the Commission is exercising its authority under section 15 of the Act to require the VOCC members of PPOIA to submit to the Commission: (1) certain marine terminal services agreements at U.S. Pacific Coast ports; and (2) information regarding the parties' authority to meet, discuss, and agree on measures related to chassis at those ports.

NOW THEREFORE, IT IS ORDERED, that the companies designated in the attached Appendix are named Respondents herein.

IT IS FURTHER ORDERED, that by July 27, 2015, each Respondent<sup>3</sup> file with the Commission's Bureau of Trade Analysis the following documents:

- I. A list of every current marine terminal services agreement the Respondent has entered into jointly with at least one other VOCC member of PPOIA at any of the following ports: Los Angeles, Long Beach, Oakland, Seattle, and Tacoma. If the Respondent has not entered into any such agreements at those ports, provide a statement to that effect.
- II. A complete copy of every current marine terminal services agreement the Respondent has entered into jointly with at least one other VOCC member of PPOIA at any of the following ports: Los Angeles, Long Beach, Oakland, Seattle, and Tacoma.
- III. A complete copy of the Respondent's current marine terminal services agreement with the largest throughput in 2014 at each of the following ports: Los Angeles, Long Beach, Oakland, Seattle, and Tacoma.
- IV. If the Respondent has already provided the Commission with a copy of an agreement described in Items II or III, the Respondent may submit the name of the agreement and the date it was provided to the Commission in lieu of submitting an additional copy.

IT IS FURTHER ORDERED, that by August 10, 2015, the Respondents, either individually or collectively, file with the Commission's Bureau of Trade Analysis a response to the following request for information:

- V. Provide an explanation regarding the extent of any legal or contractual authority Respondents or other PPOIA parties possess that would permit them to control the use, location, inspection, maintenance, and repair of chassis at U.S. Pacific Coast ports.

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<sup>3</sup> If two or more Respondents are treated as a single party under PPOIA, those Respondents may submit a single, joint response to the request for information and documents described in Items I-IV.

- VI. Identify the Respondents that currently own or lease chassis at U.S. Pacific Coast ports and the specific port(s) where such chassis are located. For each Respondent, provide the number of chassis at each port.
- VII. Provide an explanation as to how PPOIA's authority relating to chassis does not or would not undermine, or conflict with, the authority and control of chassis by chassis-pool operators, chassis-leasing companies, and other owners or users of chassis other than the parties to PPOIA.
- VIII. Provide an explanation regarding the extent to which PPOIA's authority over chassis is being used or could be used to implement provisions of the PMA-ILWU labor contract related to chassis inspection, maintenance, and repair. If such authority is being used or could be used to implement those provisions, explain whether such implementation could result, directly or indirectly, in the imposition of additional costs and/or rates, charges, or other fees on chassis-pool operators, chassis-leasing companies, or other non-party owners or users of chassis.

IT IS FURTHER ORDERED, that documents provided in response to this Order must be accompanied by a certification by an official from the Respondent(s) submitting the document indicating that a thorough search of the Respondent(s) files and records has been made, and that all documents or information responsive to this Order within the possession, custody, or control of the Respondent(s) have been provided.

IT IS FURTHER ORDERED, that every document provided in response to this Order, and written in a language other than English, shall be provided in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be an accurate translation, in accordance with 46 C.F.R. § 502.7.

FINALLY, IT IS ORDERED, that all information and documents collected in response to this Order shall be treated confidentially to the full extent permitted by law; provided, however, that this does not preclude the use of such information and documents by the Commission, as necessary, in any Commission or court proceeding.

By the Commission.

Karen V. Gregory  
Secretary

## Appendix

Maersk Line A/S  
50, Esplanaden  
DK-1098 Copenhagen, Denmark

APL Co. Pte Ltd.  
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# 14-01  
The Metropolis Tower 1  
Singapore 138588

American President Lines, Ltd.  
16220 N. Scottsdale Road  
Suite 300  
Scottsdale, AZ 85254-1781

CMA CGM S.A. (“CMA CGM”)  
4, Quai D’Arenc  
P.O. Box 2409  
13215 Marseilles Cedex 02  
France

Cosco Container Lines Company Limited  
1551-1555, Chang Yang Road  
Shanghai, 200090  
People's Republic of China

Evergreen Line Joint Service Agreement  
FMC No. 011982  
No. 163, Sec. 1, Hsin-Nan Road  
Luchu Hsian, Taoyuan Hsien, 338, Taiwan

Hamburg-Sudamerikanische  
Dampfschiffahrtsgesellschaft KG  
Willy Brandt Strasse 59  
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Aliança Navegação e Logística Ltda.  
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São Paulo - SP – Brasil

Hanjin Shipping Co., Ltd.  
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Hapag-Lloyd USA  
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Valparaiso, Chile

Compania Libra de Navegacion Uruguay S.A.  
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P.O. Box 49-V  
Valparaiso, Chile

Mitsui O.S.K. Lines, Ltd.  
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Nippon Yusen Kaisha Line  
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Tokyo 100-0005, Japan

Kawasaki Kisen Kaisha, Ltd.  
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Minato-ku, Tokyo 105-8421 Japan

Hyundai Merchant Marine Co., Ltd.  
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Seoul, Korea

Zim Integrated Shipping Services  
9 Andrei Sakharov St.  
“Matam” - Scientific Industries Center  
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Haifa 31016, Israel

China Shipping Container Lines Co., Ltd.  
27/F, Suntime International Mansion  
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Shanghai 200122  
People’s Republic of China

China Shipping Container Lines (Hong Kong) Co., Ltd.  
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99 Queen’s Road Central  
Central, Hong Kong

MSC Mediterranean Shipping Company SA  
12 - 14 Chemin Rieu  
1208 Geneva  
Switzerland

Matson Navigation Company, Inc.  
555 12th Street  
Oakland, CA 94607