

ORIGINAL

RECEIVED

20. AUG -5 PM 1:47

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

**BEFORE THE
FEDERAL MARITIME COMMISSION**

_____)
CHINA SHIPPING CONTAINER LINES)
CO., LTD.; COSCO CONTAINER LINES)
COMPANY LIMITED; EVERGREEN LINE)
A JOINT SERVICE AGREEMENT;)
HANJIN SHIPPING CO., LTD.; HORIZON)
LINES, LLC; KAWASAKI KISEN KAISHA,)
LTD.; NIPPON YUSEN KAISHA; UNITED)
ARAB SHIPPING COMPANY (S.A.G.); and)
YANG MING MARINE TRANSPORT)
CORPORATION,)

Complainants,)

v.)

THE PORT AUTHORITY OF NEW YORK)
AND NEW JERSEY,)

Respondent.)
_____)

Docket No. 11-12

**COMPLAINT FOR CEASE AND DESIST ORDER
AND REPARATIONS**

This is a Complaint for an order declaring Respondent's tariff rules unlawful, imposing a cease and desist order and awarding reparations, interest and attorney's fees to Complainants based on Respondent's Cargo Facility Charge, which became effective March 14, 2011 and which violates the Shipping Act of 1984, as amended (46 U.S.C. 40101 et. seq.) ("the Shipping Act").

I. Complainants

A. Each Complainant is acting individually and on its own initiative in regard to this Complaint, but collectively referred to herein as "Complainants".

B. China Shipping Container Lines Co., Ltd. is an ocean common carrier, FMC Organization No. 016435, with principal offices at Flr. 11-12, Ocean Plaza, 158 Fu Xing Men Nei Avenue, Xi Cheng District, Beijing 100031, The People's Republic of China.

C. COSCO Container Lines Company Limited is as an ocean common carrier, FMC Organization No. 015614, with principal offices at No. 378 Dong Da Ming Road, Shanghai, People's Republic of China 200080.

D. Evergreen Line A Joint Service Agreement FMC Agreement No. 011982 Consisting of Evergreen Marine Corp. / (Taiwan) Ltd, Evergreen Marine (UK) Ltd, Italia Marittima S.p.A., Evergreen Marine (Hong Kong) Ltd. and Evergreen Marine (Singapore) Pte Ltd is an ocean common carrier, FMC Organization Nos. 020775, 020988, 022005, 020776 and 001262, with principal offices at Evergreen Building, No. 166, Sec. 2, Minsheng East Road, Taipei, Taiwan, Republic of China.

E. Hanjin Shipping Co., Ltd. is an ocean common carrier, FMC Organization No. 022527, with principal offices at Hanjin Shipping Bldg., 25-11, Yoido-Dong, Youngdeungpo-Gu, Seoul 150-949 Korea.

F. Horizon Lines, LLC is an ocean common carrier. FMC Organization No. 022536, with principal offices at 4064 Colony Road, Charlotte, North Carolina 28211.

G. Kawasaki Kisen Kaisha, Ltd. is an ocean common carrier, FMC Organization No. 001466, with principal offices at Hibiya Central Building 2-9, Nishi-Shinbashi 1-chome, Minato-ku. Tokyo 105-8421.

H. Nippon Yusen Kaisha is an ocean common carrier, FMC Organization No. 001573, with principal offices at 3-2, Marunouchi 2 Chome, Chiyoda-Ku, Tokyo 100-0005 Japan.

I. United Arab Shipping Company (S.A.G.) is as an ocean common carrier, FMC Organization No. 006256, with principal offices at P.O. Box 3636, Safat 13037, Kuwait.

J. Yang Ming Marine Transport Corporation is an ocean common carrier, FMC Organization No. 000138, with principal offices at 271 Ming De 1st Road, Chidu District, Keelung 20646, Taiwan (R.O.C.).

II. Respondent

Respondent The Port Authority of New York and New Jersey (the "Port") is a body corporate created by Compact as a bi-state port district between the states of New York and New Jersey with consent of Congress. The Port is a massive and highly diversified transportation enterprise and structure that includes an airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Port Authority Bus Terminal in Manhattan and the World Trade Center. The Port owns and operates marine terminal facilities in the New York and New Jersey area, including leased marine terminal facilities and public berths. The Port's principal offices are at 225 Park Avenue South, New York, New York 10003.

III. Jurisdiction

A. The Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) (FMC Organization No. 002021). The Port leases most of its terminal facilities to private terminal operators who operate the container terminals

located at the Port and who provide marine terminal services and facilities to ocean common carriers and other vessel operators regularly calling at the Port in the transportation of cargo in United States foreign and domestic commerce. The Port also maintains and operates public terminals. Vessels transporting vehicles coming into and out of the Port are handled at the Port's public terminals. The Port publishes a tariff, PAMT FMC No. PA-10, containing Rules and Regulations, published February 2011 (the "Tariff").

B. Each of the Complainants is an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. §§ 40102(6) and (17). Each Complainant regularly calls at the Port's facilities and has a long-term contract with a marine terminal operator at the Port. At all times material to this complaint, each Complainant has operated as an ocean common carrier in the United States foreign commerce subject to the provisions of the Shipping Act.

C. The Federal Maritime Commission ("Commission") has jurisdiction over this Complaint because the Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14); each Complainant is an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. §§ 40102(6) and (17); this Complaint is filed pursuant to the Shipping Act, 46 U.S.C. § 41301; and the Port has violated the Shipping Act, 46 U.S.C. §§ 41102(c) and 41106(2), as particularly set forth below.

IV. Statement of Facts and Matters Complained of

Introduction

A. Complainants, ocean common carriers, seek relief and redress from actions of the Port that have violated, and continue to violate, the Shipping Act, 46

U.S.C. §§ 41102(c) and 41106(2). Complainants seek a cease and desist order, reparations, interest and attorneys fees because the Port, through adoption and implementation of its published Tariff's provisions (a) has failed and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and (b) has given and continues to give undue and unreasonable preference and advantage or impose undue or unreasonable prejudice or disadvantage with respect to persons.

B. The Port's actions violate the foregoing provisions more particularly through the Port's adoption, application and implementation of Section H of the Tariff, which establishes and enforces the Port's "Cargo Facility Charge" that the Tariff imposes on Complainants and other carriers whose vessels call at the Port. The Cargo Facility Charge is unlawful because Complainants do not receive services commensurate with the fee; because it severely and unreasonably prejudices Complainants while unduly preferring other users of the Port's facilities; and because the Cargo Facility Charge and the rules applying it provide for unlawful expulsion of the Complainants from the Port.

The Facts

C. The Port adopted, issued, published and implements its Tariff, which includes a new cargo-based tariff charge that became effective March 14, 2011. This Tariff charge, identified as the Cargo Facility Charge ("CFC"), and its implementing subrules are contained in the Tariff, Section H, Subrules, 34-1200 through 34-1220. (Exhibit 1, hereto). The Port publishes the Tariff at the Port's website at <http://www.panynj.gov/port/tariffs.html>.

D. In late 2010, the Port endorsed the CFC as a port-wide, cargo-based charge to be imposed on Complainants and other carriers. The CFC was predicated on the elimination of two other fees: one fee was assessed in connection with the movement of containers by truck, and the other fee was assessed in connection with the movement of containers by rail.

E. The CFC “appl[ies] to all cargo containers, vehicles and bulk cargo, break-bulk cargo, general cargo, heavy lift cargo, and other special cargo discharged from or loaded onto vessels at Port Authority leased and public berths.” Tariff, Section H, Subrule 34-1200.

F. The CFC container cargo rate is \$4.95 per TEU (“any containers larger than forty-feet [*sic*] are assessed as two TEUs”), the vehicle rate is \$1.11 per unit/vehicle and the rate for other cargoes is \$0.13 per metric ton. Tariff, Section H, Subrule 34-1210.

G. The CFC is assessed against a terminal “user,” defined as “a user of cargo handling services”; and The Port interprets “user” to mean any carrier calling at any terminal, leased or public, at the Port. “Terminal operator” means a “leased berth operator.” Tariff, Section H, Subrule 34-1220.

H. At leased berths all ocean carriers are responsible for payment of the CFC, which applies to cargoes of all carriers’ vessels, including cargo of participating carriers carried on the vessel. Tariff, Section H, Subrule 34-1220, 3. (a), ii. The terminal operator is required to collect the CFC from each carrier incurring the charge and to forward the payments to the Port. Terminal operators must send a monthly Vessel Activity Report (“Report”) to the Port detailing all carrier vessel activity at their terminals. The Report must identify carriers from which the terminal operator did not

receive the CFC charges stated in Port invoices submitted to the terminal operator. Tariff, Section H, Subrule 34-1220 3. (b), ii.

I. Parties responsible for paying charges associated with a vessel's use of a public (non-leased) berth must pay the CFC directly to the Port. Tariff, Section H, Subrule 34-1220, 4.

J. The Port issues monthly invoices to each terminal operator and to each user of a public berth. Invoices to terminal operators are based on the prior month's Report. Tariff, Section H, Subrule 34-1220, 3. (b), i. If a user does not pay the CFC charges contained in an invoice for two consecutive Report periods, Section H directs the Port to require all terminal operators to cease service to the carrier that did not pay the CFC charges. Tariff, Section H, Subrule 34-1220, 3. (b), iii.

K. Carriers will be denied access to all leased terminals as a penalty for nonpayment of the CFC at one terminal. No terminal operator shall provide service to a carrier that did not pay the CFC. A carrier denied service at one Port terminal for nonpayment would thereafter be denied service at all Port terminals. Tariff, Section H, Subrule 34-1220, 3. (b), iii.

L. If a terminal operator continues serving a carrier despite a prohibition of service ordered by the Port, that terminal operator becomes fully liable to the Port indefinitely for the CFC charges assessed in regard to that carrier. Tariff, Section H, Subrule 34-1220, 3. (b), iv.

M. The Port leases all of its containership terminal facilities under long-term leases. The private terminal operators publish tariffs covering the rates and conditions of service at their leased facilities. <http://www.panynj.gov/port/tariffs.html>.

N. Each Complainant through a contract with its respective marine terminal operator obtains terminal services and facilities at specified rates, terms and conditions for containers loaded on or discharged from vessels owned, chartered, space chartered and/or operated by each Complainant or containers that each Complainant's vessel carries that belong to another carrier under a space charter.

O. Each of the Complainants regularly calls at a leased terminal and each Complainant has loaded or discharged, and continues to load or discharge, cargo at the respective terminal prior to and subsequent to March 14, 2011, the effective date of the CFC.

P. Since March 14, 2011, each Complainant has been and continues to be invoiced by the respective terminal operator for the CFC. Each Complainant has been and continues to be invoiced for the CFC as to its own containers carried on its own vessels or its own containers carried on other carriers' vessels under slot charters at all Port terminal facilities. Tariff, Section H, Subrule 34-1220, 3. (a), ii.

Q. Since March 14, 2011, the Port has invoiced and continues to invoice Complainants for the CFC as to their cargoes loaded and discharged at public berths.

R. The Port would deny, and the Port has threatened to deny, Complainants' access to the Port's berths, leased and public, for Complainants who have not paid the CFC. The Port announced that enforcement for lack of compliance with the CFC and its supporting rules in Section H will begin August 15, 2011. See, *e.g.*, Letter, Port to Maher Terminals, Inc., July 18, 2011, Exhibit 2, hereto.

S. In late 2010, the Port determined to adopt the CFC and eliminate then existing Tariff provisions for the "Intermodal Container Lift Fee" ("Rail Fee") and the

“Container Terminal Subscription Fee” (“Truck Fee”). These rail and truck use-specific fees were eliminated in order to shift to the general CFC fee to recover the revenues previously generated by those fees. Exhibit 3, hereto, The Port Authority of New York and New Jersey Minutes, Tuesday, December 7, 2010, pp. 353-358.

T. The Rail Fee was a per-container charge that was imposed by the Port for utilization of the ondock intermodal rail facilities located at the Port’s leased container terminals. The ondock intermodal rail facilities are part of the Port’s ExpressRail system. The ocean carriers who used the ExpressRail system ultimately were responsible for payment of the charge to the Port. The Rail Fee most recently was assessed at \$57.50 per Intermodal Container Lift. Tariff, Subrule 34-765, published October 2010.

U. The Truck Fee was imposed on terminal operators in connection with the SeaLink trucker identification system used for interchange of containers between truckers or trucking companies and container terminals subsequent to unloading from the vessel or before loading onto the vessel. The Truck Fee was assessed solely against the marine terminal operators on the basis of each terminal’s annual TEU container volume. Subrule 34-810, Port tariff published 2010.

V. Complainants generally do not use the system for the interchange of containers between trucks and container terminals, the target of the now eliminated Truck Fee, because the movement of containers beyond the terminals by truck usually is not within the Complainants’ terms of carriage. The Port is forcing Complainants to cover the costs of the container interchange system without regard to the extent that Complainants actually use that system.

W. The Port adopted the CFC primarily as a means to recover its capital investment in constructing the Port's ExpressRail infrastructure; and the Port thereby eliminated the Rail Fee that previously had been assessed only against containers of ocean carriers that utilized the rail system to recover these capital costs. The Port instead now assesses the new CFC against all carriers, regardless of the extent of their ExpressRail utilization.

X. Complainants generally do not use the ExpressRail system. The now defunct Rail Fee was assessed only against ocean carrier containers utilizing the ExpressRail system. The CFC, conversely, compels Complainants to pay a per-container fee regardless how minimal their use of the rail system might be.

Y. The CFC, in effect, reduces the per-container costs for rail users from a Rail Fee of \$57.50 for each container lift to the CFC assessed fee of \$9.90 per 40-foot container with the difference being picked up by the non-rail users.

Z. As a result, the Port-imposed CFC relieves the predominant ExpressRail users of their prior obligations under the Rail Fee, and those users now are being significantly subsidized by the Complainants.

AA. The sum total of the Port's justification is shown in Exhibit 3. The justification boils down this: "it is fair and appropriate that they [Complainants] share in the cost of the investment in the ExpressRail system." The Port has nothing to show that the CFC or any portion of the CFC is commensurate with any benefit (direct or indirect) that the Complainants receive from the rail system.

BB. Therefore, the Complainants will pay millions in CFC payments for nothing. Conversely, rail users will benefit in the millions from Complainants' subsidies. Such subsidies are unjustifiable.

CC. By implementation of the CFC, the Port is unreasonably preferring ocean carriers who depend on ExpressRail over the Complainants who use ExpressRail only minimally or not all. This unjustly prejudices Complainants.

DD. The Port is giving an undue preference to the predominant users of the ExpressRail system, with concomitant unjust detriment to the predominant non-user Complainants through the implementation of the CFC's inequitable fee imposition.

EE. The Port threatens to blockade the Port against Complainants' vessels for nonpayment of the CFC, regardless of reason. If a Complainant fails to pay the CFC invoiced by the lessee terminal operator for two consecutive billing periods, the Port will issue a directive to every terminal operator to bar the non-paying Complainant from every Port terminal; and a Complainant that fails to pay the CFC invoiced by the Port in connection with a public terminal also will be barred from calling at the Port.

FF. Non-payment for two consecutive billing periods will result in each Complainant's vessel being denied access to any terminal within the Port without regard to the basis of Complainants' non-payment to the marine terminal operator or the Port, which nonpayment could be a matter of dispute, arbitration or litigation.

GG. The legal obligation of the Complainants to pay the CFC is unclear. In their contracts, Complainants are responsible only for the fees and charges set forth in the contracts with their terminal. If the CFC assessment is not set forth in the contracts between the Complainants and their respective terminal operators, directly or indirectly,

terminal operators may have no right to collect it. However, Complainants cannot afford to be denied access to their terminal providers or they will be unable to serve their customers.

HH. The Port Tariff prohibits compelling the terminal operators to participate in the CFC process, absent an enabling provision in the leases between the terminal operators and the Port. This is because the Tariff specifically excludes application of the Tariff, and its Rules and Regulations, to the leased terminal unless the leases provide otherwise. Tariff Subrule 34-090, published February 2011. Without such an enabling provision, the CFC, or any similar charge, would not apply to the terminals, and the Port would be using the CFC setup to make the terminal operators act as its collection agent, which would violate the Port's own Tariff, all of which is an unreasonable practice.

II. Some Complainants are members of vessel sharing agreements with one another and also with other ocean common carriers. These agreements routinely authorize Complainants to engage in reciprocal container slot allocation and chartering, coordination of sailings and other activities to promote the efficient use of vessels, equipment, terminals, stevedores, ports and suppliers. The vessels of these Complainants calling at the Port's leased terminals may load or unload containers being shipped under bills of lading of other Complainants or other carriers.

JJ. If one Complainant member of a vessel sharing agreement were ordered barred by the Port from all Port terminals, other Complainant members, or other members, would suffer unreasonably. Tariff, Section H, Subrule 34-1220 3. (a), ii. All containers on that Complainant's vessel would be barred, including containers belonging to other Complainants, or other carriers under the vessel sharing arrangement. The

barred Complainant's vessels would not be able to participate in vessel sharing services and the remaining Complainant members would be deprived of the opportunity to rationalize their services and otherwise cooperate to achieve efficiencies together with the barred line or lines. The shipping public would be denied the considerable benefits that flow from the cooperation, efficiency and cost savings among the Complainants, and other carriers, in connection with their vessel sharing agreements.

KK. The draconian penalty of berth denial under CFC regulations is forcing Complainants to pay the CFC on car carrying vessels and containerhips under protest for their own vessels or slot chartered space. Berth denial would cause severe disruption to the supply chain and U.S commerce and impose heavy expense burdens to Complainants as well as to their customers. So, not only would the CFC unfairly penalize Complainants, it would burden U.S. exporters and importers, as well.

LL. The CFC is an unfair charge on Complainants, which is in no way commensurate with the services they receive at the Port. The CFC unduly prefers the class of carriers who utilize the ExpressRail system to the detriment of Complainants, whose rail use at the Port is minimal. The CFC unreasonably discriminates in the provision of terminal services to Complainants. The CFC also prejudices the Complainants to the extent that they compete with carriers using other ports who are not required to subsidize rail users thereby providing them with an unreasonable cost advantage. The CFC unlawfully interferes in Complainant/terminal operator contracts by ordering terminal operators to refuse terminal facilities to Complainants. The CFC is an unconstitutional impairment of contracts. Although the FMC does not enforce the Constitution, such violation of the U.S. Constitution is a violation of the unreasonable

practice prohibition. The CFC, including its barring penalty, as contained in the Tariff and if fully enforced, will, as would any similar charge, result in an unreasonable practice in connection with receiving, handling, storing or delivering property in violation of the Shipping Act.

V. Violations

As a direct result of the foregoing Sections I-IV of this Complaint, which are fully incorporated in this Section V, the Port has violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41102(c) and 41106(2). The Port's adoption, application, implementation and enforcement of its published Tariff, and in particular Section H of the Tariff, including the unlawful exaction of fees not commensurate with services provided and the threat of expulsion from all Port facilities, impose unreasonable, undue and unlawful detriment, prejudice and harm on Complainants; and any other charge of this type or of similar nature and effect is unlawful

VI. Injury to Complainants

As a direct result of the foregoing Sections I-V of this Complaint, which are fully incorporated in this Section VI, Complainants have suffered and sustained and will continue to suffer and sustain (unless the cease and desist order requested is granted) substantial economic damage, harm and injury in an amount to be determined, consisting at minimum and not exclusively of unreasonable payments and obligations to the Port, increased costs, operational expenditures and lost business.


VII. Relief Sought

Wherefore Complainants pray that Respondent be required to answer the charges herein; that after due hearing, an order be made declaring Respondent's CFC and Section H to be unlawful, and commanding Respondent: to cease and desist from the aforesaid violations; to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to Complainants by way of reparations for the unlawful conduct hereinabove described a sum to be determined, with interest and attorney's fees and such other sums as the Commission may determine to be proper as an award of reparations; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

The parties have not engaged in mediation or consulted the Commission's Office of Consumer Affairs and Dispute Resolution.

A hearing in Washington, D.C. is requested.

By:



Eliot J. Halperin
Deana E. Rose
Michael H. Selter
Manelli Selter PLLC
2000 M Street, N.W., Suite 700
Washington, D.C. 20036
Tel.: 202-261-1012 (direct line Eliot J. Halperin)
Tel.: 202-261-1016 (direct line Deana E. Rose)
Tel.: 202-261-1026 (direct line Michael H. Selter)
Fax: 202-887-0336
Email: ehalperin@mdslaw.com
drose@mdslaw.com
mselecter@mdslaw.com

Attorneys for Complainants:

China Shipping Container Lines Co., Ltd.
COSCO Container Lines Company Limited
Evergreen Line A Joint Service Agreement
Hanjin Shipping Co., Ltd.
Horizon Lines, LLC
Kawasaki Kisen Kaisha, Ltd.
Nippon Yusen Kaisha
United Arab Shipping Company (S.A.G.)
Yang Ming Marine Transport Corporation



John P. Meade
"K" Line America, Inc.
6009 Bethlehem Road
Preston, MD 21655
Tel: 410-673-1010
Fax: 410-673-1013
Email: John.Meade@us.kline.com

Co-Counsel for Kawasaki Kisen Kaisha, Ltd.

Date: August 5, 2011

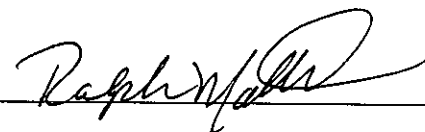
Dated at 8-3-2011, this _____ day of _____,
2011.

CHINA SHIPPING CONTAINER LINES CO., LTD.

China Shipping Container Line

Suntime International Mansion, No.450

Fushan Road, Pudong New Area , Shanghai, 200122,P.R. China

By: 

Title: DIRECTOR OF OPERATIONS

China Shipping Holding Co.

11 Phillips Parkway

Montvale, NJ 07645

AS AGENT

VERIFICATION

State of New Jersey)
County of Bergen)

ss:

Ralph Makhello, being first duly sworn on oath deposes and says that he is the Director of Operations of CHINA SHIPPING HOLDING CO. as Agent for CHINA SHIPPING CONTAINER LINES CO., LTD. and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.



Ralph Makhello

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Bergen this 3rd day of August, 2011.

[Seal] _____



ADELINE ROCCELLA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 9, 2015

Dated at Secaucus, New Jersey, this 2nd day of August, 2011.

COSCO CONTAINER LINES COMPANY LIMITED

No. 378 Dong Da Ming Road

Shanghai, People's Republic of China 200080

A handwritten signature in black ink, appearing to read 'Frank Grossi', written over a horizontal line.

By: Frank Grossi

Title: Executive Vice President

COSCO CONTAINER LINES AMERICAS, INC.

100 Lighting Way

Secaucus, NJ 07094

FOR AND ON BEHALF OF

COSCO CONTAINER LINES COMPANY LIMITED

VERIFICATION

State of New Jersey)
County of Hudson)
_____)

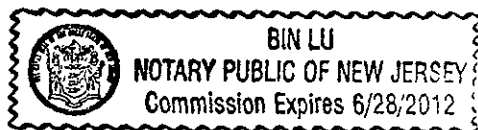
ss:

FRANK GROSSI, being first duly sworn on oath deposes and says that he is the EXECUTIVE VP of **COSCO CONTAINER LINES AMERICAS, INC.** acting for and on behalf of **COSCO CONTAINER LINES COMPANY LIMITED** and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

[Signature]

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Hudson this 2nd day of August, 2011.

[Seal] _____



[Signature]
NOTARY PUBLIC

My Commission expires: 6/28/2012

Dated at Jersey City , New Jersey , this _1st day of _August, 2011.

EVERGREEN LINE A JOINT SERVICE AGREEMENT

FMC Agreement No. 011982 Consisting of

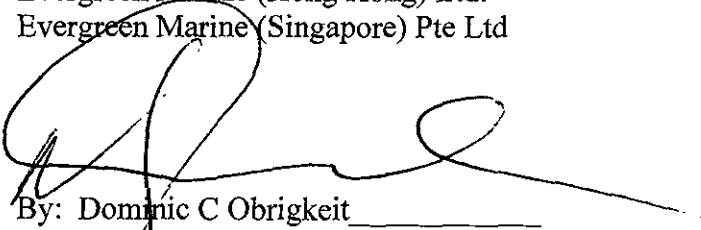
Evergreen Marine Corp. / (Taiwan) Ltd

Evergreen Marine (UK) Ltd

Italia Marittima S.p.A.

Evergreen Marine (Hong Kong) Ltd.

Evergreen Marine (Singapore) Pte Ltd



By: Dominic C Obrigkeit _____

Title: Senior Vice President _____

Evergreen Shipping Agency (America) Corporation
One Evertrust Plaza
Jersey City, NJ 07302

AS AGENT

VERIFICATION

State of New Jersey)
)
County of Hudson)
_____)

ss:

Dominic Obrigkeit, being first duly sworn on oath deposes and says that he is the Senior Vice President of **EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION** as Agent for **EVERGREEN LINE A JOINT SERVICE AGREEMENT** and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Hudson this 1st day of August, 2011.

[Seal] _____



KATY CHI-WEN LI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 10/4/2014

Dated at Paramus, N.J., this 1st day of August, 2011.

HANJIN SHIPPING CO., LTD.

Hanjin Shipping Bldg.

25-11, Yoido-Dong

Youngdeungpo-Gu, Seoul 150-949 Korea

By: 

Title: SENIOR VICE PRESIDENT

Hanjin Shipping Co., Ltd.

80 East Route 4, Suite 490

Paramus, NJ 07652

AS AGENT

VERIFICATION

State of NEW JERSEY)
County of BERGEN)

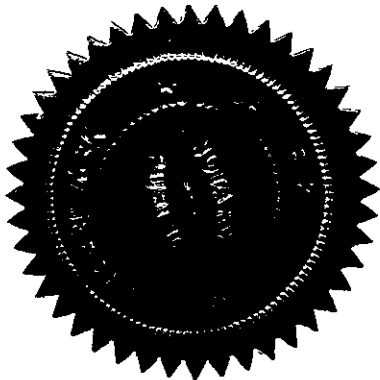
SS:

MICHAEL J. RADAK, being first duly sworn on oath deposes and says that he is the SENIOR VICE PRESIDENT of HANJIN SHIPPING CO., LTD. as Agent for HANJIN SHIPPING CO., LTD. and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

[Signature]

Subscribed and sworn to before me, a notary public in and for the State of NEW JERSEY, County of BERGEN this 1 day of AUGUST, 2011.

[Seal] _____



[Signature]
NOTARY PUBLIC

JACOB K. LEE
NOTARY PUBLIC, State of New Jersey
No. 2326044
Qualified in Bergen County
Commission Expires March 07, 2015

Dated at Charlotte, North Carolina, this 22nd day of July, 2011.

Horizon Lines, LLC
4064 Colony Road
Suite 200
Charlotte, NC 28211

By: 
ROBERT S. ZUCKERMAN
Title: VICE PRESIDENT

VERIFICATION

State of North Carolina)
)
County of Mecklenburg)
)
_____) ss:

ROBERT S. ZUCKERMAN, being first duly sworn on oath deposes and says that he is the Vice President of **HORIZON LINES, LLC** and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Robert S. Zuckerman

Subscribed and sworn to before me, a notary public in and for the State of North Carolina, County of Mecklenburg this 22nd day of July, 2011.

[Seal] _____

Christine Purser
NOTARY PUBLIC

My Commission expires: 6/20/2015

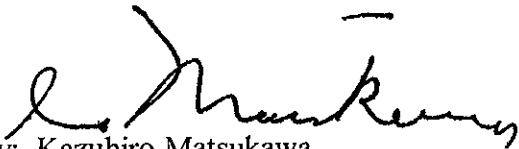
Dated at Richmond, Virginia, this 1st day of August, 2011

KAWASAKI KISEN KAISHA CO., LTD.

Hibiya Central Building 2-9

Nishi-Shinbashi 1-chome

Minato-ku, Tokyo 105-8421

A handwritten signature in black ink, appearing to read 'K. Matsukawa', written over a horizontal line.

By: Kazuhiro Matsukawa

Title: President & CEO

“K” Line America, Inc.

8730 Stony Point Pkwy

Suite 400

Richmond, VA 23235

AS AGENT

VERIFICATION

_____))
State of Virginia))
City of Richmond))
_____))

ss:

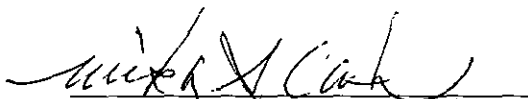
Kazuhiko Matsukawa, being first duly sworn on oath deposes and says that he is the President & CEO of "K" LINE AMERICA, INC. as Agent for KAWASAKI KISEN KAISHA CO., LTD. and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.



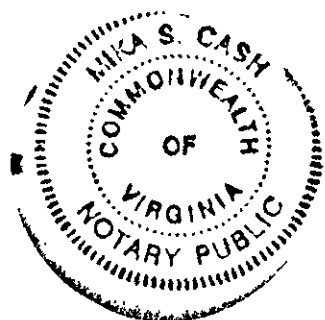
Subscribed and sworn to before me, a notary public in and for the State of

Virginia, City of Richmond this 1st day of August, 2011.

[Seal]



Notary Public 363497
My Commission Expires 12/31/13



Dated at Hudson County, NJ, this 2 day of AUGUST, 2011.

NIPPON YUSEN KAISHA

3-2, Marunouchi 2 Chome

Chiyoda-Ku

Tokyo 100-0005 Japan

By:

Louis Ferrel

Title: DIRECTOR MARINE & TERMINALS

NYK Line (North America) Inc.

300 Lighting Way

Secaucus, NJ 07094

AS AGENT

Dated at Cranford, New Jersey, this 1st day of August, 2011.

UNITED ARAB SHIPPING COMPANY (S.A.G.)

P.O. Box 3636

Safat 13037, Kuwait

A handwritten signature in black ink, appearing to read 'S. H. Bae', written in a cursive style.

By: Seung H. Bae

Title: Operations and Logistics Manager

United Arab Agencies, Inc.

511 South Avenue

Cranford, NJ 07016

AS AGENT

VERIFICATION

State of N.J.)
County of Union)
SS:

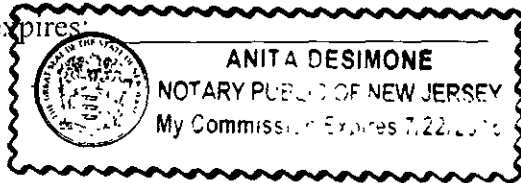
Seung H. Bae, being first duly sworn on oath deposes and says that he is the Operations Logistics Mgr **UNITED ARAB SHIPPING CO.** as Agent for **UNITED ARAB SHIPPING COMPANY (S.A.G.)** and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Union this 1st day of August, 2011.

[Seal] _____

Anita Desimone
NOTARY PUBLIC

My Commission expires:



Dated at Jersey City, N.J. this 1st day of August, 2011.

YANG MING MARINE TRANSPORT CORPORATION

271 Ming De 1st Road

Chidu District

Keelung 20646, Taiwan (R.O.C.)

By: 

Title: Senior Vice President

Yang Ming (America) Corp.

525 Washington Boulevard, 25th Floor

Jersey City, NJ 07310


AS AGENT

VERIFICATION

State of New Jersey)
County of Hudson)

ss:

T. R. Lee, being first duly sworn on oath deposes and says that he is the Senior Vice President for **YANG MING (AMERICA) CORP.** as Agent for **YANG MING MARINE TRANSPORT CORPORATION** and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.



Subscribed and sworn to before me, a notary public in and for the State of

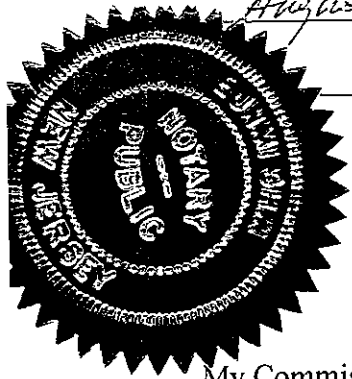
New Jersey, County of Hudson this 1st day of August, 2011.



NOTARY PUBLIC

EUNMI SHIN
Commission # 2303035
Notary Public, State of New Jersey
My Commission Expires
March 26, 2014

My Commission expires: _____



EXHIBIT

SECTION H

CARGO FACILITY CHARGE

SUBRULE 34-1200 ISSUED 1 JANUARY 2011 EFFECTIVE 14 MARCH 2011

CARGO FACILITY CHARGE – DEFINITION OF CARGO SUBJECT TO FEE

This fee shall apply to all cargo containers, vehicles and bulk cargo, break-bulk cargo, general cargo, heavy lift cargo, and other special cargo discharged from or loaded onto vessels at Port Authority leased and public berths.

SUBRULE 34-1210 ISSUED 1 JANUARY 2011 EFFECTIVE 14 MARCH 2011

CARGO FACILITY CHARGE – RATES

Container cargo	\$4.95 per TEU*
Vehicles	\$1.11 per unit/vehicle
Bulk cargo, break-bulk cargo, general cargo, heavy-lift cargo and other special cargo	\$ 0.13 per metric ton

*Any containers larger than forty-feet shall be considered to be the equivalent of two TEUs.

SUBRULE 34-1220 ISSUED 1 JANUARY 2011 EFFECTIVE 14 MARCH 2011

CARGO FACILITY CHARGE

1. Definitions
 - (a) "User" shall mean a user of cargo handling services.
 - (b) "Terminal operator" shall mean a leased berth operator
2. At all leased berths, each user is responsible for payment of the Cargo Facility Charge to the Port Authority, which will be collected by the terminal operator handling the user's cargo for remittance to the Port Authority.
3. Lessees/Terminal Operators
 - (a) Reporting of Vessel Activity Data
 - i. Each terminal operator shall provide to the Port Authority a Vessel Activity Report setting forth data necessary for determination of the amount of Cargo Facility Charge incurred by each user. Such report shall be submitted no later than the 20th day of the month following such activity, and shall comply with sub-paragraph 3 (a) ii. of this Subrule.

- ii. Each Vessel Activity Report shall set forth the following for the month in which Cargo Facility Charges were incurred for each vessel call: vessel name; voyage #; service; user(s), including participating carriers whose cargo is carried on the vessel; date of arrival; date of departure; volume of cargo discharged from and/or loaded onto each vessel for each user (containers by size identifying loads versus empties and transshipped containers, number of vehicles, and/or metric tons of bulk cargo, break-bulk cargo, general cargo, heavy-lift cargo and other special cargo) and, the Cargo Facility Charge due for the current month for each cargo category. For the purposes of completing a Vessel Activity Report, metric tons for lumber shall be calculated by multiplying the number of thousand gross board measurement feet of lumber times one and two tenths (1.2). Such information is to be provided in both paper and electronic formats in accordance with any form or template that may be provided by the Port Authority from time to time. Such form or template is available through the office of the General Manager NJMT and NYMT.
- iii. Hard copy transmittals are to be accompanied by a statement certifying the truth and accuracy of the document. Submission of the Vessel Activity Report by electronic means shall constitute a statement that such submission is intended to be the equivalent of the submission of a paper document containing the same information, and that the placement of a name on such submission certifying the truth and accuracy of the document is intended to be equivalent to a handwritten signature.
- iv. Each terminal operator shall provide copies of the Vessel Activity Report described in section ii above to each addressee set forth at (A), and, to the addressee set forth at (B) for the facility at which the activity occurred.

(A) All facilities:

Manager, Revenue Accounting
The Port Authority of NY & NJ
One PATH Plaza – 6th Floor
Jersey City, New Jersey 07036
pcaffrey@panynj.gov

Manager, Leasing and Property Development
The Port Authority of NY & NJ
New Jersey Marine Terminal
260 Kellogg Street
Port Newark, New Jersey 07114
jkirin@panynj.gov

Manager, Strategic Analysis & Industry Relations
The Port Authority of NY & NJ
225 Park Avenue South, 11th Floor
New York, New York 10003
pzantal@panynj.gov

(B) New Jersey Facilities: General Manager, NJMT and NYMT
The Port Authority of NY & NJ
New Jersey Marine Terminal
260 Kellogg Street
Port Newark, New Jersey 07114
asaporito@panynj.gov

New York Facilities: Manager, New York Marine Terminals
The Port Authority of NY & NJ
90 Columbia Street
Brooklyn, New York 11201
jtrutneff@panynj.gov

(b) Billing and payment of Cargo Facility Charges

- i. On or about the first day of each month, the Port Authority shall issue a bill to each terminal operator based upon the Vessel Activity Report for the previous reporting period. Such bills shall set forth the Cargo Facility Charge with respect to cargo discharged from or loaded onto vessels within the leasehold area of the terminal operator for each user.
- ii. Within 30 days after the date of each bill described in 3 (b) i., each terminal operator shall (A) remit to the Port Authority the Cargo Facility Charge amount collected from each user as set forth in such bill, and (B) make a report to the Port Authority of every user who has failed to pay the Cargo Facility Charge set forth in such bill.
- iii. In the event of non-payment of any Cargo Facility Charges by a user for two consecutive Vessel Activity Reporting periods, the Port Authority shall issue a directive to every terminal operator prohibiting them from providing any service that would be subject to a Cargo Facility Charge to the delinquent user for a period from no later than 5 calendar days from the date of the directive until receipt of notice from the Port Authority that such unpaid Cargo Facility Charges have been paid.
- iv. Should any terminal operator provide service to a user in violation of the directive described in 3 (b) iii., such terminal operator shall become liable for, and shall be obligating itself to pay to the Port Authority, the full amount of the Cargo Facility Charges incurred by such user arising from services performed by such terminal operator on and after the date of the violation of the directive.

4. Public Berth Applicants

Each party responsible for payment to the Port Authority of all other charges associated with a vessel's use of a public berth shall pay to the Port Authority the Cargo Facility Charge set forth in the Port Authority's Tariff with respect to cargo discharged from or loaded onto a vessel. Such payments are to be paid directly to the Port Authority in the same manner as all other amounts paid to the Port Authority for use of a public berth.

5. Fee Exemptions

(a) The following movements are fully or partially exempt from Cargo Facility Charge as set forth in the Port Authority's Tariff:

- i. Fully exempt from fees: restows and shifts.
- ii. Partially exempt from fees: transshipped containers; a transshipped container is subject to a Cargo Facility Charge for only one move.

(b) In this section:

- i. "Restows" shall mean discharged containers arriving on a vessel and departing on the same vessel and as part of the same voyage.
- ii. "Shifts" shall mean containers that are moved from one location to another location on the same vessel without touching the ground.
- iii. "Transshipped containers" shall mean containers that are discharged from a vessel, placed on the terminal and loaded onto another vessel for further carriage as part of a single voyage and do not exit the terminal.

EXHIBIT

THE PORT AUTHORITY OF NY & NJ

July 8, 2011

Mr. Frans van Riemsdyk
Executive Vice President
Corporate Development & Strategy
Maher Terminals LLC
1210 Corbin Street
Elizabeth, NJ 07201

Dear Frans:

Since the inception of the Cargo Facility Charge on March 14, 2011, the Port Authority has made a number of administrative changes to the invoicing process in an effort to work with the Port community during the introduction of this new charge. As a result, the Port Authority has determined that any enforcement activity for lack of compliance will begin on August 15, 2011, 60 days after June 15, 2011, the date that the last administrative change to the invoicing process was implemented.

Therefore, in accordance with SUBRULE 34-1220 of Section H in the Port Authority Tariff, if necessary, the first enforcement action for uncollected Cargo Facility Charge amounts will be taken on August 15, 2011.

As a reminder, Section H SUBRULE 34-1220, of the Tariff, provides that a leased berth operator will be invoiced by the Port Authority for the Cargo Facility Charge incurred by each of its users. Within 30 days after the date of each invoice, the lease berth operator must remit the amount collected from each user and/or make a report of each user who failed to pay the Cargo Facility Charge during the relevant Vessel Activity Reporting period. In the event of a failure by a user to pay Cargo Facility Charges for two consecutive Vessel Activity Reporting periods, the Port Authority will issue a directive to all leased berth operators prohibiting them from providing any service that incurs a Cargo Facility Charge to the delinquent user. Should a Terminal Operator provide service to a user in violation of the directive, such Terminal Operator shall be liable for, and shall pay to, the Port Authority the full amount of the Cargo Facility Charges resulting from services performed by that Terminal Operator for the affected user on or after the date of the violation of the directive.

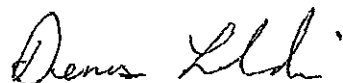
The Port Authority invoices the Cargo Facility Charge, which is payable by the user (ocean carrier), based on the information provided by the Terminal Operator. Where a carrier requests documentation that supports the Cargo Facility Charge invoice, it would be the Terminal Operator's responsibility to provide the information requested, since the Terminal Operator produces the initial information that is used to create the Cargo Facility Charge invoice.

225 Park Avenue South 11th Floor
Port Commerce Department
New York, NY 10003

THE PORT AUTHORITY OF NY & NJ

I hope this clears up any questions about the collection of the Cargo Facility Charge, the commencement of enforcement for non-compliance and the responsibility for providing supporting documentation when requested. Please let me know if you have any additional questions.

Best Regards,



Dennis Lombardi
Deputy Director
Port Commerce Department
Port Authority of NY & NJ

EXHIBIT

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

MINUTES

Tuesday, December 7, 2010

Report of Audit Committee	313
Report of Security Committee	313
Report of Governance and Ethics Committee	313
Report of Committee on Finance	313
Report of Committee on Operations	313
Report of Committee on Construction	314
Report of World Trade Center Redevelopment Subcommittee	314
Report of Special, Interim Meeting of the Committee on Operations	314
John F. Kennedy International, Newark Liberty International and LaGuardia Airports – Bollard Protection of Terminal Frontages – Phase 3 – Project Authorization	315
Lincoln Tunnel – Rehabilitation and Replacement of the Helix – Phase 1 – Structural Rehabilitation and Repaving – Project Authorization	317
Elizabeth-Port Authority Marine Terminal – McLester Street Widening – Project Authorization	319
Port Newark and the Elizabeth-Port Authority Marine Terminal – ExpressRail Port Newark and ExpressRail Corbin Street Intermodal Rail Support Facility – Phase 2A – Project Re-authorization – Agreements with Consolidated Rail Corporation	321
John F. Kennedy International Airport – Building 66 - Cargo Airport Services USA, LLC – Lease AYE-137 – New Lease	324
Port Newark – Aarhuskarlshamn USA, Inc. – Lease L-PN-301 – New Lease and Agreements	326
Essex County Resource Recovery Facility – Supplemental Agreement to Lease and Agreement – Construction and Operation of Compressed Natural Gas Fueling Station	328
All Airports – Agreement with the United States Department of Agriculture for Wildlife Management Services	329

PORT OF NEW YORK AND NEW JERSEY – ESTABLISHMENT OF CARGO FACILITY CHARGE – ELIMINATION OF INTERMODAL CONTAINER LIFT FEE AND SEA LINK CONTAINER TERMINALS SUBSCRIPTION FEE – AMENDMENT OF AGREEMENTS WITH MILLENNIUM MARINE RAIL, LLC, NEW YORK CONTAINER TERMINAL, INC., AND PORT NEWARK CONTAINER TERMINAL, LLC

It was recommended that the Board authorize the Executive Director to: (1) amend the Marine Terminal Tariff – Federal Maritime Commission Schedule No. PA-10 Tariff (Tariff) to establish a new Port Authority cargo-based port infrastructure and security fee, to be known as the Cargo Facility Charge, that would be applicable to waterborne cargo discharged from or loaded onto vessels at Port Authority leased and public berths, in order to foster a more efficient, secure and productive Port of New York and New Jersey (Port), with the timing of the implementation of the Cargo Facility Charge to be determined by the Executive Director and the Chairman, consistent with the By-Laws; (2) eliminate the Intermodal Container Lift Fee; (3) eliminate the Sea-Link Container Terminal Subscription Fee; (4) amend the railroad operating agreements with Millennium Marine Rail LLC (Millennium) for ExpressRail Elizabeth and New York City Container Terminal (NYCT) for ExpressRail Staten Island, and the interim agreement with Port Newark Container Terminal (PNCT) for ExpressRail Port Newark, to reflect the elimination of the Intermodal Container Lift Fee; and (5) approve, for and on behalf of the Port Authority, future adjustments to the rates with respect to the Cargo Facility Charge and existing fees contained in the Tariff.

Increasing the operational efficiency for the movement of goods at the Port and throughout the region is a key strategic goal. To achieve that goal, the proposed Cargo Facility Charge would be assessed on all cargoes that benefit from capital investments in security, rail and road improvements. The proposed Cargo Facility Charge would be levied on all types of waterborne cargo moving through Port Authority marine terminal facilities – containers, vehicles, and bulk/breakbulk, general, heavy lift and special cargo. The timing of its implementation would be determined by the Executive Director and the Chairman, consistent with the By-Laws.

One component of the fee would recover capital expenditures incurred to construct our ExpressRail infrastructure. In addition to those who directly utilize the rail system, given the long-standing issues of road congestion in the Port, those who ship by truck have benefited from the investment in the ExpressRail system and continue to do so. Accordingly, it is fair and appropriate that they share in the cost of the investment in the ExpressRail system.

In 2004, an intermodal lift fee was implemented to recover the expenditures to date to construct Port-wide ExpressRail facilities. Rail cargo movements remove trucks from our terminals' gates and the Port's and region's highways, and benefit regional cargo with the increased roadway and gate capacity they provide. The ExpressRail System is an important link in the Port's logistics chain, the existence of which creates a more efficient transportation network for the transportation of containers while also mitigating negative environmental impacts to the region. Implementation of the Cargo Facility Charge (which includes the rail component) would eliminate the need for the Intermodal Container Lift Fee and be a broader and fairer assessment on the direct and indirect beneficiaries of the investment in ExpressRail.

As the agency continues to invest in the ExpressRail System, sufficient capacity on the Port's roadway system also must be provided, because the truck is, and will remain, the dominant mode of transport in the Port, due to the large local market we serve. The second component of the proposed Cargo Facility Charge would be charged proportionately to recover the cost of important Port roadway projects at Port Newark and the Elizabeth-Port Authority Marine Terminal (EPAMT), to reduce truck idling times and mitigate the attendant negative environmental impact caused by idling.

Under the third component of the Cargo Facility Charge, all cargoes would be charged proportionately for the partial recovery of the Port Authority's incremental post-9-11 security costs. Since September 11, 2001, the Port Authority has been, and continues to be, faced with the need to make the Port safer and more secure, by implementing a number of operational and physical security improvements at the marine terminal facilities, including those required by federal mandates. The agency accepts these responsibilities; however, in today's financial environment, the costs associated with these improvements must be shared with the benefited Port users. Accordingly, the proposed Cargo Facility Charge also would be used to partially defray the Port Authority's non-reimbursed incremental post-9-11 security-related operations and maintenance costs, and to recover a portion of previously unamortized capital investments. The security component of the fee may be adjusted in the future to reflect later investments of security-related capital costs.

The Cargo Facility Charge would be collected by the Port Authority's marine terminal tenants that operate private berths, and the Port Authority would directly collect the charge at public berths. Authorization also is requested for the Executive Director to approve future adjustments to the rates with respect to the Cargo Facility Charge, as well as other existing fees contained in the Tariff.

The establishment of the Cargo Facility Charge would require the elimination from the Tariff of the Intermodal Container Lift Fee and the Sea Link Container Terminals Subscription Fee, as costs recovered from these fees would now be recovered by the Cargo Facility Charge. In order to reflect the elimination of the Intermodal Container Lift Fee from the Tariff, the railroad operating agreements with Millennium for ExpressRail Elizabeth and NYCT for ExpressRail Staten Island, and the interim agreement with PNCT for ExpressRail Port Newark, as authorized by the Board in August 2004, April 2006 and July 2001, respectively, would be amended.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Coscia, Grayson, Holmes, Moerdler, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to: (1) amend the Marine Terminal Tariff – Federal Maritime Commission Schedule No. PA-10 Tariff (Tariff) to establish a new Port Authority cargo-based port infrastructure and security fee, to be known as the Cargo Facility Charge, that will be applicable to waterborne cargo discharged from or loaded on to vessels at Port Authority leased and public berths, with the timing of the implementation of the Cargo Facility Charge to be determined by the Executive Director and the Chairman, consistent with the By-Laws; (2) eliminate the Intermodal

Container Lift Fee; (3) eliminate the Sea-Link Container Terminal Subscription Fee; (4) amend the railroad operating agreements with Millennium Marine Rail LLC for ExpressRail Elizabeth and New York Container Terminal for ExpressRail Staten Island, and the interim agreement with Port Newark Container Terminal for ExpressRail Port Newark, to reflect the elimination of the Intermodal Container Lift Fee; and (5) approve, for and on behalf of the Port Authority, future adoption of and adjustments to the rates with respect to the Cargo Facility Charge and existing fees contained in the Tariff; and it is further

RESOLVED, that the form of the foregoing amendments to the Tariff and agreements shall be subject to the approval of General Counsel or his authorized representative.