UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ODETTE BLANCO DE FERNANDEZ *née* BLANCO ROSELL; EMMA RUTH BLANCO, in her personal capacity, and as Personal Representative of the ESTATE OF ALFREDO BLANCO ROSELL, JR; HEBE BLANCO MIYARES, in her personal capacity, and as Personal Representative of the ESTATE OF BYRON BLANCO ROSELL; SERGIO BLANCO DE LA TORRE, in his personal capacity, and as Administrator *Ad Litem* of the ESTATE OF ENRIQUE BLANCO ROSELL; EDUARDO BLANCO DE LA TORRE, as Administrator *Ad Litem* of the ESTATE OF FLORENTINO BLANCO ROSELL; LIANA MARIA BLANCO; SUSANNAH VALENTINA BLANCO; LYDIA BLANCO BONAFONTE; JACQUELINE M. DELGADO; BYRON BLANCO, JR.; MAGDELENA BLANCO MONTOTO; FLORENTINO BLANCO DE LA TORRE; JOSEPH E. BUSHMAN; CARLOS BLANCO DE LA TORRE; and GUILLERMO BLANCO DE LA TORRE;

Plaintiffs,

v.

MSC MEDITERRANEAN SHIPPING COMPANY SA;

Defendant.
_____ /

COMPLAINT

Odette Blanco de Fernandez *née* Blanco Rosell ("Odette Blanco Rosell"); Emma Ruth Blanco, in her personal capacity, and as Personal Representative of the Estate of Alfredo Blanco Rosell, Jr; Hebe Blanco Miyares, in her personal capacity, and as Personal Representative of the

Estate of Byron Blanco Rosell; Sergio Blanco de la Torre, in his personal capacity, and as Administrator *Ad Litem* of the Estate of Enrique Blanco Rosell; Eduardo Blanco de la Torre, as Administrator *Ad Litem* of the Estate of Florentino Blanco Rosell; Liana Maria Blanco; Susannah Valentina Blanco; Lydia Blanco Bonafonte; Jacqueline M. Delgado; Byron Diaz Blanco, Jr.; Magdelena Blanco Montoto; Florentino Blanco de la Torre; Joseph E. Bushman; Carlos Blanco de la Torre; and Guillermo Blanco de la Torre ("Plaintiffs"), by and through counsel, as and for their Complaint against MSC Mediterranean Shipping Company SA ("MSC" or "Defendant") hereby allege:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action to recover damages and interest under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, codified at 22 U.S.C. § 6021, *et seq.* (the "Helms-Burton Act" or "Act") against Defendant for trafficking in property which was confiscated by the Cuban Government on or after January 1, 1959 and as to which Plaintiffs own claims.

2. On September 29, 1960, the Cuban Government published the announcement of the confiscation without compensation of the following property of Plaintiff Odette Blanco Rosell, who is living, and her siblings, all of whom are deceased: Alfredo Blanco Rosell, Jr.; Florentino Blanco Rosell; Enrique Blanco Rosell; and Byron Blanco Rosell (collectively, the "Blanco Rosell Siblings")[1]:

> One: To confiscate, on behalf of the Cuban State, all of the property and rights, whatever their nature, forming the assets of the persons listed in the first Whereas, with the exception of property and rights that are strictly of a personal nature.
>
> Two: To confiscate, on behalf of the Cuban State, all shares or stock certificates representing capital of the entities listed in the [other] Whereas of this resolution, along with all of their properties, rights, and shares that are issued and in circulation.

[1] As stated above in the caption, the claims of Alfredo Blanco Rosell, Jr.; Florentino Blanco Rosell; Enrique Blanco Rosell; and Byron Blanco Rosell, are being pursued by their Personal Representatives and Administrators *Ad Litems,* respectively.

> Three: To order the transfer of the properties, rights, and shares forming the assets of the legal entities listed in the preceding provision to the National Institute for Agrarian Reform (I.N.R.A.).
>
> Four: This resolution to be published in the OFFICIAL GAZETTE of the Republic for purposes of notification and fulfillment of what is provided for by Law No. 715 of 1960.

Resolution No. 436 published in the Cuban Official Gazette dated September 29, 1960 at 23405 - 23406 (English translation).

3. The "persons listed in the first Whereas" in Resolution No. 436 above is a reference to the Blanco Rosell Siblings, who had been the subject of "investigations" carried out by the Cuban Government. *See id*. at 23405 (first Whereas clause) ("Whereas: Having considered cases number 3-2-3143, 3-2-8990 and 3-2-9832, regarding the investigations carried out on the following persons: Alfredo, Enrique, Florentino, Byron, and Odette Blanco Rosell.").

4. The Blanco Rosell Siblings' property confiscated by the Cuban Government included all of their "property and rights, whatever their nature," including but not limited to:

> (a) their wholly owned company, Maritima Mariel SA, and the 70-Year Concession held by Maritima Mariel SA, to develop docks, warehouses and port facilities on Mariel Bay, a deep water harbor located on the north coast of Cuba; and
>
> (b) their wholly owned companies, Central San Ramón and Compañia Azucarera Mariel S.A., including those companies' extensive land holdings (approximately 11,000 acres) on the southeast, south and west sides of Mariel Bay, which included a number of improvements such as roads, railways, buildings, and utilities

See Resolution No. 436 published in the Cuban Official Gazette dated September 29, 1960 at 23406 (English translation) ("Confiscated Property").

5. The Blanco Rosell Siblings were not U.S. citizens when the Cuban Government confiscated their Confiscated Property in 1960. They fled Cuba after the confiscation and became U.S. citizens before March 12, 1996, the date the Helms-Burton Act was signed into law. The Blanco Rosell Siblings were not eligible to, and therefore did not file claims with the Foreign

Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949. Today, only Plaintiff Odette Blanco de Fernandez, *née* Blanco Rosell, age 91, is alive.

6. In 1996, the U.S. Congress passed the Helms-Burton Act, and President William J. Clinton signed the Act into law on March 12, 1996. Title III of the Act, which took effect in August 1996, imposes liability against persons who "traffic" in property confiscated by the Cuban Government on or after January 1, 1959, the claims to which are owned by persons who became U.S. nationals after the confiscation of their property and before March 12, 1996.

7. Although Title III's creation of liability as to those engaged in trafficking has remained in force since August 1996, the ability of any potential plaintiff to bring a private right of action for Title III violations had been suspended by several Presidents (pursuant to authority granted in the Act) until May 2019, when President Donald Trump allowed the suspension of Title III's private right of action to lapse, thereby allowing such actions to proceed.

PARTIES

I. Plaintiffs

8. Plaintiff Odette Blanco de Fernandez, *née* Blanco Rosell, is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She acquired ownership of her claim to the Confiscated Property before March 12, 1996, which claim she still owns. She became a naturalized U.S. citizen on September 8, 1971. She resides in Miami-Dade County, Florida.

9. Alfredo Blanco Rosell's claim to the Confiscated Property is prosecuted by Plaintiff Emma Ruth Blanco, in her capacity as Personal Representative of Alfredo Blanco Rosell's estate. The Circuit Court for Miami-Dade County, Florida, Probate Division, has opened Alfredo Blanco Rosell's estate, appointed Emma Ruth Blanco as Personal Representative, and issued Letters of Administration for the purpose of Emma Ruth Blanco pursuing Alfredo Blanco Rosell's Helms

Burton Act claim. *In re Estate of Alfredo, deceased*, Case No. 2020-005105-CP-02, Section PMH03 (J. Soto). Alfredo Blanco Rosell was a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He became a naturalized U.S. citizen on August 26, 1970. He acquired ownership of his claim to the Confiscated Property before March 12, 1996. Prior to his death on December 10, 2006, he resided in Miami-Dade County, Florida.

10. Byron Blanco Rosell's claim to the Confiscated Property is prosecuted by Plaintiff Hebe Blanco Miyares, in her capacity as Personal Representative of Byron Blanco Rosell's estate. The Circuit Court for Miami-Dade County, Florida, Probate Division, has re-opened Byron Blanco Rosell's estate, appointed Hebe Blanco Miyares as Personal Representative, and issued Letters of Administration for the purpose of Hebe Blanco Miyares pursuing Byron Blanco Rosell's Helms Burton Act claim. *In re Estate of Byron Blanco, deceased*, Case No. 2001-002462-CP-02, Section PMH03 (J. Soto). Byron Blanco Rosell was a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He became a naturalized U.S. citizen in or around 1972. He acquired ownership of his claim to the Confiscated Property before March 12, 1996. Prior to his death on February 25, 2001, he resided in Miami-Dade County, Florida.

11. Enrique Blanco Rosell's claim to the Confiscated Property is prosecuted by Plaintiff Sergio Blanco de la Torre ("Sergio Blanco"), in his capacity as Administrator *Ad Litem* of Enrique Blanco Rosell's estate. The Circuit Court for Miami-Dade County, Florida, Probate Division, has re-opened Enrique Blanco Rosell's estate and appointed Sergio Blanco as Administrator *Ad Litem* for the purpose of Sergio Blanco pursuing Enrique Blanco Rosell's Helms Burton Act claim. *In re Estate of Enrique Blanco, deceased*, Case No. 2021-000187-CP-02, Section PMH03 (J. Soto). Enrique Blanco Rosell was a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He became a naturalized U.S. citizen on September 23, 1970. He

acquired ownership of his claim to the Confiscated Property before March 12, 1996. Prior to his death on November 27, 2014, his last known place of residence was San Juan, Puerto Rico.

12. Florentino Blanco Rosell's claim to the Confiscated Property is prosecuted by Plaintiff Eduardo Blanco de la Torre, in his capacity as Administrator *Ad Litem* of Florentino Blanco Rosell's estate. The Circuit Court for Miami-Dade County, Florida, Probate Division, has re-opened Florentino Blanco Rosell's estate and appointed Eduardo Blanco de la Torre as Administrator *Ad Litem* for the purpose of pursing Florentino Blanco Rosell's Helms-Burton Act claim. *In re Estate of Florentino Blanco, deceased*, Case No. 2021-000131-CP-02, Section PMH03 (J. Soto). Florentino Blanco Rosell was a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He became a naturalized U.S. citizen in or around 1975. He acquired ownership of his claim to the Confiscated Property before March 12, 1996. Prior to his death on March 18, 2005, his last known place of residence was Baldrich, Puerto Rico.

13. Plaintiff Emma Ruth Blanco is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Alfredo Blanco Rosell's daughter. To the extent that Alfredo Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. She became a naturalized U.S. citizen on January 4, 1973. She resides in Miami-Dade County, Florida.

14. Plaintiff Liana Maria Blanco is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Alfredo Blanco Rosell's daughter. To the extent that Alfredo Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. Upon knowledge, information and belief, she became a naturalized U.S. citizen prior to March 12, 1996. She resides in Miami-Dade County, Florida.

15. Plaintiff Susannah Valentina Blanco is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Alfredo Blanco Rosell's granddaughter. To the extent that

Alfredo Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. Upon knowledge, information and belief, she became a naturalized U.S. citizen prior to March 12, 1996. She resides in Miami-Dade County, Florida.

16. Plaintiff Hebe Blanco Miyares is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Byron Blanco Rosell's daughter. To the extent that Byron Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. She became a naturalized U.S. citizen on September 23, 1970. She resides in Miami-Dade County, Florida.

17. Plaintiff Lydia Blanco Bonafonte is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Byron Blanco Rosell's daughter. To the extent that Byron Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. She became a naturalized U.S. citizen on November 17, 1971. She resides in Miami-Dade County, Florida.

18. Plaintiff Jacqueline M. Delgado is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Byron Blanco Rosell's daughter. To the extent that Byron Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. She became a naturalized U.S. citizen on February 18, 1970. She resides in Miami-Dade County, Florida.

19. Plaintiff Byron Blanco, Jr. is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is Byron Blanco Rosell's son. To the extent that Byron Blanco Rosell's claim does not remain with his Estate, Byron Blanco, Jr. inherited and owns a portion of that claim. He became a naturalized U.S. citizen before March 12, 1996. He resides in Orange County, California.

20. Plaintiff Magdelena Blanco Montoto is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). She is Florentino Blanco Rosell's daughter. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, she inherited and owns a portion of that claim. She became a naturalized U.S. citizen on June 21, 1977. She resides in Miami-Dade County, Florida.

21. Plaintiff Sergio Blanco is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is Florentino Blanco Rosell's son and Enrique Blanco Rosell's nephew. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, Sergio Blanco inherited and owns a portion of that claim. In addition, to the extent Enrique Blanco Rosell's claim does not remain with his Estate, Sergio Blanco inherited and owns all of that claim. He became a naturalized U.S. citizen on January 25, 1983. He resides in Guaynabo, Puerto Rico.

22. Plaintiff Florentino Blanco de la Torre is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is Florentino Blanco Rosell's son. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, Florentino Blanco de la Torre inherited and owns a portion of that claim. He became a naturalized U.S. citizen on February 1, 1978. He resides in Gauynabo, Puerto Rico.

23. Plaintiff Joseph E. Bushman is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is the surviving husband of Florentino Blanco Rosell's daughter, Maria Elena Blanco. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, Joseph E. Bushman inherited and owns a portion of that claim. He was born a U.S. citizen on March 14, 1947 and has remained a U.S. citizen his entire life. He resides in Sumter County, Florida.

24. Plaintiff Carlos Blanco de la Torre is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is Florentino Blanco Rosell's son. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, Carlos Blanco de la Torre inherited and owns a portion of that claim. He became a naturalized U.S. citizen on February 26, 1985. He resides in Gauynabo, Puerto Rico.

25. Plaintiff Guillermo Blanco de la Torre is a United States national within the meaning of 22 U.S.C. § 6023(15)(A). He is Florentino Blanco Rosell's son. To the extent that Florentino Blanco Rosell's claim does not remain with his Estate, Guillermo Blanco de la Torre inherited and owns a portion of that claim. He became a naturalized U.S. citizen on August 3, 1982. He resides in San Juan, Puerto Rico.

II. Defendant

26. Defendant MSC Mediterranean Shipping Company, S.A. ("MSC") is a Société Anonyme organized under the laws of Switzerland with its principal place of business located at Chemin Rieu 12-14, 1208 Geneva, Switzerland.

27. MSC describes itself as a "global business engaged in the shipping and logistics sector. Present in 155 countries, MSC facilitates international trade between the world's major economies, and among emerging markets across all continents."[2]

28. MSC has more than 100,000 employees and 570 vessels covering 500 ports of call as shown in the figure below.[3]

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[2] https://www.msc.com/che/about-us (last visited Sept. 15, 2021).

[3] *Id.*

29. According to its website, MSC operates at 25 ports in the United States.[4]

Select port

- Baltimore
- Boston
- Charleston
- Gulfport
- Houston
- Jacksonville
- Long Beach
- Los Angeles
- Miami
- Mobile
- New Orleans
- New York
- Norfolk
- Oakland
- Philadelphia
- Port Everglades
- Port Hueneme
- Portland, Or
- Portsmouth
- Savannah
- Seattle
- Tacoma
- Tampa
- Wilmington, De
- Wilmington, Nc

30. As discussed more fully below (*infra*, ¶¶ 104-112), MSC has trafficked in the Confiscated Property, the claims to which are owned by Plaintiffs, since at least 2016 through at

[4] https://www.msc.com/search-schedules (last visited Sept. 15, 2021). These 25 ports are located in 18 different states. MSC operates in nearly every single U.S. state that touches the Atlantic Ocean, Pacific Ocean, or Gulf of Mexico.

least July 2021. According to bills of lading on file with U.S. Customs and Border Protection, since 2016, Defendant has served as the carrier for approximately 273 cargo shipments from various U.S. Ports, including multiple cargo shipments from Port Everglades in Fort Lauderdale (within this Judicial District) to the Port of Mariel,[5] the final destination declared.

31. The containers that Defendant carries to the Port of Mariel are loaded at U.S. ports, including Port Everglades and Jacksonville, and then Defendant carries the containers to ports in Panama, the Bahamas, and the Dominican Republic where the containers are off-loaded and then loaded onto other ships (a/k/a "commercial feeder" ships) and are then carried by Defendant to the Port of Mariel, the declared final destination where they are off-loaded at Terminal de Contenedores del Mariel ("TCM" or "Container Terminal"), which is part of the Port of Mariel within the Zona Especial de Desarollo Mariel ("ZEDM") (a/k/a Mariel Special Economic Zone) and within the Bay of Mariel. MSC profits by, from and through carrying the cargo to the Port of Mariel.

32. As discussed more fully below (*infra* at ¶¶ 113 – 119), MSC also has trafficked in the Confiscated Property, the claims to which are owned by Plaintiffs, because ships owned, operated and/or directed by MSC, or commercial feeder ships contracted by, or otherwise engaged by MSC, have trafficked in the Confiscated Property by "calling" at the Container Terminal which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel, and while calling at

[5] As used in this Complaint, the "Port of Mariel" comprises more than 2,300 feet of wharf space, four super Post-Panamax cranes, and the capacity to handle 820,000 cargo containers annually through the Port's Container Terminal which is the single largest user of the ZEDM. *See* Mariel is Cuba's big industrial gamble. Could U.S. companies be among investors? Miami Herald, Oct. 23, 2017. Exhibit A hereto. *See also* Port of Mariel New Transport Hub for the Americas, https://www.caribbeanshipping.org/images/CSEC2016/Presentation_TC_Mariel_English_170516.pdf (last visited Sept. 15, 2021) Exhibit B hereto (redacted to remove data regarding other Cuban ports).

the Container Terminal, engaged in commercially beneficial transactions and other commercial activities with the Container Terminal, Almacenes Universales S.A. (also known as "AUSA"),[6] and/or the ZEDM. MSC profits by, from and through the business activities of the ships, some of which are ships from MSC's fleet, and others of which are feeder ships operated by other companies with whom MSC engages in business transactions for the purpose, *inter alia* of transporting the containers that MSC carries on the final leg of the containers' journeys to the Port of Mariel.

33. "Calling" at a port in the container shipping industry means that containers are either offloaded or loaded at a Port of Call. See https://www.marineinsight.com/life-at-sea/what-does-the-term-port-of-call-means/ (last visited September 15, 2021). While calling at the Port of Mariel, the vessels dock and utilize wharf space, offload and/or load containers, hook up to water and electricity, utilize crane service, container storage yards, warehouses and other storage space to store the containers, as well as road, rail and wheeled means of conveyance for the containers it unloads. MSC contracts for and pays for these and other services at the Port of Mariel with the TCM, AUSA, and/or the ZEDM.

34. As discussed more fully below (*infra* at ¶¶ 120 – 123), Defendant's trafficking includes Defendant trafficking through its Cuban agent, Agencia Maritima Mapor S.A. ("Mapor

[6] AUSA is a subsidiary of Grupo de Administración Empresarial SA (or GAESA), an umbrella group controlled by the Cuban military. In December 2020, the U.S. Treasury Department added GAESA to its "Specially Designated Nationals and Blocked Persons" list, barring American individuals and companies from doing business with the company. *See* Notice of OFAC Sanctions Action, 85 Fed. Reg. 84468 (Dec. 28, 2020).

Habana").[7] According to Mapor Habana's Terms And Conditions ("Agency T&Cs"), Mapor Habana acts exclusively as MSC's agent in Cuba (where Mariel is the only port that MSC serves), provides "inland forwarding services" in addition to the voyage, and accepts customer bookings involving Cuba.[8]

35. Since at least 2016, MSC purposefully and repeatedly carried cargo to the Port of Mariel and directed ships to call at the Container Terminal, which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel, where the ships, for themselves and on behalf of and/or at the direction of Defendant, called at the Container Terminal and while there engaged in commercially beneficial transactions and other commercial activities with the Container Terminal, AUSA, and/or the ZEDM including, but not limited to, offloading and loading containers of cargo carried by Defendant, thereby using or otherwise benefiting from the Confiscated Property without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(ii).

36. Since at least 2015, Defendant knowingly and intentionally carried cargo to the Port of Mariel and directed ships to call at the Port of Mariel to engage in commercially beneficial transactions and other commercial activities—including, but not limited to, calling at the Container Terminal, which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel, and offloading and loading containers of cargo carried by Defendant at the Container Terminal

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[7] *See* https://www.msc.com/cub/contact-us?lang=en-gb ("Agencia Maritima Mapor S.A., Edificio Beijing Oficina No. 116, Avenida 3ra entre 76 y 78, Miramar Playa, CU - LA HABANA, CIUDAD DE LA HABANA ***as agent only for MSC Mediterranean Shipping Company S.A.***") (last visited Sept. 15, 2021) (emphasis added).

[8] Mapor Habana Terms and Conditions (a/k/a "Agency T&Cs") at 3, 15-17 (Exhibit C, hereto); *see also* https://www.msc.com/global-document-library/msc-cuba/msc-cuba-agency-t-cs (last visited Sept. 15, 2021).

whereby MSC, caused, directed, participated in, or profited from trafficking by other persons or otherwise engaged in trafficking through other persons without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(iii).

III. Relevant Non-Parties

37. The Terminal de Contenedores del Mariel ("TCM" or "Container Terminal") is a 100% Cuban state-owned entity. TCM displays MSC as one of its "nuestros clients" on TCM's main website's landing page, available at https://www.tcmariel.cu/ (last visited September 21, 2021).

38. Non-party Almacenes Universales S.A. (also known as "AUSA") is a 100% Cuban state-owned entity that is a comprehensive logistics operator that, *inter alia,* runs the container storage yard in the ZEDM. AUSA is a subsidiary of Grupo de Administración Empresarial SA (or GAESA), an umbrella group controlled by the Cuban military. On November 9, 2017, the U.S. State Department listed GAESA, AUSA, and the TCM as Restricted Entities and Subentities Associated with Cuba. *See* The State Department's List of Entities and Subentities Associated with Cuba (Cuba Restricted List), 82 Fed. Reg. 52089 (Nov. 9, 2017).

39. In December 2020, the U.S. Treasury Department added GAESA to its "Specially Designated Nationals and Blocked Persons" list, barring American individuals and companies from doing business with the company. *See* Notice of OFAC Sanctions Action, 85 Fed. Reg. 84468 (Dec. 28, 2020).

40. The TCM and AUSA container storage yard are physically located in the Port of Mariel. As described more fully herein (*see infra* ¶¶ 94 – 97), the ZEDM is a special economic zone created by Cuban statute. The TCM and AUSA are physically located in the Port of Mariel which is within and part of the ZEDM. TCM, AUSA and ZEDM are all agencies or instrumentalities of the Republic of Cuba as defined in 28 U.S.C. § 1603(b).

41. TCM, AUSA and the ZEDM, while aware that the Confiscated Property had been confiscated from the Blanco Rosell family, knowingly and intentionally traffic in the Confiscated Property because they each individually and collectively, "transfer[], distribute[], dispense[], broker[], manage[] … lease[], receive[], possess[], obtain[] control of, manage[], use[], or otherwise acquire[] or hold[] an interest in" the Confiscated Property. See 22 U.S.C. § 6023(13)(A)(i). In plain terms, the TCM, AUSA and/or the ZEDM manage the land, concessionaires and users of the ZEDM and contract with companies, including MSC, that do business in the ZEDM and with the TCM and AUSA–for example by offloading and/or loading containers from MSC ships at the TCM and parking/storing them at the container storage yard operated by AUSA.

42. TCM, AUSA and the ZEDM also engage in commercial transactions and commercial activities in which they use and benefit from the land that was confiscated from the Blanco Rosell Siblings that underlies the ZEDM and from the 70-year Concession rights to execute, maintain, and exploit the docks, wharves, warehouses and storage areas in the Port of Mariel which is within the Bay of Mariel.

43. Agencia Maritima Mapor S.A. ("Mapor Habana") is MSC's Cuban agent and is located at Edificio Beijing Oficina No. 116, Avenida 3ra entre 76 y 68, Miramar Playa, Ciudad de la Habana, Cuba.

44. Double Ace Cargo, Inc. ("Double Ace"), a company organized under the laws of Florida, with its principal place of business at 2175 NW 115th Ave., Miami, Florida, 33172, is primarily engaged in furnishing shipping information and acting as agents in arranging transportation for freight and cargo. Double Ace is listed as the "Exporter" on 202 of the 204 Bills of Lading on which MSC was the carrier for cargo shipments from U.S. Ports to the Container Terminal at the Port of Mariel.

45. Apacargoexpress Company, upon information and belief, a company organized under the laws of Florida, with its principal place of business at 1335 NW 98 Court Suite 5 & 6, Miami, Florida, 33172, is listed at the "Exporter" on 23 of the 204 Bills of Lading on which MSC was the carrier for cargo shipments from U.S. Ports to the Container Terminal at the Port of Mariel.

JURISDICTION AND VENUE

46. Defendant is subject to the personal jurisdiction of this Court pursuant to Federal Rule of Civil Procedure 4(k)(1)(A) and pursuant to Fla. Stat. § 48.193 including §§ 48.193(1)(a)1, 48.193(1)(a)2, 48.193 (1)(a)6, and 48.193(2) thereof, because, *inter alia,* (a) Defendant is engaged in substantial and not isolated activity within this State; (b) Defendant committed and continues to commit acts of trafficking as defined in the Helms Burton Act, 22 U.S.C. § 6023(13) within the state of Florida and within this judicial District and thus is subject to personal jurisdiction in the state courts of Florida and in this Court; (c) Defendant, personally or through its agents, is operating, conducting, engaging in, or carrying on a business or business venture in Florida, including the business of carrying containers from Florida to the Port of Mariel (*see infra* ¶¶ 104 – 112); and/or (d) Defendant is causing injury to persons who reside in this state arising out of acts or omissions by Defendant and/or its agents outside this State while Defendant and/or its agents were engaged in the solicitation of service activities within this State.

47. In the alternative, to the extent Defendant is not subject to jurisdiction in any state, personal jurisdiction is conferred upon this Court over Defendant by Federal Rule of Civil Procedure 4(k)(2), because Plaintiffs' Helms-Burton Act claim arises under federal law; Defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and exercising jurisdiction over Defendant based on its nationwide contacts is consistent with the U.S. Constitution and laws because Defendant has systematic and continuous contacts with the United States, it has purposefully availed itself of the benefits and protections of the United States, and this action arises from or relates to such contacts and purposeful availment. *See* ¶¶ 29, 104 – 112.

48. In addition, in the alternative to personal jurisdiction alleged above, to the extent Defendant is not subject to jurisdiction in any state, personal jurisdiction is conferred upon this Court over Defendant by Federal Rule of Civil Procedure 4(k)(2), because Plaintiffs' Helms-Burton Act claim arises under federal law; Defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and exercising jurisdiction over the Defendant for its conduct purposefully directed at the United States is consistent with the U.S. Constitution and laws. The exercise of personal jurisdiction by this Court over Defendant is consistent with the U.S. Constitution and U.S. laws because Defendant committed intentional torts purposefully directed at U.S. nationals in the United States which caused harm that Defendant knew or reasonably should have anticipated would be suffered in the United States by certain U.S. nationals.

49. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims arise under the laws of the United States, specifically Title III of the Helms-Burton Act, 22 U.S.C. §§ 6081–85.

50. The amount in controversy in this action exceeds $50,000, exclusive of interest, treble damages, court costs, and reasonable attorneys' fees. 22 U.S.C. § 6082(b). Venue is proper

in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred in this District.

51. Contemporaneous with this filing, Plaintiffs have paid the special fee for filing an action under Title III of the Helms-Burton Act, 22 U.S.C. § 6082(i).

THE HELMS-BURTON ACT

I. Background

52. The Helms-Burton Act, signed into law on March 12, 1996, has several goals, including to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. § 6022(6). Further, Congress determined that "'trafficking' in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise to the … Cuban Government and thus undermines the foreign policy of the United States," which foreign policy includes "protect[ing] claims of United States nationals who had property wrongfully confiscated by the Cuban Government." 22 U.S.C. § 6081(6).

53. Congress found that international law "lacks fully effective remedies" for the "unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property." 22 U.S.C. § 6081(8).

54. Congress thus decided that "the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11). The result was Title III of the Helms-Burton Act – "Protection of Property Rights of United States Nationals" – which imposes liability on persons trafficking in property confiscated from a U.S. national (including property confiscated from a person who became a U.S. national before March 12, 1996)

by the Cuban Government on or after January 1, 1959, and which authorizes a private right of action for damages against such traffickers. *See* 22 U.S.C. § 6082.

55. The Helms-Burton Act authorizes the President (or his delegate, the Secretary of State) to suspend for periods of up to six months at a time (1) the Title III private right of action, 22 U.S.C. § 6085(c); and/or (2) the effective date of Title III of August 1, 1996, 22 U.S.C. § 6085(b).

56. On July 16, 1996, President Clinton announced that after the Helms-Burton Act came into effect on August 1, 1996, he was suspending the private right of action under Title III for six months. The August 1, 1996 effective date was never suspended. Starting on that date, traffickers in confiscated property were liable to U.S. nationals with claims to that property but could not be sued while the private right of action remained suspended.

57. President Clinton and subsequent administrations renewed the suspension of the Title III private right of action, typically for six months at a time, by decision of the President or the Secretary of State. There was never any guarantee that additional suspensions of the private right of action would be granted indefinitely into the future, and the operative provisions of the Act have remained in effect continuously since 1996.

58. On April 17, 2019, Secretary of State Pompeo announced that the Trump Administration would no longer suspend the right to bring an action under Title III, effective May 2, 2019. On May 2, 2019, upon the expiration of the last suspension, the right to bring an action under Title III was activated.

II. The Helms-Burton Act's Private Right of Action

59. Title III of the Helms-Burton Act provides the following private right of action:

> (1) Liability for trafficking. — (A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date

> of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages...

22 U.S.C. § 6082(a)(1).

60. The Act defines "person" as "any person or entity, including any agency or instrumentality of a foreign state." 22 U.S.C. § 6023(11).

61. The Act defines "United States national" to include "any United States citizen or any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States." 22 U.S.C. § 6023(15).

62. The Act adopts the definition of "agency or instrumentality of a foreign state" under 28 U.S.C. § 1603(b), *see* 22 U.S.C. § 6023(1) ("Agency or Instrumentality of a Foreign State.—The term "agency or instrumentality of a foreign state" has the meaning given that term in section 1603(b) of title 28, United States Code.").

63. A person "traffics" in confiscated property if that person "knowingly and intentionally":

> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property
>
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13).

64. The Act defines "property" as "any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." 22 U.S.C. § 6023(12).

65. The Act defines "confiscated" in relevant part as:

> [T]he nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959 —
>
> (i) without the property having been returned or adequate and effective compensation provided; or
>
> (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure.

22 U.S.C. § 6023(4)(A).

66. The term "knowingly" under the Act means "with knowledge or having reason to know." 22 U.S.C. § 6023(9).

67. The Helms-Burton Act adopts the definition of "commercial activity" under 28 U.S.C. § 1603(d), *see* 22 U.S.C. § 6023(3), which defines the term as "either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(d).

68. Under the Act,

> (A) The term "Cuban Government" includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

> (B) For purposes of subparagraph (A), the term "agency or instrumentality of the Government of Cuba" means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to "a foreign State" deemed to be a reference to "Cuba."

22 U.S.C. § 6023(5).

69. Since August 1, 1996, when Title III of the Helms-Burton Act went into effect, it has been clear that companies doing business with Cuba or in Cuba incurred potential liability under the Helms-Burton Act if they knowingly and intentionally traffic in confiscated property.

70. Companies doing business in and/or with Cuba have therefore been on notice since August 1, 1996 that they would face potential liability under the Helms-Burton Act for trafficking in confiscated property.

III. Remedies Under the Helms-Burton Act's Private Right of Action

71. A person who "traffics" in a U.S. national's confiscated property under the Helms-Burton Act is liable to a plaintiff for money damages equal to:

> (i) the amount which is the greater of —
>
> …
>
> (II) the amount determined [by a court-appointed special master], plus interest; or
>
> (III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater[.]

22 U.S.C. § 6082(a)(1)(A)(i).

72. Pre-filing interest under the Act accrues from "the date of confiscation of the property involved to the date on which the action is brought." 22 U.S.C. § 6082(a)(1)(B). Interest is calculated "at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System" for the calendar week

preceding the date of confiscation and compounded annually. 28 U.S.C. § 1961(a) (incorporated by reference in 22 U.S.C. § 6082(a)(1)(B)).

73. A person who "traffics" in a U.S. national's confiscated property under the Act is also liable for plaintiffs' court costs and reasonable attorneys' fees. *See* 22 U.S.C. § 6082(a)(1)(A)(ii).

74. The Act provides for "Increased Liability"

> … If the claimant in an action under this subsection… provides, after the end of the 3-month period described in paragraph (1) notice to —
>
> (i) a person against whom the action is to be initiated, or
>
> (ii) a person who is to be joined as a defendant in the action,
>
> at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

See 22 U.S.C. §§ 6082(a)(3)(B) and 22 U.S.C. 6082(a)(3)(C)(ii) (allowing damages "3 times the amount determined applicable under paragraph (1)(A)(i)").

FACTUAL ALLEGATIONS

I. The Confiscated Property

75. Plaintiffs are U.S. nationals and/or representatives of the Estates of U.S. nationals as defined by 22 U.S.C. § 6023(15)(A), who own claims to the Confiscated Property, which includes a 70-year Concession to develop docks, warehouses and port facilities on Mariel Bay and land holdings.

A. Maritima Mariel SA and the 70-Year Concession

76. Maritima Mariel SA ("Maritima Mariel") was a Cuban corporation set up in 1954 and owned in equal parts by the Blanco Rosell Siblings, who are among the Plaintiffs in this case:

Odette Blanco Rosell; Alfredo Blanco Rosell, Jr as represented by Plaintiff Emma Ruth Blanco, in her capacity as Personal Representative of Alfredo Blanco Rosell's estate; Byron Blanco Rosell as represented by Plaintiff Hebe Blanco Miyares in her capacity as Personal Representative of Byron Blanco Rosell's estate; Enrique Blanco Rosell as represented by Plaintiff Sergio Blanco, in his capacity as Administrator *Ad Litem* of Enrique Blanco Rosell's estate; and Florentino Blanco Rosell as represented by Plaintiff Eduardo Blanco de la Torre, in his capacity as Administrator *Ad Litem* of Florentino Blanco Rosell's estate.

77. On August 15, 1955, the Cuban Government granted to Maritima Mariel a 70-year Concession:

> 'Maritima Mariel, SA' is hereby granted the concession to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel Bay, province of Pinar del Rio Province, and the construction of new buildings and works, without prejudice to the rights acquired by third persons or entities under previous concessions still in force, for the purposes stated in this paragraph.

Decree 2367 published in the Cuban Official Gazette dated August 15, 1955 at 13864 (English translation). When the 70-Year Concession was granted to Maritima Mariel, there were no previous concessions in force for the purposes stated in the foregoing quoted paragraph.

78. The 70-Year Concession also authorized Maritima Mariel to exercise a series of exceptional rights in the Bay of Mariel, including:

a) The occupation and use, either temporary or permanent, of the lands and waters in the public domain or under private ownership and those of the State, province, or municipality, whenever they are essential for the execution and exploitation of the aforementioned projects and works.

b) The right of mandatory expropriation, in accordance with Decree No. 595 of May 22, 1907 or any other later provision regarding ownership, possession, or use of any real estate or private property rights for land that must be occupied for the work, uses, and services mentioned in Section One, a procedure that may also be used with regard to any rights granted by the State, province, or municipality with regard to the maritime-land zone or public domain land or property of those entities of the Nation.

c) The right to impose, on privately owned property, any class of easement for the construction of any type of roads, traffic, access, movement, and parking of vehicles, the establishment of power lines (either overhead or underground), pipes and ducts for water, gas, ventilation, or drainage, and, in general, for anything that is inherent or deemed to be necessary for the purposes of carrying out, maintaining, and exploiting the works that the aforementioned paragraph one deals with, also with the power to attend those cases of forced expropriation, as provided for in the preceding subparagraph.

d) The right to evict any tenants, sharecropper, squatter, or occupant of any other description from any property or facilities that must be occupied, either temporarily or permanently, for the projects referred to repeatedly in Section One, making a payment as compensation to the parties evicted equal to the amount of one year of rent paid in each case.

e) The right to carry out the aforementioned acts by means of applying the provisions contained in Law-Decree No. 1015 of August 7, 1953 and No. 1998 of January 27, 1955, whereby the National Finance Agency of Cuba will provide the financing of those projects.

Id. at 13865-13866 (English translation).

79. These exceptional rights granted in the 70-year Concession gave Maritima Mariel and the Blanco-Rosell Siblings priority rights over any other rights in the Bay of Mariel, including any such rights acquired by third persons or entities under previous concessions still in force at the time the 70-year Concession was granted to Maritima Mariel. The 70-Year Concession granted Maritima Mariel the right to exclude any other person or entity from planning, studying, executing, maintaining or exploiting public docks and warehouses in the Bay of Mariel.

80. Both Maritima Mariel and the 70-Year Concession are part of the Confiscated Property and were specifically identified in Resolution 436 as being confiscated from the Blanco Rosell Siblings by the Cuban Government.

B. Central San Ramón, Compañia Azucarera Mariel S.A., and Land

81. In addition to the 70-Year Concession and Maritima Mariel, the Blanco Rosell Siblings owned several other companies, including the sugar mill then known as the Central San Ramón, which they purchased in 1949. Central San Ramón was owned and operated by Compañia Azucarera Mariel S.A. ("Azucarera Mariel"), a company wholly owned by the Blanco Rosell Siblings.

82. The Blanco Rosell Siblings also had extensive land holdings (approximately 11,000 acres) southeast, south and west of Mariel Bay which they owned through Central San Ramón and Azucarera Mariel. Those approximately 11,000 acres included numerous improvements such as roads, railways, buildings, and utilities.

83. Azucarera Mariel, Central San Ramón and the 11,000 acres of land are part of the Confiscated Property that were specifically named and confiscated from the Blanco Rosell Siblings by the Cuban Government, in Resolution 436.

II. Cuba's Confiscation of The Confiscated Property and Plaintiffs' Claims to The Confiscated Property are Publicly Known

A. Cuba's Confiscation of The Confiscated Property was Publicly Announced in the Cuba Official Gazette on September 29, 1960

84. On September 29, 1960, per Resolution 436, the Cuban Government announced the confiscation without compensation of all assets and rights, whatever their nature, then owned by the Blanco Rosell Siblings and which are herein defined as the Confiscated Property. Such Confiscated Property includes, *inter alia*, Maritima Mariel, the 70-year Concession, Central San Ramón, Azucarera Mariel, as well as all the "all shares or stock certificates representing capital of the entities listed in the [other] Whereas of [Resolution 436]," which included, *inter alia*, the 70-Year Concession and all the lands owned by these entities. *See* Resolution 436 at 23406.

85. More specifically, on September 29, 1960, the Cuban Government published Resolution 436 in its Official Gazette on the confiscation without compensation of the following:

> One: To confiscate, on behalf of the Cuban State, all of the property and rights, whatever their nature, forming the assets of the persons listed in the first Whereas, with the exception of property and rights that are strictly of a personal nature.
>
> Two: To confiscate, on behalf of the Cuban State, all shares or stock certificates representing capital of the entities listed in the [other] Whereas of this resolution, along with all of their properties, rights, and shares that are issued and in circulation.
>
> Three: To order the transfer of the properties, rights, and shares forming the assets of the legal entities listed in the preceding provision to the National Institute for Agrarian Reform (I.N.R.A.).
>
> Four: This resolution to be published in the OFFICIAL GAZETTE of the Republic for purposes of notification and fulfillment of what is provided for by Law No. 715 of 1960.

Resolution No. 436(1) published in the Cuban Official Gazette dated September 29, 1960 at 23406 (English translation).

86. In addition to expressly naming the 70-Year Concession and the above-referenced legal entities, Resolution 436 also expressly named the five Blanco Rosell Siblings as owners of, *inter alia*, the 70-Year Concession, Maritima Mariel, Central San Ramon, and Compania Azucarera Mariel.

87. But for Cuba's confiscation in Resolution 436 published in the official Cuban Gazette on September 29, 1960, the 70-year Concession granted in Decree 2367 issued in 1955 would still be in force. In any event, the 70-year Concession was cut short by Cuba's confiscation of the 70-year Concession.

88. According to the Cuban Official Gazette as published on September 29, 1960, the confiscation of the Confiscated Property occurred on August 19, 1960. The story of the confiscation by the Cuban Government was reported by the Revolucion newspaper on

September 8, 1960. Both the Cuban Official Gazette and the newspaper Revolucion (now known as Granma following the merger of the Revolucion and Hoy newspapers) are available to the public.

B. Plaintiffs' Claims to the Confiscated Property have Received Wide-Spread Media Coverage since 2019

89. The fact of the confiscation of the Blanco Rosell Siblings' property in Cuba was so well known that, on April 18, 2019, the day after the Trump Administration announced that it would allow Helms-Burton Act lawsuits under Title III to go forward, stories published on both Radio Marti and TV Marti identified Plaintiffs' claims to the Mariel Special Development Zone:

> The Mariel Special Development Zone, the star Cuban project to attract investment, was built on nationalized land where the Carranza-Bernal, Carbonell-González and Blanco-Rosell families owned sugar and hemp processing plants.[9]

90. Since December 20, 2020, Plaintiffs have sued two major U.S. container cargo shipping companies and the world's largest container cargo shipping company for trafficking in the Confiscated Property, the claims to which are owned by Plaintiffs.[10]

91. Plaintiffs' lawsuits and Plaintiffs' claims to the Confiscated Property have received U.S. and international news coverage, including shipping company media news coverage, for example:

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[9] https://www.radiotelevisionmarti.com/a/propiedades-que-ya-podr%C3%ADan-reclamar-en-tribunales-de-eeuu/236777.html/ (last visited Sept. 15, 2021).

[10] *Odette Blanco de Fernandez, et al., v. Seaboard Marine, Ltd.*, Case 1:20-cv-25176-BB (S.D. Fla., Dec. 20, 2020); *Odette Blanco de Fernandez v. Crowley Maritime Corporation*, Case 3:20-cv-01426-BJD-PDB (M.D. Fla., Dec. 20, 2020); *Odette Blanco de Fernandez, et al., v. Crowley Maritime Corporation et al.,* Case 1:21-cv-20443 (S.D. Fla., Feb. 2, 2021); *Odette Blanco de Fernandez, et al. v. A.P. Moller-Maersk A/S et al.*, Case 2:21-cv-00339 (E.D. La., Feb. 17, 2021).

a. On December 24, 2020, World News Today published a detailed story about Plaintiffs' first two lawsuits, wherein Plaintiffs' claims were discussed in detail.[11]

b. On December 25, 2020, On Cuba News published a story titled "Two other lawsuits under Helms-Burton Act set sights on Port of Mariel."[12]

c. On February 24, 2021, TradeWinds, the self-described "Global Shipping News Source" ran an article titled "US-Cuba lawsuits show no signs of slowing down as Maersk sued."[13]

d. The U.S. - Cuba Trade and Economic Council, Inc. publishes a widely-disseminated blog which reports each and every Helms-Burton lawsuit filing including Plaintiffs' pending lawsuits.[14]

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[11] https://www.world-today-news.com/florida-companies-sued-for-doing-business-on-land-confiscated-by-cuban-regime/ (last visited Sept. 15, 2021).

[12] https://oncubanews.com/en/cuba-usa/two-other-lawsuits-under-helms-burton-act-set-sights-on-port-of-mariel/ (last visited Sept. 15, 2021).

[13] https://www.tradewindsnews.com/law/us-cuba-lawsuits-show-no-signs-of-slowing-down-as-maersk-sued/2-1-967900 (last visited Sept. 15, 2021).

[14] https://www.cubatrade.org/blog/2020/12/23/agdh6liz2sexx0emhpw0nrqaphmbnr Seaboard Marine Is 31st Libertad Act Lawsuit- Plaintiff Targets Mariel Special Economic Zone Operations (last visited Sept. 15, 2021).

https://www.cubatrade.org/blog/2020/12/23/5ms3f5lr8xytqozz63dfr176qxose9 (Crowley Maritime Corporation Is 32nd Libertad Act Lawsuit- Plaintiffs Target Use Of ZEDM Port) (last visited Sept. 15, 2021).

https://www.cubatrade.org/blog/2021/2/18/maersk-worlds-largest-container-shipping-company-is-third-to-be-defendant-in-libertad-act-lawsuit (last visited Sept. 15, 2021).

https://www.cubatrade.org/blog/2021/8/3/pxqrf52mzej1tpilhzxgt1p7my4ajt European Union Member France's CMA CGM S.A. Is 41st Company Sued Using Libertad Act- Shipping To Cuba Through Jamaica And Using Port Mariel (last visited Sept. 15, 2021).

92. The Confiscated Property has never been returned nor has adequate and effective compensation ever been provided, including for the 70-Year Concession or any other property interests belonging to Plaintiffs. Nor have the claims to the Confiscated Property been settled pursuant to an international claims settlement agreement or other settlement procedure.

93. Plaintiffs never abandoned their claims to the Confiscated Property.

III. The Cuban Government Incorporated the Confiscated Property into The Zona Especial de Desarrollo Mariel ("ZEDM") (a/k/a Mariel Special Economic Zone)

94. The Zona Especial de Desarrollo Mariel ("ZEDM") (*a/k/a* Mariel Special Economic Zone) is an agency or instrumentality of the Cuban Government. Created by statute, the ZEDM is a special economic zone in Cuba with its own legal structure.

95. As stated above, the ZEDM has been referred to in the media as "the star Cuban project to attract investment."

96. Cuba incorporated the Confiscated Property into the ZEDM without the authorization of Plaintiffs and therefore the ZEDM traffics in the Confiscated Property.

97. Starting in or around 2009, the Government of Cuba and various non-Cuban corporate partners rebuilt the Port of Mariel and constructed a Container Terminal in the ZEDM.

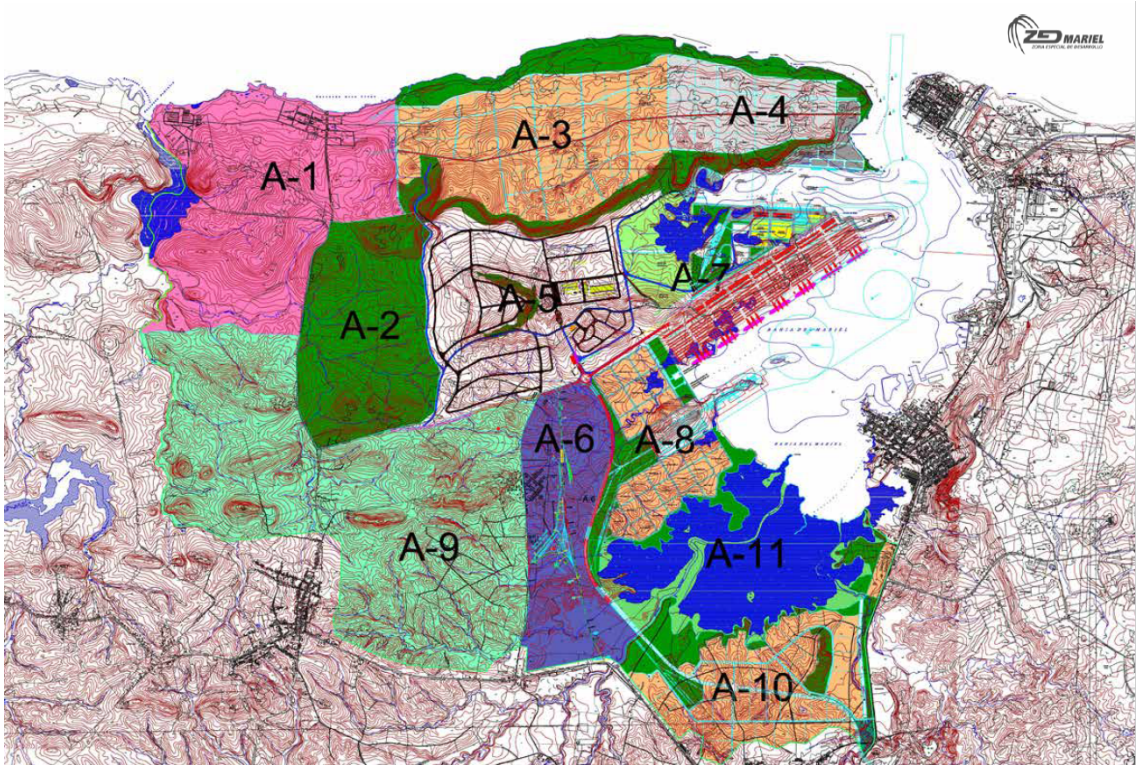
98. The ZEDM's Container Terminal subsumes the 70-Year Concession rights, pursuant to which the Blanco Rosell Siblings possessed the right, among other things, "to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel, province of Pinar del Rio, and the construction of new buildings and works…." *See* Decree 2367 at 13865.

99. The Blanco Rosell Siblings' extensive land holdings on the southeast, south and west sides of Mariel Bay, all of which are part of the Confiscated Property, cover virtually every

square meter of ZEDM sector A5, which the ZEDM operates as a logistics zone, as well as portions of section A7 where the ZEDM's Container Terminal is located.

100. The 70-Year Concession encompasses all of Mariel Bay, including, but not limited to ZEDM Sector A5, where AUSA's container storage yard is located and Sector A7, where the ZEDM's Container Terminal is located.

101. The following map illustrates that ZEDM Sector A7 encompasses the shoreline of Mariel Bay and land adjacent to the shoreline, areas that are subject to the 70-Year Concession:



102. The ZEDM, Container Terminal, and AUSA are trafficking in the Blanco Rosell Siblings' Confiscated Property within the meaning of Title III because the ZEDM:

(i) … transfers, distributes, dispenses, brokers, manages, or … leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in [the Confiscated Property];

(ii) engages in a commercial activity using or otherwise benefitting from [the Confiscated Property],

> (iii) causes, directs, participates in, or profits from trafficking (as described clause (i) or (ii) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii) through another person
>
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13)(A).

103. Those who "plan, study, execute, maintain and exploit public docks and warehouses in Mariel Bay, Pinar del Rio Province, and the construction of new buildings and works" (Decree 2367 at 13865) are trafficking in Plaintiffs' Confiscated Property, including the 70-Year Concession.

IV. Defendant is Trafficking in the Confiscated Property Without Plaintiffs' Authorization

A. Defendant Traffics in the Confiscated Property by Carrying Cargo to the Port of Mariel Without Plaintiffs' Authorization

104. MSC is listed as the carrier on 273 bills of lading for shipments from the U.S. to the Port of Mariel since 2016.

105. MSC is actively involved in each stage of these shipments from the U.S. to the Port of Mariel, and profits from them, even as these goods often are transferred from an MSC vessel to a ship operated by a different company at intermediatory points in the Caribbean en route to their final destination of discharge at the TCM at the Port of Mariel in the ZEDM in the Bay of Mariel.

106. MSC's website lists ports of "transshipment" for every Mariel bill of lading on which it is named as the carrier.

107. Charles Baker, the general director of the Port of Mariel's container terminal, confirmed in September 2016 that MSC was one of the top international carriers to conduct business at the Port of Mariel:

> [Cuban state-owned carrier] Melfi is the main customer. It has about 30 percent of the business. Then following them, roughly in order, would be Maersk Line, Mediterranean Shipping Co., CMA CGM, Hamburg Sud, Cosco Container Lines — and now China Shipping after the merger — and then Hapag-Lloyd, ZIM Integrated Shipping Services, Evergreen Line, Nirint, and Crowley …[.][15]

108. MSC's online data also states that some of its bills of lading for carrying cargo to the Port of Mariel were issued by the company's Cuban agent Agencia Maritima Mapor S.A. ("Mapor Habana").

109. Defendant describes Mapor Habana as "agents for MSC in Cuba" (where Mariel is the only port that MSC serves), and Mapor Habana's Terms and Conditions document indicates that it accepts customer bookings involving Cuba. Exhibit C at 15-16. Mapor Habana's Cuban operations also include "inland forwarding services in addition to the voyage." *Id.* at 17.

110. Bills of lading document multiple instances of MSC acting as carrier for cargo shipments from Port Everglades in Fort Lauderdale and the Port of Jacksonville to the Port of Mariel as the final destination, including as some examples:

(a) Carrying wine cargo loaded at the Port of Jacksonville and then carried to the Port of Mariel. Each of these deliveries was routed through Freeport, Grand Bahama and Cristobal, Panama as points of transshipment. An April 18, 2018 shipment of 1084 cases of wine was loaded at the Port of Jacksonville and then carried to Freeport on the vessel JSP AMIHAN. This bill of lading is linked to a Touax Group 20-foot dry van

[15]https://webcache.googleusercontent.com/search?q=cache%3Ahttps%3A%2F%2Fwww.joc.com%2Fport-news%2Fterminal-operators%2Fpsa-international%2Fmariel-port-head-outlines-cuba-long-term-shipping-prospects_20160905.html&rlz=1C5CHFA_enUS779US779&oq=cache%3Ahttps%3A%2F%2Fwww.joc.com%2Fport-news%2Fterminal-operators%2Fpsa-international%2Fmariel-port-head-outlines-cuba-long-term-shipping- (last visited Sept. 15, 2021).

container that was unloaded from the vessel VEGA ZETA in the Port of Mariel on May 15, 2018.

(b) MSC was the carrier for a September 23, 2019 shipment of "household goods/gift parcels" loaded at Port Everglades that was ultimately unloaded in the Port of Mariel on October 17, 2019. The container was then picked up by the recipient on October 30, 2019 and returned to the Port of Mariel empty on November 8, 2019.

(c) MSC was the carrier for a February 2, 2017 shipment of 180 packages loaded onto the vessel AGGELIKI P at Port Everglades and then carried to Caucedo, Dominican Republic. The shipped goods included "electrical equipment, appliances, building material/hardware, electrical material, clothing…department store merchandise, electric moped, restaurant supplies, stove, furniture, refrigerators, [and] personal effects." The MSC website links the bill of lading to a 40-foot "high cube" container that was unloaded off the MSC NADRIELY in the Port of Mariel on February 20, 2017 (the vessel departed Cristobal on February 11, 2017 and apparently routed the shipment through Caucedo again during a stop between February 14 and 16, 2017). The container was picked up by the recipient in the Port of Mariel on February 24, 2017.

(d) MSC was the carrier for three April 9, 2018 shipments of (a) 274 packages of "gifts and parcels," (b) 360 packages of "gifts and parcels" and (c) 234 packages of "household goods" loaded at Port Everglades and then carried to Caucedo on the vessel MSC MARTA. The MSC website links the bills of lading to three Dong Fang 40-foot "high cube containers that were unloaded from the VEGA ZETA in Mariel on May 15, 2018. MSC reported that the container was picked up by the recipient on May 19, 2018 and

returned empty by June 27, 2018. MSC's website also states that Mapor Habana issued all three bills of lading.

(e) MSC was the carrier for a February 11, 2020 shipment of 183 packages of "household goods electrodomestic effects, lingerie, furniture, [and] other articles" loaded at Port Everglades and then carried to Caucedo on the vessel MONACO. The MSC website links the bill of lading to a Seaco 40-foot "high cube" container that was unloaded in Caucedo on February 13, 2020 and loaded onto the MSC RANIA on February 14, 2020. MSC reported that the container was unloaded in Cristobal on February 16, 2020 and loaded onto the MACAO STRAIT at the nearby Manzanillo port on February 25, 2020. The container was unloaded in the Port of Mariel on March 4, 2020, picked up by the recipient on March 7, 2020 and returned empty to the Port of Mariel by March 11, 2020.

(f) MSC was the carrier for a March 4, 2021 shipment of 220 packages of "household goods, electrodomestic effects, lingerie, furniture, [and] other articles" loaded at Port Everglades and then carried to Caucedo on the vessel OREGON TRADER. The MSC website links the bill of lading to a Dong Fang 40-foot "high cube" container that was unloaded in Caucedo, Dominican Republic on March 6, 2021 and loaded onto the MSC BIANCA on April 9, 2021. MSC reported that the container was unloaded in Colon, Panama on April 13, 2021 and loaded onto the CARIBBEAN EXPRESS at the nearby Manzanillo port on May 7, 2021. The CARIBBEAN EXPRESS delivered the container to the Container Terminal at the Port of Mariel on May 14, 2021. The recipient picked up the container on June 10, 2021 and returned to the container yard at the Port of Mariel on June 28, 2021.

(g) MSC was the carrier for an April 2, 2021 shipment of 3685 packages of "gifts and parcel" that were loaded at Port Everglades and then carried to Caucedo, Dominican Republic on the vessel OREGON TRADER. The MSC website links the bill of lading to a Dong Fang 40-foot "high cube" container that was unloaded in Caucedo, Dominican Republic on April 5, 2021 and loaded onto the MSC CHLOE on April 23, 2021. MSC reported that the container was unloaded in Cristobal, Panama on April 25, 2021 and loaded onto the CARIBBEAN EXPRESS at the nearby Manzanillo port on May 7, 2021. The CARIBBEAN EXPRESS delivered the container to the Container Terminal at the Port of Mariel on May 14, 2021. The recipient picked up the container on June 4, 2021 and returned it to the Container Terminal at the Port of Mariel on June 29, 2021.

111. Since at least 2016 through at least July 2021, MSC purposefully and repeatedly carried cargo from various locations, including the United States, to the Port of Mariel and directed ships to call at the Container Terminal, which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel, where the ships, for themselves and on behalf of and/or at the direction of Defendant, called at the Container Terminal and while there engaged in commercially beneficial transactions and other commercial activities with the Container Terminal, AUSA, ZEDM and/or Mapor Habana including, but not limited to, offloading and loading containers of cargo carried by Defendant, thereby using or otherwise benefiting from the Confiscated Property without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(ii). MSC's commercial activities with the Container Terminal, AUSA, ZEDM and/or Mapor Habana make MSC's container business at the Port of Mariel possible and profitable.

112. Since at least 2016 through at least July 2021, Defendant knowingly and intentionally carried cargo from various locations, including the United States, to the Port of Mariel

and directed ships to call at the Port of Mariel to engage in commercially beneficial transactions and other commercial activities—including, but not limited to, calling at the Container Terminal, which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel, and offloading and loading containers of cargo carried by Defendant at the Container Terminal whereby MSC, caused, directed, participated in, or profited from trafficking by other persons such as or more of TCM, AUSA, ZEDM and Mapor Habana, or otherwise engaged in trafficking through one or more of TCM, AUSA, ZEDM and Mapor Habana without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(iii).

B. Defendant Also Traffics in the Confiscated Property by Operating Vessels that Call at the Port of Mariel Without Plaintiffs' Authorization and by Contracting with Third-Party Feeder Vessels that Call at the Port of Mariel Without Plaintiffs' Authorization

113. MSC has trafficked in the Confiscated Property by knowingly and intentionally directing container ships to call at the Container Terminal—which is part of the Port of Mariel within the ZEDM and within the Bay of Mariel in Cuba—either directly or by causing, directing, participating in, or profiting from trafficking by or through one or more other persons.

114. "Calling" at a port in the container shipping industry means that containers are either offloaded or loaded at a Port of Call. See https://www.marineinsight.com/life-at-sea/what-does-the-term-port-of-call-means/ (last visited September 15, 2021). While calling at the Port of Mariel, the container ships dock and utilize wharf space, offload and/or load containers, hook up to water and electricity, utilize crane service, container storage yards, warehouses and other storage space to store the containers, as well as road, rail and wheeled means of conveyance for the containers it unloads. The container ships contract for and pay for these and other services at the Port of Mariel with the TCM, AUSA, and/or the ZEDM. Containers that MSC carries to the Port of Mariel on ships directed to the Port of Mariel by MSC are offloaded at the Container Terminal

in ZEDM Sector 7 and stored in the container storage yard operated by AUSA in ZEDM Sector A5. MSC also engages in commercial activities using or otherwise benefitting from the Plaintiffs' Confiscated Property and acts of trafficking by the Container Terminal, AUSA and the ZEDM which make MSC's container business at the Port of Mariel possible and profitable.

115. Container data on MSC's web tracking system reveals the names of the vessels that offloaded the containers in Mariel. For example, one such vessel, the MSC NADRIELY, is part of MSC's fleet. Between September 25, 2016 and July 16, 2017, the MSC NADRIELY called at the Port of Mariel fourteen times while being operated by MSC:

MSC Nadriely Movements

Status and Distance	Port	Country	From	To	Destination
called at	Mariel	Cuba (GMT -04H)	16/07/2017 05:38:00 GMT	17/07/2017 16:24:00 GMT	Caucedo
called at	Mariel	Cuba (GMT -04H)	05/06/2017 05:30:00 GMT	07/06/2017 00:11:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	22/05/2017 19:17:00 GMT	23/05/2017 19:12:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	30/04/2017 12:46:00 GMT	01/05/2017 15:00:00 GMT	Puerto Barrios
called at	Mariel	Cuba (GMT -04H)	16/04/2017 15:42:00 GMT	17/04/2017 19:23:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	22/03/2017 03:17:00 GMT	24/03/2017 01:23:00 GMT	Puerto Limon
called at	Mariel	Cuba (GMT -04H)	09/03/2017 18:31:00 GMT	11/03/2017 00:05:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	20/02/2017 22:52:00 GMT	22/02/2017 16:02:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	06/02/2017 01:00:00 GMT	07/02/2017 23:41:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	21/01/2017 02:43:00 GMT	23/01/2017 01:12:00 GMT	Caucedo
called at	Mariel	Cuba (GMT -04H)	06/12/2016 21:41:00 GMT	09/12/2016 22:28:00 GMT	Cristobal
called at	Mariel	Cuba (GMT -04H)	16/10/2016 22:08:00 GMT	18/10/2016 07:35:00 GMT	Puerto Cortes

called at	Mariel	Cuba (GMT -04H)	03/10/2016 18:17:00 GMT	05/10/2016 12:29:00 GMT	Kingston(JAM)
called at	Mariel	Cuba (GMT -04H)	25/09/2016 09:45:00 GMT	27/09/2016 19:30:00 GMT	Cristobal

116. In addition, MSC contracts third-party feeder vessels to fulfil the final leg of the shipments they deliver to the Port of Mariel:

> "Melfi has mainline services. Maersk has a mainline service coming from North Europe that started in May. Hapag-Lloyd runs services from Mexico. The rest are bringing in cargo by feeders, from Panama and Kingston and the Bahamas and a little from Caucedo [in the Dominican Republic], much of it through Isla Bonita Shipping … [.]"[16]

117. Two of the five vessels (currently known to Plaintiffs) that have carried MSC shipments to the Port of Mariel—the X-PRESS MACHU PICHCCU (seven shipments) and the Caribbean Express (two shipments)—are X-Press Feeders ships that departed from Panama.

118. MSC purposefully and repeatedly directed vessels, or contracted with third-party feeder vessels, to call at the Port of Mariel where each of them, for themselves and on behalf of and/or at the direction of MSC, called at the Container Terminal and made use of AUSA's services including at the container storage yard, which are part of the Port of Mariel and located within the ZEDM and within the Bay of Mariel, and engaged in commercial transactions and other commercial activities—including, but not limited to, offloading and loading containers of cargo carried by MSC at the Container Terminal—thereby using or otherwise benefiting from the Confiscated Property without the authorization of Plaintiffs, which constitutes trafficking as

[16]https://webcache.googleusercontent.com/search?q=cache%3Ahttps%3A%2F%2Fwww.joc.com%2Fport-news%2Fterminal-operators%2Fpsa-international%2Fmariel-port-head-outlines-cuba-long-term-shipping-prospects_20160905.html&rlz=1C5CHFA_enUS779US779&oq=cache%3Ahttps%3A%2F%2Fwww.joc.com%2Fport-news%2Fterminal-operators%2Fpsa-international%2Fmariel-port-head-outlines-cuba-long-term-shipping-prospects_20160905.html&aqs=chrome..69i57j69i58.2790j0j4&sourceid=chrome&ie=UTF-8 (last visited Sept. 15, 2021).

defined in 22 U.S.C. § 6023(13)(A)(ii). MSC's commercial activities with the Container Terminal, AUSA, ZEDM and/or Mapor Habana make MSC's container business at the Port of Mariel possible and profitable.

119. While calling at the Port of Mariel, ships directed to the Port of Mariel by MSC (either directly or via third-party feeder vessels) knowingly and intentionally engaged in commercial transactions and other commercial activities—including, but not limited to, offloading and loading containers of cargo carried to the Port of Mariel by Defendant at the Container Terminal—whereby MSC for itself, caused, directed, participated in, or profited from trafficking by another person, or otherwise engaged in trafficking through another person without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(iii).

C. Defendant Traffics in the Confiscated Property By and Through Defendant's Agent, Agencia Maritima Mapor S.A. ("Mapor Habana") in the Port of Mariel Without Plaintiffs' Authorization

120. Defendant's agent Mapor Habana provided (and continues to provide) logistics services as Defendant's "agents" at the Port of Mariel within the ZEDM and within the Bay of Mariel, where it for itself and on behalf of and/or at the direction of Defendant engages in commercially beneficial transactions and other commercial activities with the Container Terminal, AUSA, and/or the ZEDM including, but not limited to providing services as Defendant's agent, thereby using or otherwise benefiting from the Confiscated Property, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(ii).

121. Defendant knowingly and intentionally directed its agent Mapor Habana to engage in commercially beneficial transactions and other commercial activities at the Port of Mariel—including, but not limited to, providing services as Defendant's agent at the Port of Mariel within the ZEDM and within the Bay of Mariel, whereby Defendant, caused, directed, participated in, or

profited from trafficking by another person, or otherwise engaged in trafficking through another person without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(iii).

122. In addition, Defendant, by and through its agent Mapor Habana, profits from Mapor Habana's commercial, for profit business operations at the Port of Mariel including Mapor Habana's acting as Defendant's agent in Cuba, accepting customer bookings involving Cuba, issuing U.S. bills of lading for shipments to Cuba, and providing "inland forwarding services in addition to the voyage" (*see supra* ¶¶ 108 – 109) without the authorization of Plaintiffs, which constitutes trafficking as defined in 22 U.S.C. § 6023(13)(A)(iii).

123. In sum, and as the facts demonstrate in Paragraphs 104 – 122, *supra*, Defendant traffics in the Confiscated Property because:

(a) TCM, AUSA, and ZEDM all use an interest in the Confiscated Property pursuant to 22 U.S.C. § 6023(13)(A)(i);

(b) TCM, AUSA, and/or ZEDM manage, distribute, dispense, broker, possess, have obtained control of or otherwise have acquired an interest in the Confiscated Property pursuant to 22 U.S.C. § 6023(13)(A)(i);

(c) TCM leases or has otherwise acquired or holds an interest in the Confiscated Property pursuant to 22 U.S.C. § 6023(13)(A)(i);

(d) Defendant engages in business activities using or otherwise benefitting from the Confiscated Property pursuant to 22 U.S.C. § 6023(13)(A)(ii);

(e) Defendant engages in business activities with TCM, AUSA, ZEDM and Mapor Habana for the purpose of making money which they could not otherwise do if there were not ports, docks, and warehouses that had not been planned, studied, developed, built,

maintained, and available to be used and exploited in the Bay of Mariel pursuant to 22 U.S.C. § 6023(13)(A)(ii);

(f) Defendant profits from trafficking by TCM, AUSA, ZEDM, and Mapor Habana as described in (a) through (e) of this paragraph pursuant to 22 U.S.C. § 6023(13)(A)(iii);

(g) Defendant causes, directs and/or participates in trafficking by its agent, Mapor Habana, as described in (a) through (e) of this paragraph without the authorization of Plaintiffs pursuant to 22 U.S.C. § 6023(13)(A)(iii);

(h) All of the above (a) through (g) are done without the authorization of Plaintiffs.

V. Plaintiffs Notified Defendant that Defendant is Trafficking in the Confiscated Property, the Claims to Which are Owned by Plaintiffs

124. On June 3, 2021, Plaintiffs, through counsel, sent MSC a letter pursuant to 22 U.S.C. § 6082(a)(3)(D) ("Notice Letter") notifying MSC that it is trafficking in confiscated property as defined in the Helms-Burton Act, the claims to which are owned by Plaintiffs, without the authorization of Plaintiffs.

125. Plaintiffs sent the Notice Letter by FedEx, International Priority, and separately, by the United States Postal Service ("USPS") International Registered Mail.

126. FedEx delivered the Notice Letter to MSC on June 7, 2021.

127. The USPS delivered the Notice Letter to MSC on July 2, 2021.

128. On June 30, 2021 MSC's counsel sent Plaintiffs' counsel a letter acknowledging that MSC had been offering "services in relation to the alleged Confiscated Property" and alleged that MSC ceased providing such services "[u]pon receipt" of the Notice Letter:

Upon receipt of the Notices, MSC SA promptly instructed that all services offered in

> relation to the alleged Confiscated Property (as defined in the Notices) must cease with immediate effect. Thus, to the extent any MSC entity has engaged in any alleged trafficking as defined under the Helms-Burton Act (which we strongly dispute), such trafficking even under the broadest possible meaning has terminated. If Claimants still intend to pursue their claims against MSC and to the extent Claimants have any viable uncertified claims (which they do not), MSC will not be liable to the Claimants for treble damages. See 22 U.S.C. § 6082(a)(2)(B).

Letter from R. Brodsky to D. Baron (Jun. 30, 2021) (Exhibit D, hereto).

129. However, MSC has continued to traffic since it received the Notice Letter.

130. According to MSC's website, MSC was the carrier for a container numbered MEDU1954670 that was unloaded in the Port of Mariel off of X-Press Feeder's CARIBBEAN EXPRESS on July 10, 2021. Exhibit E, hereto. The shipment originally left Jacksonville on the JSP AMIHAN on or around April 16, was unloaded in the Bahamas on May 5, traveled to Panama on the MSC DAMLA between May 30 and June 3, and was loaded onto the CARIBBEAN EXPRESS for shipment to the Port of Mariel on July 2. The shipment arrived in the Port of Mariel on July 10, 2021. The bill of lading for the shipment (MEDUU1162343) shows that it contains 711 cases of wine. *Id.*

131. MSC's website also shows that MSC was the carrier for a shipment (bill of lading MEDUU1703872, container number MEDU7146427) that left Long Beach, California on or around May 30 was scheduled to travel from Panama to Mariel on the CARIBBEAN EXPRESS on or around July 17. Exhibit F, hereto. The CARIBBEAN EXPRESS delivered the container to the Container Terminal at the Port of Mariel on July 25, 2021. *Id*.

132. Because MSC did not obtain the authorization of Plaintiffs with regard to these acts of trafficking, occurring both before and after receiving the Notice Letter, Plaintiffs were injured by MSC's acts of trafficking in the Confiscated Property to which Plaintiffs own claims and MSC is subject to treble damages.

133. Plaintiffs have been injured by MSC's unauthorized acts of trafficking in the confiscated property to which Plaintiffs own claims because, *inter alia*:

(a) MSC is profiting without obtaining consent from or paying adequate compensation to Plaintiffs;

(b) Plaintiffs are not receiving the benefit of their interests in the Confiscated Property;

(c) MSC is profiting without obtaining authorization or paying adequate compensation to Plaintiffs for authorization to traffic in the confiscated property;

(d) MSC is profiting or otherwise benefiting from trafficking in the Confiscated Property by or through others without obtaining authorization from, or paying adequate compensation to, Plaintiffs;

(e) MSC's trafficking in the Confiscated Property has undermined Plaintiffs' rights to compensation for the Confiscated Property;

(f) MSC has profited from its use of the Confiscated Property at Plaintiffs' expense;

(g) MSC has denied Plaintiffs the ability to obtain economic rent that could have been negotiated for in exchange for their authorization to MSC to traffic in the Confiscated Property;

(h) MSC has appropriated from Plaintiffs the leverage from the Helms-Burton Act that Plaintiffs would have had on the Cuban Government to negotiate compensation for their Confiscated Property;

(i) MSC has injured Plaintiffs by trafficking in the Confiscated Property without Plaintiffs' authorization and without making any payment of compensation to Plaintiffs because in the Helms-Burton Act, Congress provided the rightful owners of confiscated property with the right to be compensated from defendants who have economically exploited the confiscated property;

(j) Defendant has injured Plaintiffs by trafficking in the particularized Confiscated Property to which Plaintiffs own claims without seeking or obtaining Plaintiffs' authorization to traffic in that particularized Confiscated Property and as a result Defendant's failure to do so has resulted in concrete and particularized monetary harm and injury to Plaintiffs; and

(k) The harms and injuries suffered by Plaintiffs as a result of Defendant's failure to obtain Plaintiffs' authorization to traffic in the Confiscated Property have a close relationship to traditionally recognized common-law actions for unjust enrichment, trespass, trespass to chattels, and conversion.

(l) There is a direct causal link between Plaintiffs' injuries from the Cuban Government's confiscation of the Confiscated Property and Defendant's unjust enrichment, trespass, trespass to chattels, and/or conversion from Defendant's commercially beneficial use of the Confiscated Property without Plaintiffs' authorization.

(m) MSC's trafficking in the Confiscated Property without Plaintiffs' authorization has caused a concrete injury to Plaintiffs that is traceable to

MSC and has a close relationship to harms traditionally recognized providing a basis for a lawsuit in American courts – such as unjust enrichment, trespass, trespass to chattels and conversion.

CLAIM FOR DAMAGES
TITLE III OF THE HELMS-BURTON ACT

134. Plaintiffs incorporate by reference all of the foregoing Paragraphs as if fully set forth herein.

135. This case is brought pursuant to Title III of the Helms-Burton Act, 22 U.S.C. § 6082.

136. MSC did traffic, as the term "traffic" is defined in 22 U.S.C. § 6023(13)(A), in the Confiscated Property without authorization of Plaintiffs who own claims to the Confiscated Property. Defendant is therefore liable to Plaintiffs under the Helms-Burton Act.

137. MSC has trafficked in the Confiscated Property, by knowingly and intentionally carrying or directing containers to be carried to the Port of Mariel in Cuba where the containers are off-loaded, either directly or by causing, directing, participating in, or profiting from trafficking by or through another person. Defendant uses, benefits, and profits from the Container Terminal in the ZEDM including the ZEDM's ports, docks, warehouses, and facilities. Defendant also engages in commercial activities using or otherwise benefitting from the ZEDM and Plaintiffs' Confiscated Property.

138. MSC also has trafficked in the Confiscated Property, by knowingly and intentionally directing container ships to call at the Port of Mariel in Cuba, either directly or by causing, directing, participating in, or profiting from trafficking by or through another person. When in the Port of Mariel, the container ships call at, and/or otherwise use, benefit, and profit from the Container Terminal in the ZEDM including the ZEDM's ports, docks, warehouses, and

facilities. Defendant also engages in commercial activities using or otherwise benefitting from the ZEDM and Plaintiffs' Confiscated Property including, but not limited to, the 70-Year Concession, without the authorization of Plaintiffs.

139. MSC is therefore trafficking in Plaintiffs' Confiscated Property and benefit or profit from the trafficking of the Container Terminal, AUSA, and the ZEDM in Plaintiffs' Confiscated Property including, but not limited to, the 70-Year Concession, without the authorization of Plaintiffs.

140. MSC, as a result of carrying containers to the Port of Mariel and as a result of directing containers ships to the Port of Mariel also has trafficked in the Confiscated Property by knowingly and intentionally participating in, benefitting from, and profiting from the commercial activities of the Container Terminal, AUSA, ZEDM and/or Mapor Habana's trafficking in the Confiscated Property including, but not limited to, the 70-Year Concession, without the authorization of Plaintiffs.

141. MSC engages in a commercial activity using or otherwise benefitting from the Confiscated Property, including, but not limited to, the 70-Year Concession.

142. MSC also causes, directs, participates in, or profits from trafficking by the Container Terminal, AUSA, and the ZEDM in the Confiscated Property, including the 70-Year Concession.

143. MSC has had actual knowledge of Plaintiffs' claims to the Confiscated Property since at least June 7, 2021, due to Plaintiffs' Notice Letter mentioned above in Paragraphs 124 - 127.

144. Prior to MSC's receipt of Plaintiffs' Notice Letters, MSC knew or had reason to know that Plaintiffs own claims to the Confiscated Property.

145. Prior to MSC's receipt of Plaintiffs' Notice Letters, MSC knew or had reason to know that the ZEDM was trafficking in the Confiscated Property.

146. MSC's continued trafficking in the Confiscated Property, including in the 70-Year Concession, more than 30 days after its receipt of Plaintiffs' Notice Letters subjects MSC to treble damages. 22 U.S.C. § 6082(a)(3).

147. The Container Terminal, AUSA, and the ZEDM did not ever seek or obtain Plaintiffs' authorization to traffic in the Confiscated Property, including the 70-Year Concession, the land, or any other Confiscated Property at any time.

148. The Container Terminal, AUSA, and the ZEDM's knowing and intentional conduct with regard to the Confiscated Property constitutes trafficking as defined 22 U.S.C. § 6023(13).

149. MSC did not seek nor obtain Plaintiffs' authorization to traffic in the Confiscated Property, including in the 70-Year Concession or any other property interests at any time.

150. MSC's knowing and intentional conduct with regard to the Confiscated Property constitutes trafficking as defined in 22 U.S.C. § 6023(13).

151. As a result of MSC's trafficking in the Confiscated Property, MSC is liable to Plaintiffs for all money damages allowable under 22 U.S.C. § 6082(a) including, but not limited to, those equal to:

a. The amount which is the greater of: … (i) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2); or (ii) the current "fair market value" of the Confiscated Property, or the original fair market value of the Confiscated Property plus pre-filing interest;

b. Three times the amount determined above (treble damages);

c. Prejudgment interest; and

d. Court costs and reasonable attorneys' fees, and expenses.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against MSC as follows:

A. Awarding damages as allowed by law including treble damages and pre-filing interest as provided by the Act;

B. Awarding prejudgment interest as allowed by law on any amounts awarded;

C. Awarding attorneys' fees, costs, and expenses; and

D. Awarding such other and further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

Dated: September 22, 2021

Respectfully submitted,

s/ *David J. Horr*
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JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS ODETTE BLANCO DE FERNANDEZ née BLANCO ROSELL, et al.

DEFENDANTS MSC MEDITERRANEAN SHIPPING COMPANY SA

(b) County of Residence of First Listed Plaintiff Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

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9130 S. Dadeland Boulevard, Miami, FL 33156 (305) 670-2525

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☑ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant
☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff) and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

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☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

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☐ 370 Other Fraud
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☐ 560 Civil Detainee – Conditions of Confinement

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☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

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☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

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☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

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☐ 820 Copyrights
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☐ 835 Patent – Abbreviated New Drug Application
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
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☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
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☐ 376 Qui Tam (31 USC 3729 (a))
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☐ 410 Antitrust
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☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☒ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE: DOCKET NUMBER: 1:20-cv-25176 (SD Fla.)

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause *(Do not cite jurisdictional statutes unless diversity)*:
Title III of the Helms-Burton Act, 22 U.S.C. Sections 6081-85. Trafficking in property confiscated in Cuba

LENGTH OF TRIAL via 21 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ in excess of $1 Billion

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE September 22, 2021

SIGNATURE OF ATTORNEY OF RECORD on behalf of David J. Horr

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RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

EXHIBIT A

Miami Herald

HOMEPAGE

Mariel is Cuba's big industrial gamble. Could U.S. companies be among investors?

BY MIMI WHITEFIELD

OCTOBER 23, 2017 08:00 AM, UPDATED OCTOBER 23, 2017 09:37 AM

Twenty-eight miles west of Havana in Mariel, one of the biggest economic development projects in Cuba history is taking shape. Cuban officials hope to attract sustainable industries, advanced manufacturing and high-tech companies to the Mariel Spe BY EMILY MICHOT

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MARIEL, CUBA

After years of Cuba talking about the Mariel Special Economic Development Zone as the island's economic future, the sprawling site 28 miles west of Havana is beginning to take shape with huge tracts of land leveled and ready for construction of two major manufacturing operations.

So far 27 companies, including firms from Spain, the Netherlands, Panama, Brazil, Mexico, South Korea, Vietnam, France, Belgium, and Cuba itself, have been given the green light to set up shop in the 115,000-acre zone. Only nine are currently operating there.

But Cuba envisions the zone and the Mariel port — perhaps best known in the United States as the gritty departure point for 125,000 Cubans who came to the United States during the 1980 boatlift — as the beginning of a bustling commercial city built on high-tech, advanced manufacturing and sustainable development.

TOP ARTICLES

SKIP AD

When Cuban leader Raúl Castro and former Brazilian President Luiz Inácio Lula da Silva toured the refurbished Mariel port in February 2014, Castro called the Mariel complex the most important project carried out by the Cuban Revolution in the past 50 years.

"I think the port of Mariel represents the possibility of an industrial revolution for Cuba," said Lula. During his administration, Brazil's National Bank of Economic and Social Development (BNDES) extended loans that paid for most of the cost of developing the Mariel container terminal.

Over the last few years, container operations have been shifted from the Port of

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business delegations. Managed by Singapore-based PSA International, the container terminal is the zone's largest user.

"Sometimes there's a little confusion — especially among the American audience. They see the zone as a port. The zone has a competitive advantage, which is the existence of the port, but it is much more than a port," said Ana Teresa Igarza, managing director of the special zone, which is known by its Spanish acronym as ZED.

Until recently there wasn't much to see in the zone, which was inaugurated in November 2013. Roads and traffic circles had been built among the rolling hills, but the zone was mostly wide, open spaces.

Now 25 acres of land has been fenced in and leveled for construction of the BrasCuba factory — a joint venture between Brazil's Souza Cruz and Cuba's Tabacuba. The $100-million plant will turn out Popular, Cohiba and H. Upmann cigarettes for export and the domestic market.

Across the street, a site has been prepared for a Cuban biotech factory, and Womy, a Dutch company that rents cranes and other heavy equipment, has just finished its building. Foreign companies such as BDC-Log and BDC-Tec also have begun operating in the zone's logistics sector.

Unilever, which currently has an importing operation in Cuba, has completed site preparation for a joint venture with Cuba's Intersuchel that will produce shampoo, deodorant, Lux soap, Omo detergent and Close-Up toothpaste. It hopes to be in production by 2018, said Igarza.

Rows of new warehouses with solar panels on their roofs that use only 10 percent of the energy they generate are nearing completion, and Mariel Solar, a French/U.K. venture, has won approval to build a solar farm at the zone.

Devox Caribe, a paint and coatings company with 100 percent Mexican capital, is among zone users that will be largely powered by solar energy. Its goal is to first produce for the Cuban market and then begin exporting to Mexico.

Two food companies, Richmeat de Mexico, which plans a processing plant and meat packing operation, and Profood Service, a Spanish company that plans to produce concentrated juice, cocktail mixes and powdered drinks to be used in drink dispensers, also have been approved.

But unless these companies can ramp up quickly to begin exporting, rather than just producing for the Cuban market, the zone's financial incentives are little more than subsidies for domestic production, said Richard Feinberg, a professor of international economic policy at the University of California, San Diego.

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To meet development goals, Cuba has said it needs to attract $2.5 billion in annual foreign investment, but it is still far from that goal.

Spain has the highest representation of any country in the zone with six approvals. So far no U.S. company has made the cut.

However, Igarza hints that may change soon. She said negotiations with three U.S. companies in the bio-pharmaceutical and heavy equipment industries are in the advanced stage. “Perhaps we’ll have some surprises at the International Fair of Havana,” she said. Until they have final approvals, she said the companies have asked that their names not be released.

The fair, which Cuba often uses to announce new foreign investment projects, will be held Oct. 30-Nov. 3.

“In our commercial relations we’ve decided to work with all countries,” said Igarza. “So trade with the United States and investment relations with the United States — which is a natural market for Cuba and Cuba is also a natural market for the United States — is in our work plan.”

But the thaw in U.S.-Cuba relations that began in December 2014 is threatening to freeze up again. In the wake of mysterious attacks that have affected the health of 24 American diplomats stationed in Havana, the United States has withdrawn all but key personnel from its embassy, expelled 15 diplomats at Cuba’s embassy in Washington, and has warned American travelers against visiting the island because some of the attacks on diplomats occurred at hotels.

The Trump administration also is writing new regulations that are expected to make it more difficult for Americans to do business with and travel to Cuba, but it hasn’t released them yet.

“We do see policies changing from those established under President Obama.... but in terms of interest by American firms, I don’t think it has diminished,” said Igarza. “We are constantly receiving entrepreneurs, state delegations or mayors here who are interested in the progress.”

Despite the travel warning, a delegation, which included council members and business executives from both St. Petersburg and Tampa, visited Cuba earlier this month and toured the special zone.

After the Obama administration’s opening to Cuba allowed limited U.S. investment and trade with the island, there was a flurry of interest by American businesses and even an announcement that Cleber, an Alabama company, had been approved to manufacture small tractors in the zone.

But that was premature, said Igarza. Even though Cleber had U.S. authorization to

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it became clear the company wasn't bringing any clean or advanced manufacturing processes to the zone, its proposal was turned down, Igarza said.

Cleber had proposed tractor technology from the 1940s — which Saul Berenthal, one of Cleber's co-founders said was appropriate for small-scale agriculture in Cuba where some farmers still use oxen to till their fields. "We told him we weren't interested because the technology was obsolete," and the tractor also didn't meet current safety and work health requirements in Cuba, said Igarza.

The Cleber rejection was a disappointment for those hoping it would be a harbinger of a deeper U.S.-Cuba business relationship. Some American executives also have complained about the lengthy Cuban decision-making process for potential U.S. ventures.

Igarza disagrees with that characterization. Decisions are not slow, she said, and are generally made within 60 days. But she conceded the process can be lengthy. After a company fills out a preliminary questionnaire, Cuba makes a determination whether a project is of interest. Then companies must submit extensive documentation and technical specifications.

"[How long it takes] all depends on how prepared their negotiating teams are," Igarza said. Some companies have done all their paperwork in six months, she said.

The zone has received more than 400 applications from companies around the world, but not all have decided to go through the rigorous documentation process or have proposed projects that interest the Cubans. The zone works with 20 to 30 companies at a time on completing paperwork, said Igarza

At port seminars in the United States, Charles Baker, managing director of the Mariel container terminal, has talked about the port's interest in serving as trans-shipment point. Big ships that have transited the expanded Panama Canal could call at Mariel where cargoes could be offloaded to smaller feeder vessels serving Tampa and other U.S. Gulf Coast ports that don't have deep enough water for the huge Neo-Panamax ships now using the canal expansion.

But other ports, including Balboa in Panama, also are eager to expand their transhipment business and will offer plenty of competition. Currently the Mariel container terminal is operating at less than half its capacity.

The entrance to the Mariel channel is dredged to a depth of 45-feet, seven inches — not deep enough for Neo-Panamax ships, but dredging is continuing in phases. The goal is to reach a depth of just over 52 feet. The shipping channel at PortMiami, which is big-ship ready, has been dredged to a depth of 50 to 52 feet

As long as the U.S. embargo remains in effect, it will be difficult for Mariel to reach its potential as a trans-shipment and exporting port. "Look where Mariel is: facing the United States. The U.S. is the logical target," said Feinberg. "Overall Mariel faces two major problems: very little access to the U.S. market and the wage issue."

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Even though workers in the zone receive a premium over other Cuban workers, foreign companies must do their hiring through state agencies and the government retains a big chunk of workers' earnings. "Even though the wages Cuban workers actually get are low, Cuba is not considered a low-wage destination and that's a problem for investors," said Feinberg.

Meanwhile, the pieces of Cuba's grand industrial project are slowly coming together.

A double-track rail line has already been completed from the zone to Havana, and a passenger terminal is under construction. Some 7,000 workers — many of them involved in construction projects — who now labor in the zone will be able to ride the train to work and take shuttles to their workplaces when the terminal is completed in January.

Outside Igarza's third floor office at the Pelicano Business Center, there is a huge rendering of the future Mariel zone with all the open land filled in with factories and warehouses.

"A port open to the world," it reads.

Follow Mimi Whitefield on Twitter: @HeraldMimi

1 of 2

Ana Teresa Igarza, director of the Mariel Special Economic Development Zone, points to a map of the Mariel Special Economic Development Zone uring a power point presentation on Sept. 29, 2017. EMILY MICHOT *EMICHOT@MIAMIHERALD.COM*

COMMENTS

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READ NEXT

FLORIDA KEYS

Cuban migrants rescued off Keys on a raft, Coast Guard says. That's not where they stayed

BY GWEN FILOSA

APRIL 26, 2021 06:13 PM

Two Cuban migrants who were rescued off the Florida Keys last week were taken back to Cuba on Monday by the U.S. Coast Guard.

The two men were rescued Thursday by the motor tanker STI Brixton's crew, who saw them waving their arms on a raft about 70 miles southwest of Marathon, the Coast Guard reported.

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TRENDING STORIES

A Florida model was offering drunken lap dances to strangers. Cops then stepped in

UPDATED 3 HOURS 57 MINUTES AGO

Broward Schools Chief Robert Runcie and district's top lawyer will resign

UPDATED APRIL 27, 2021 09:33 PM

The annual Mando Mock draft: Dolphins make two sexy picks then address beef in second round

UPDATED APRIL 28, 2021 09:58 AM

Genetically modified mosquitoes are being released in the Keys. They'll mate to kill

UPDATED APRIL 28, 2021 04:47 PM

It's our 30th annual mock draft, and the Dolphins get lucky ... twice | Opinion

UPDATED APRIL 28, 2021 05:54 PM

CUBA

Cuban government detains opposition leader José Daniel Ferrer

UPDATED APRIL 23, 2021 09:52 AM

CUBA

Broken record or new tune? Cuba's leaders preached continuity but some saw slivers of reform

UPDATED APRIL 22, 2021 11:50 PM

CUBA

Cuba's Communist Party meet-up is closed door. Online, Cubans still have plenty to say

UPDATED APRIL 21, 2021 01:46 PM

AMERICAS

Miguel Díaz-Canel is named Cuba's next Communist Party chief, replacing Raúl Castro

UPDATED APRIL 21, 2021 01:46 PM

POLITICS

South Florida Republicans: Jump-start Cuban reunification program from Guantánamo Bay

UPDATED APRIL 19, 2021 07:47 PM

EDITORIALS

Last Castro steps down. Unfortunately, too many Cuban exiles didn't live to see it | Editorial

UPDATED APRIL 19, 2021 11:22 AM

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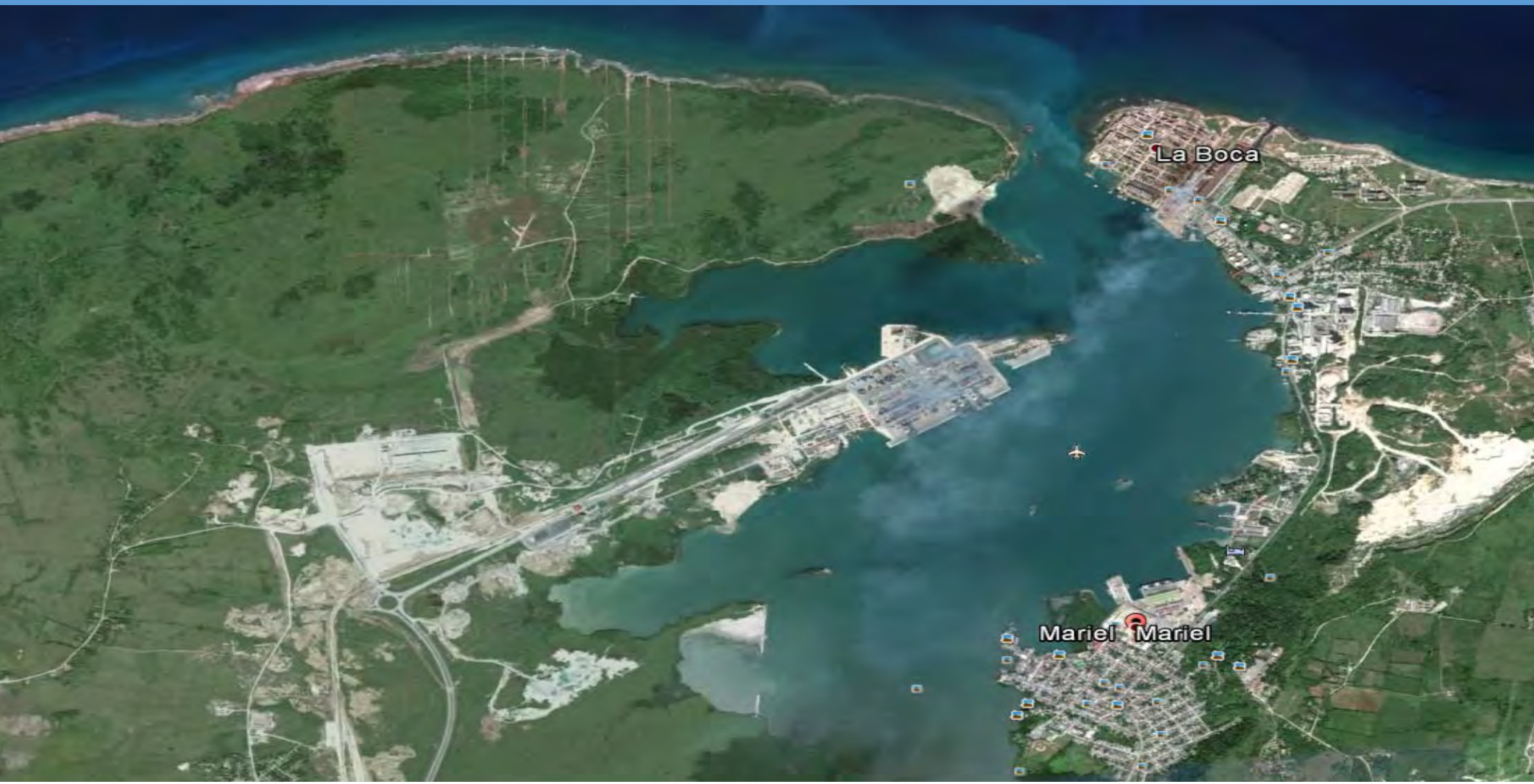
EXHIBIT B

Port of Mariel.

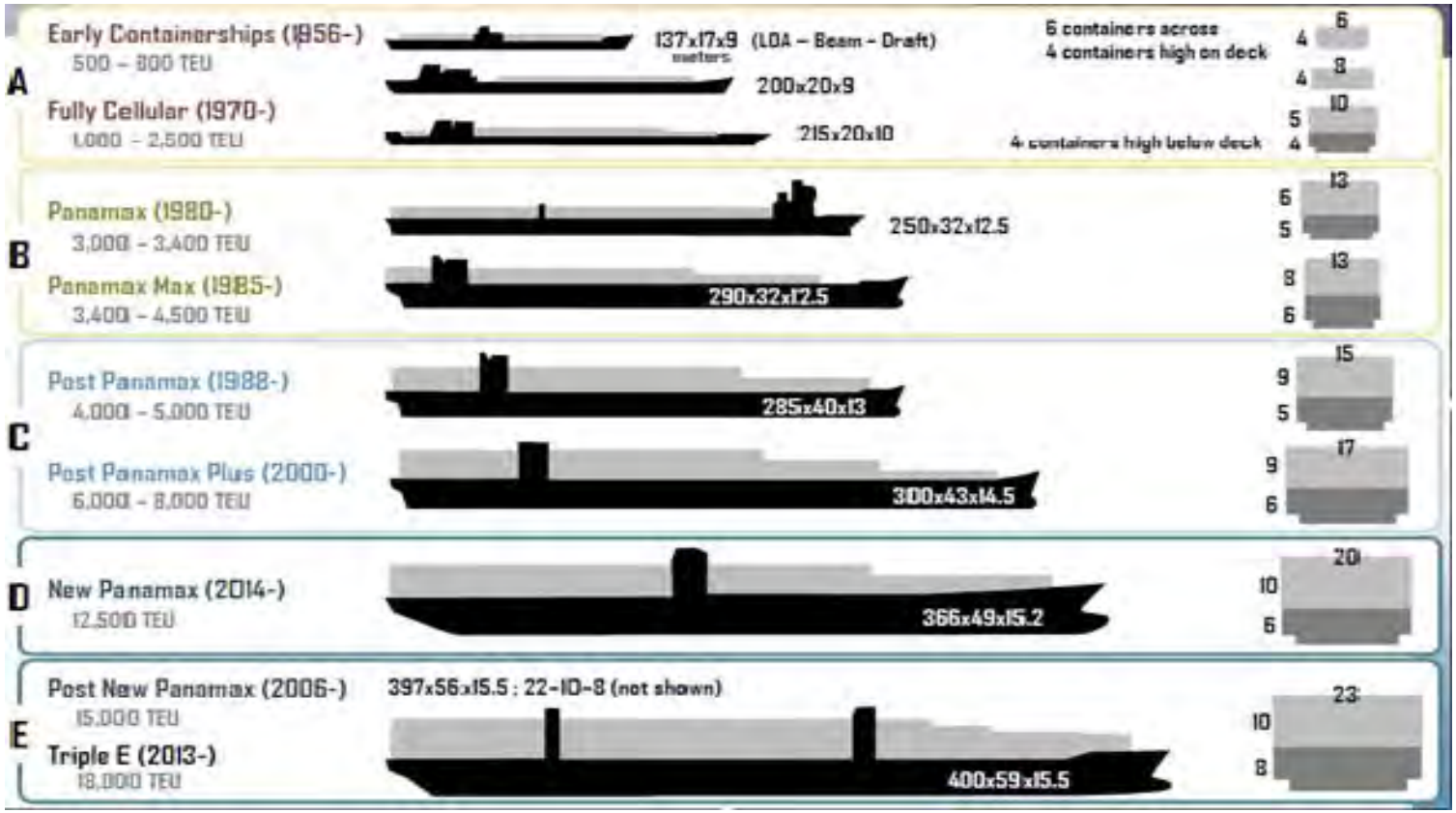
New transport hub for the Americas.

PORT OF MARIEL



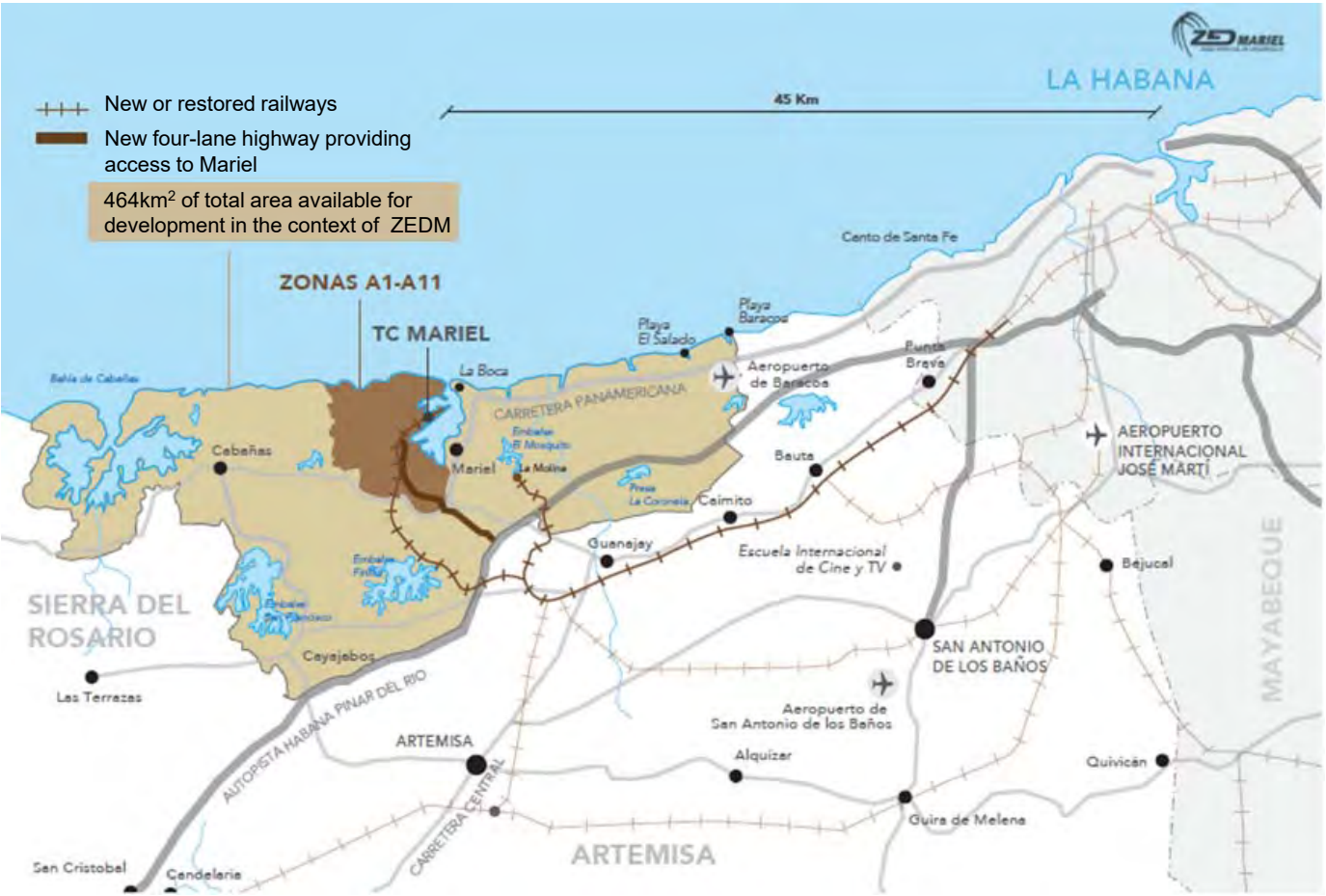
EVOLUTION OF CONTAINER VESSELS

The maximum size for the "old" Habana terminal & port



TC Mariel is designed and built for the "New Panamax" class vessels

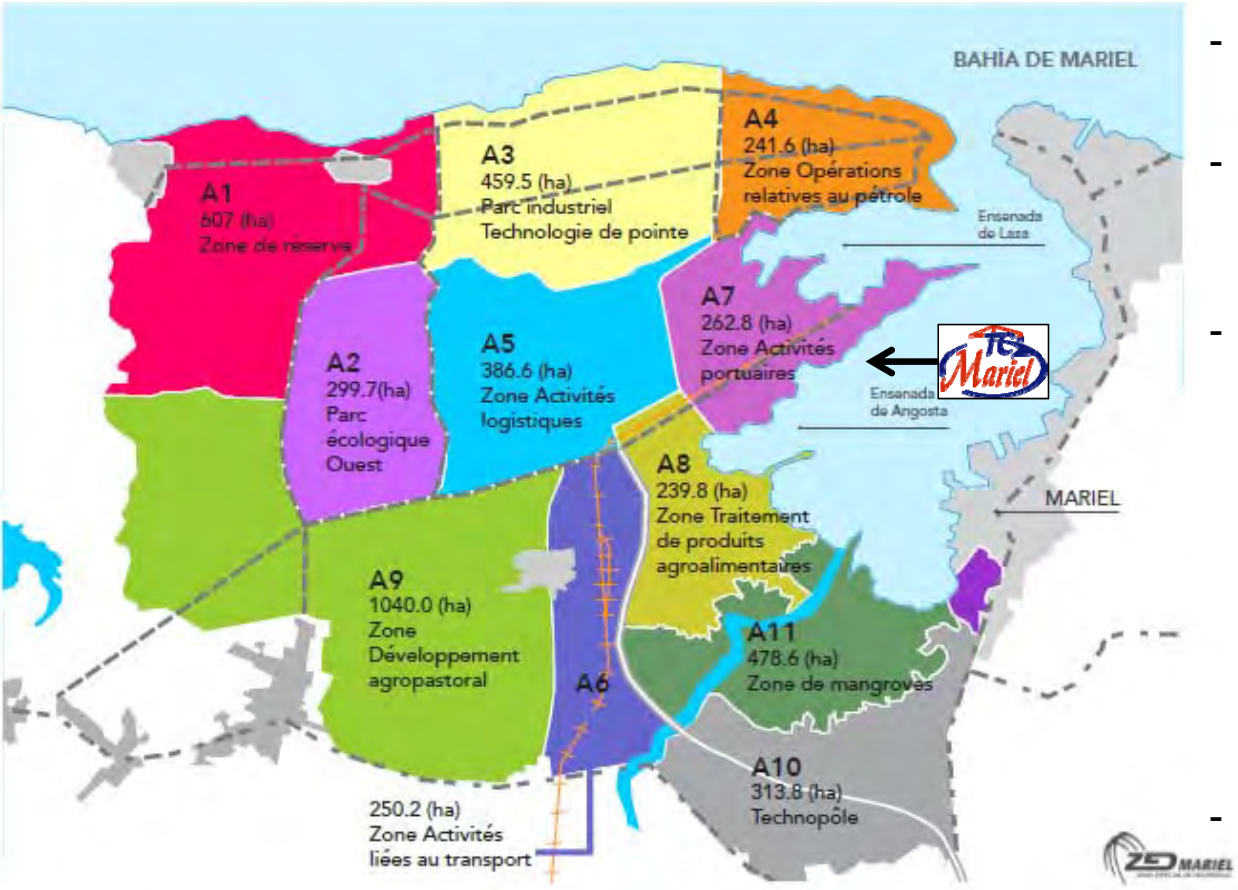
Mariel Special Development Zone



- *Created in 2013 to drive foreign direct investment in economic development of Cuba.*
- *45km from Cuba's capital city, Havana.*
- *Modern road & rail connections to Havana and beyond.*
- *No restrictions on foreign ownership, fast & agile project approval process, fiscal advantages versus other territories in Cuba.*
- *Significant international interest from investors to create manufacturing, production, farming activities.*

www.zedmariel.com

ZED Mariel (Zone A) - Investors gathering…



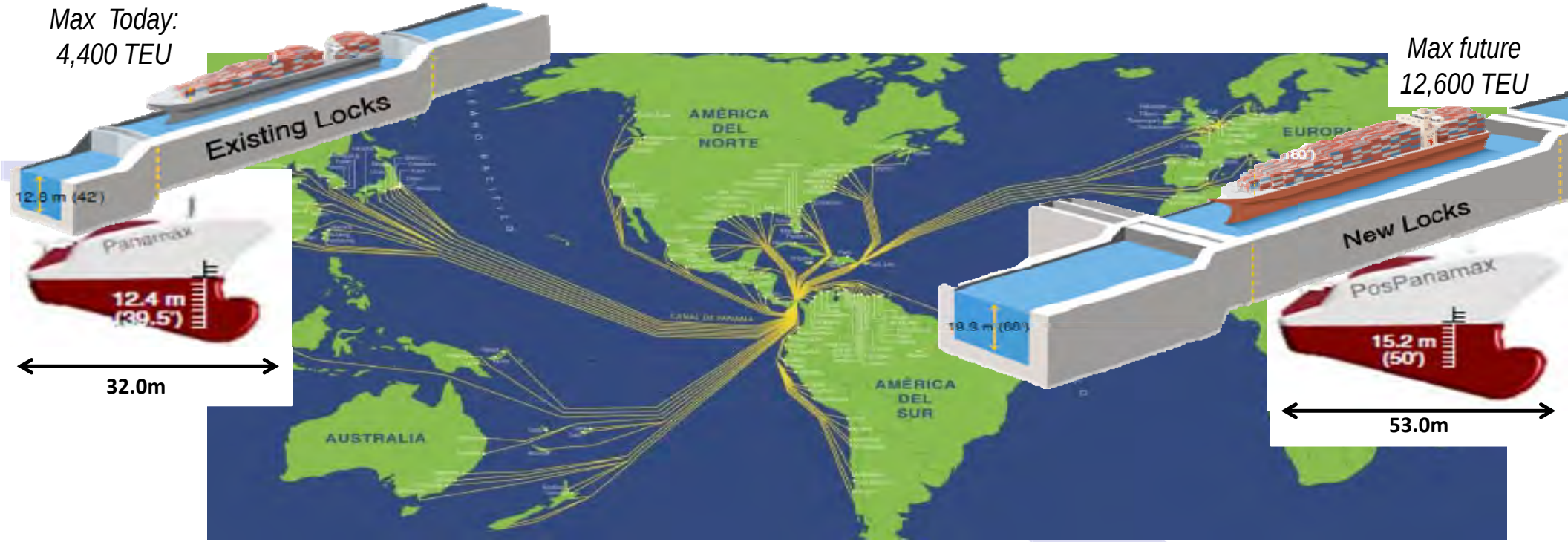
- *TC Mariel first investor and user of the Mariel Special Development Zone (ZEDM)*
- *ZAL – Logistics Activity Zone opened in August 2015 (20,000m2 dry and 5,000m3 refrigerated warehousing.*
- *8 additional projects under construction:*
  - *Meat processing plant*
  - *Industrial paints plant*
  - *Juices & drinks plant*
  - *Heavy equipment leasing & service centre*
  - *Logistics provider*
  - *Hotel supplies logistics provider*
- *Considerable international interest (current investors: Spanish, Mexican, Belgian, Cuban, French…..)*

ZED Mariel (Zone A) - Investors gathering…

722 million USD
2 318 jobs

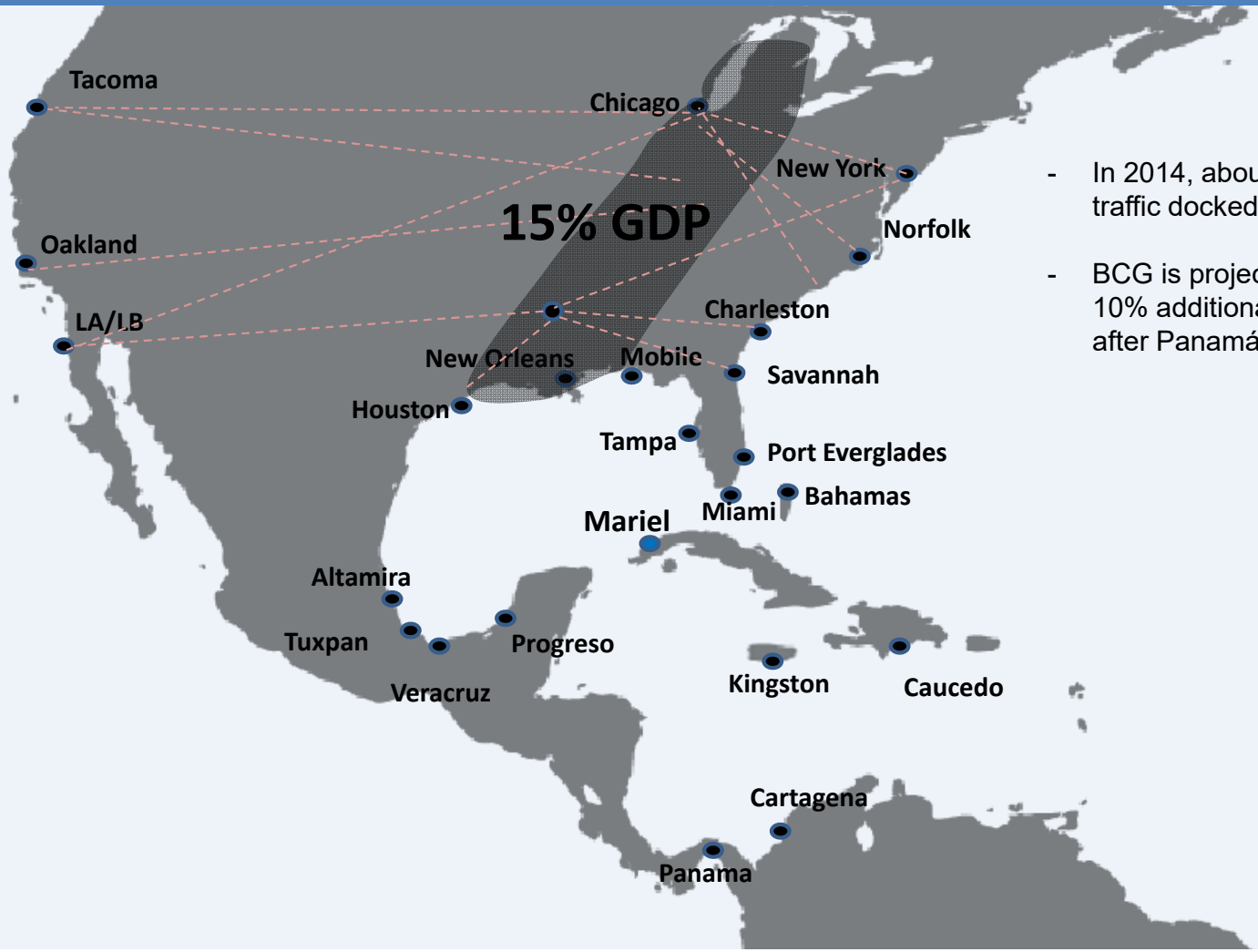
3	100% Cuban Capital
9	100% Foreign capital
2	Joint Ventures
1	AEI

EXPANSION OF THE PANAMA CANAL



- *(3x) Larger ships producing economies of escale.*
- *Port call reduction on routes creates a demand for "Hub-Ports" (Large ports receiving and distributing containers from far and wide).*
- *A hub-port in Cuba will attract larger ships which will reduce the transshipment incidence to Cuban imp/exp cargo, generating benefits for the Cuban economy.*

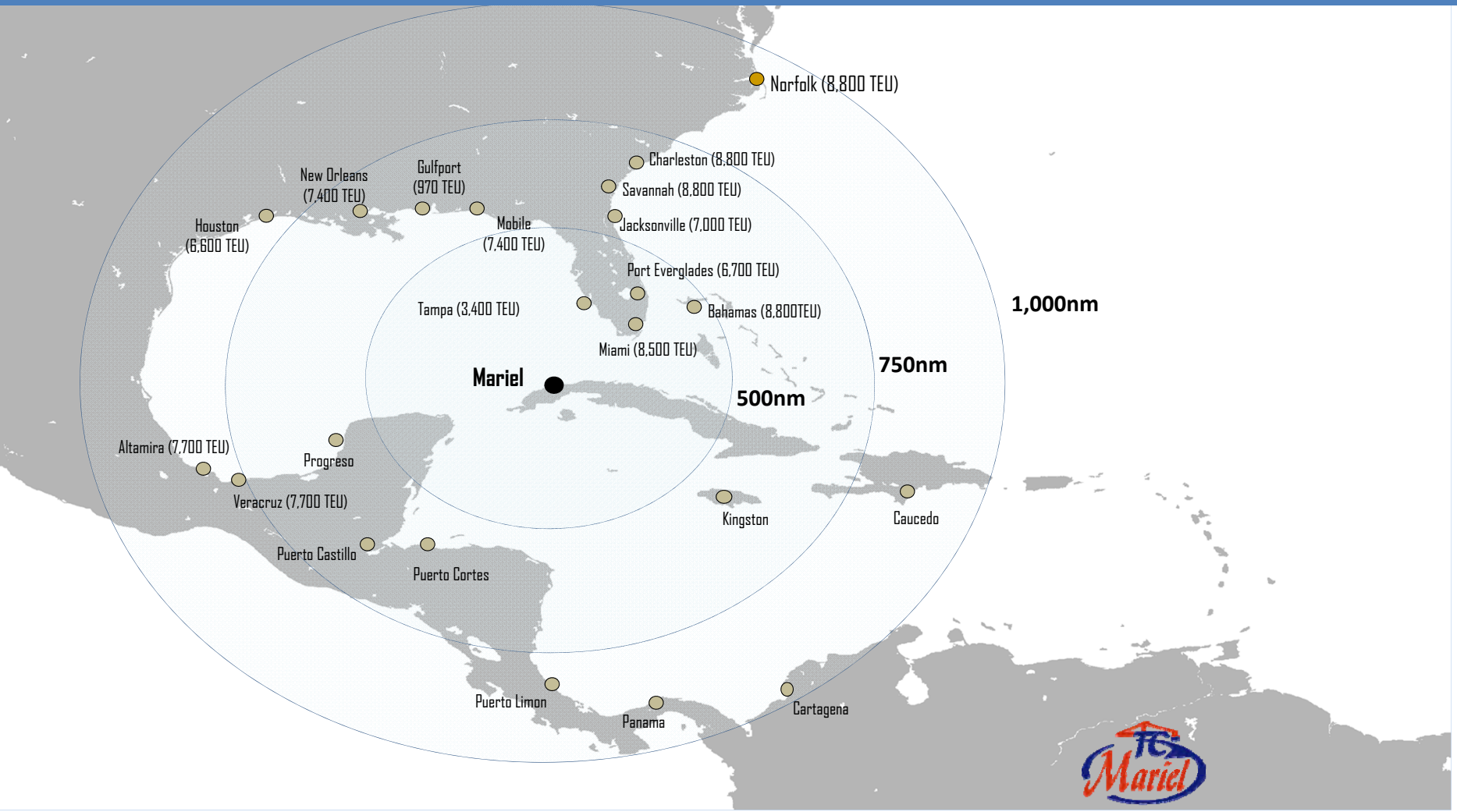
US HINTERLAND CONECTIVITY



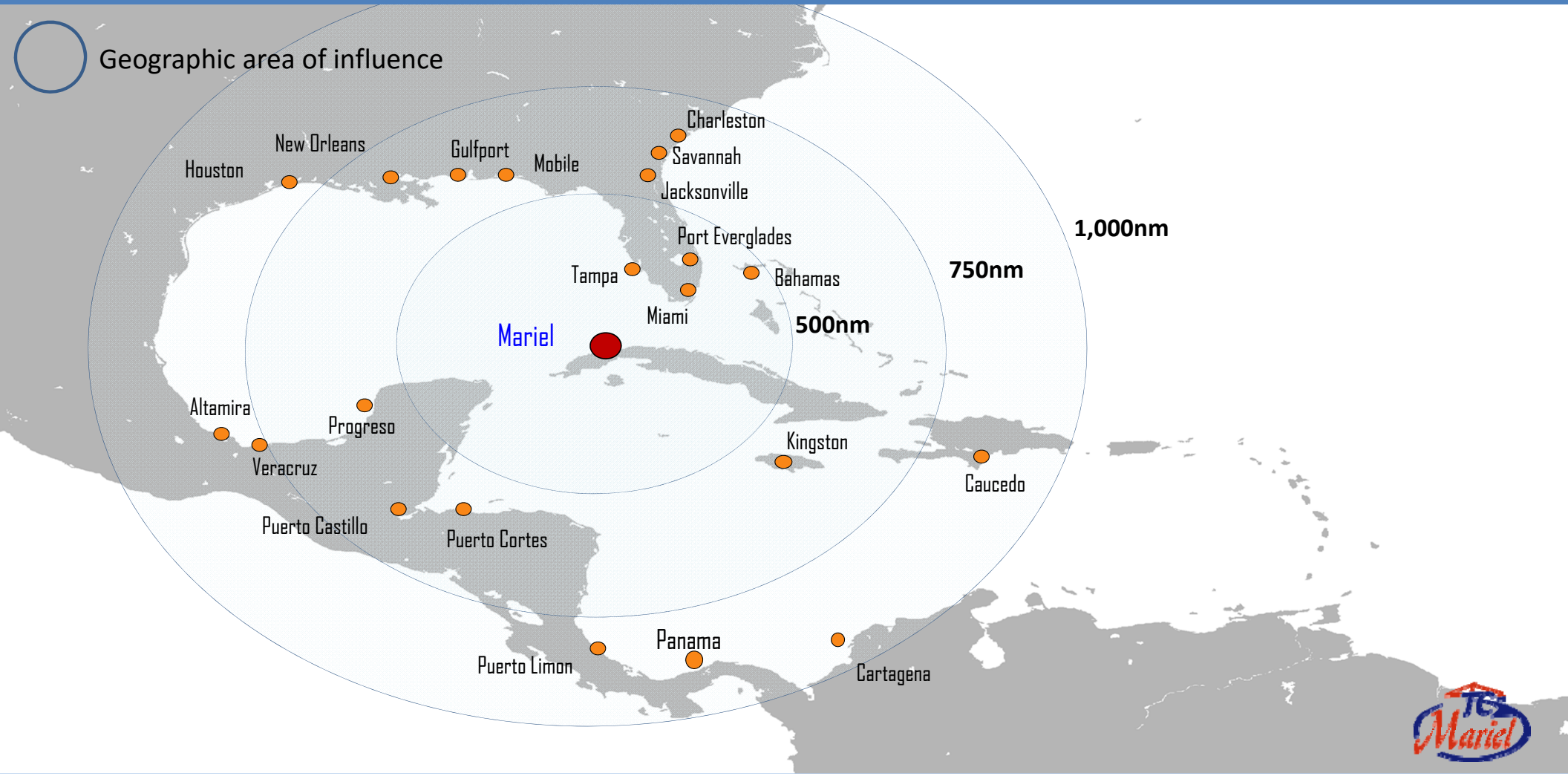
- In 2014, about 35% of East Asia Container traffic docked on the US East Coast.
- BCG is projecting East Coast Ports will gain 10% additional share of FE-US container traffic, after Panamá Canal Expansion, for 2020.

US PORT –DRAFT ISSUES

BIGGEST VESSELS CURRENTLY CALLING



"THE LOCATION" FOR USEC & GULF COAST



Hub & spoke direct to gateway ports

TC MARIEL'S HISTORY

- *Official Creation Date:* ***16 November 2010****.*
- *Equity:* ***100% cuban****.*
- *Owner:* ***Almacenes Universales S.A****.(The largest transportation and logistics group in Cuba).*
- *Managed by :* ***PSA International*** *(Number one port operator in the world).*
- *First Commercial Ship:* ***Mv. K Breeze*** *(operated by Crowley Marine), on 26.01.2014*
- *Official Inauguration:* ***27 January 2014.***
- *June 2014: Completed transfer of all liner services from Havana Old Port to Mariel.*
- *July 1st, 2014: Rail terminal opens with rail services crossing country.*
- *2014 FY:* ***197*** *vessel calls,* ***160k*** *TEUs.*
- *2015 FY:* ***298*** *vessel calls and* ***330k*** *TEUs (106% YOY).*
- *2016 Est.* ***360~370k TEUs*** *(10~15% growth YoY)*
- *Approx. 500 employees (5 foreign staff in total).*

INFRAESTRUCTURE

Infrastructure	2015	Future
Berth length	702	2400
Max draft (m)	17.0	17.9
Gaintry cranes SPP	4 (6*)	24
RTG	12	72
Prime movers	22	132
Empty C. Handlers	4	18
Reachstackers	2	3
Area (ha)	27.7	95
Reefer plugs	1140	2500
Total capacity(TEU)	800,000	3,000,000
* With no need for additional work on the dock		
Railway facility		
RMG	2	2
Railway tracks	4	4
Capacity (TEU)	120 000	300.000

LOCATION FOR A HUB PORT

TC MARIEL HELPING TO CREATE NEW HORIZONS

EXHIBIT C

MAPOR HABANA

TERMS AND CONDITIONS

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MAPOR HABANA MEANS AGENCIA MARITIMA MAPOR S.A., WITH ADDRESS IN CUBA, LA HABANA, CALLE 12 NO.105, EDIFICIO PLAYA, 1-A e/ 1RA Y 3RA MIRAMAR, INCLUDING ALL ITS BRANCH OFFICES IN CUBA.

THIS AGREEMENT IS REFERRED TO AS THE "AGENCY T&Cs" AND MAPOR HABANA IS REFERRED TO AS THE "AGENT".

THE AGENT ALWAYS ACTS, ON BEHALF OF AND IN THE NAME OF MSC MEDITERRANEAN SHIPPING COMPANY S.A. (THE "CARRIER") UNLESS EXPRESSLY INDICATED OTHERWISE.

THE AGENCY T&Cs ARE APPLICABLE TO ALL DEALINGS BETWEEN THE AGENT AND ANY COUNTERPARTIES. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY CONTRACTS OF CARRIAGE ENTERED INTO AND ANY SERVICES PROVIDED BY OR ON BEHALF OF THE CARRIER.

THE AGENCY T&Cs INCORPORATE ALL THE TERMS AND CONDITIONS IN THE CARRIER'S SEA WAYBILL AS PUBLISHED ON THE CARRIER'S WEBSITE AT THE TIME A CONTRACT IS FORMED (THE "CARRIER'S SEA WAYBILL").

IN RELATION TO ANY CONTRACTS OF CARRIAGE ARRANGED BY THE AGENT, THESE WILL BE SUBJECT TO:

1. **THE CARRIER'S SEA WAYBILL, SAVE THAT IF A BILL OF LADING IS ACTUALLY ISSUED BY THE CARRIER, THEN ALL THE TERMS AND CONDITIONS IN THE "CARRIER'S BILL OF LADING" SHALL APPLY INSTEAD OF THE CARRIER'S SEA WAYBILL; AND**
2. **THE AGENCY T&Cs AT THE PORTS OF LOAD, CALL, TRANSSHIPMENT AND DISCHARGE BUT ONLY TO THE EXTENT THAT THE ISSUE IN DISPUTE RELATES TO MATTERS THAT HAVE OCCURRED AT SUCH PORTS AND THERE ARE SPECIFIC PROVISIONS IN THE LOCAL AGENCY TERMS DEALING WITH THE ISSUES THAT HAVE ARISEN. THESE AGENCY T&CS ARE AVAILABLE AT WWW.MSC.COM; AND**
3. **THE TERMS OF THE BOOKING NOTES AND BOOKING CONFIRMATIONS**

1. DEFINITIONS

1.1 Carrier or MSC: means MSC MEDITERRANEAN SHIPPING COMPANY S.A., 12-14 Chemin Rieu, 1208 Geneva – Switzerland.

1.2 Combined Transport: arises if the Carrier has indicated a Place of Receipt and/or a Place of Delivery on the sea waybill / bill of lading front in the relevant spaces. Combined Transport consists of a Port-to-Port carriage and Inland Transport.

1.3 Container: includes any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate Goods and any connected or accessory equipment.

1.4 Cut-off date/time: means latest time at which specific information or documents must be sent to MSC or its agent by the Merchant or when the Goods must be delivered at the port of loading.

1.5 Freight: includes the freight and all charges, costs and expenses whatsoever payable to the Carrier in accordance with the applicable Tariff and the sea waybill / bill of lading, including storage, per diem and demurrage.

1.6 Goods: includes the whole or any part of the cargo, including any packing or packaging materials and Merchant owned or leased Containers.

1.7 Hague Rules: means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 with the express exclusion of Article 9.

1.8 Hague–Visby Rules: means the provisions of The Hague Rules 1924 as Amended by the Protocol adopted at Brussels on 23 February 1968, and 21st December 1979 (SDR Protocol) where applicable. Notwithstanding anything to the contrary herein it is expressly agreed that nothing herein shall contractually apply the Hague-Visby Rules to the contract of carriage and they shall apply only when compulsorily applicable by the law governing the contract of carriage.

1.9 IMDG Cargo: means any classified cargo under the International Maritime Dangerous Goods Code and its amendments.

1.10 Inland Transport: means carriage during Combined Transport other than between the port of loading and the port of discharge.

1.11 Merchant: includes the booking party, shipper, consignee, holder of a bill of lading, the receiver of the Goods and any Person owning, entitled to or claiming possession of the Goods or the corresponding Bill of Lading or anyone acting on behalf of this Person and every person defined as Merchant is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with the contract of carriage.

1.12 Person: includes an individual, corporation, company or any other legal entity.

1.13 Place of Delivery: means the place at which the Carrier has contracted to deliver the Goods, when such place is other than the port of discharge.

1.14 Place of Receipt: means the place at which the Carrier has contracted to receive the Goods, when such place is other than the port of loading.

1.15 Port-to-Port carriage: means carriage between the port of loading and the port of discharge.

1.16 Subcontractor: includes but is not limited to the owners, charterers and operators of the Vessel(s) other than the Carrier, as well as stevedores, terminals and groupage operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier performing the carriage, and any direct or indirect Subcontractors, servants and agents thereof, whether in direct contractual privity or not.

1.17 Vessel: includes the vessel named herein or any substituted vessel, feeder vessel, lighter or other watercraft utilized by the Carrier for carriage by sea.

2. APPLICABILITY AND PRIORITY

2.1 In case of any inconsistency or conflict between the **3** sets of terms referred to at the start of this document, the order of priority will be as follows and the terms that rank higher shall prevail over the lower terms to the extent of such inconsistency or conflict but no further.

1st - the Carrier's sea waybill or Carrier's bill of lading terms and conditions.

2nd – the Agency T&Cs.

3rd – the terms of the booking notes and booking confirmations.

2.2 Orders and instructions of the Merchant and movements of Containers and/or Goods by the Merchant shall be considered as its acknowledgement and acceptance of the Agency T&Cs.

2.3 Any terms and conditions of the Merchant will not be applicable. Without prejudice to this, if any such terms were arguably incorporated into the agreement between the Carrier and the Merchant, then they would be superseded and replaced in their entirety by the Carrier's sea waybill and/or the Carrier's bill of lading terms and conditions and/or the Agency T&Cs. The only way for the conditions of the Merchant to apply would be if this was expressly agreed in writing by senior management of the Agent and the agreement must contain an express reference to this clause 2.3.

3. QUOTATIONS

3.1 The Agent acts as agent for and on behalf of MSC only. All quotations made by the Agent are on behalf of and only on behalf of the Carrier.

3.2 Any quotation will become null and void unless the Merchant has placed the booking in writing within 30 days after receipt of the quotation. At any time during this period MSC or the Agent may, in its sole discretion, withdraw or amend the quotation. In any event, quotations made by MSC or its agents are not binding, even if accepted by the Merchant, until MSC or the Agent has transmitted a booking confirmation in writing to the Merchant, and MSC is under no obligation whatsoever to do this.

3.3 Quoted times and dates for the movements of Containers and Goods are always subject to equipment availability and space availability on board Vessel(s). MSC does not make any commitment regarding availability of Containers and/or space of any Vessel. Advertised transit times, sailing and arrival dates are estimated times only; and such schedules may be advanced, delayed or cancelled without notice. In no event shall the Carrier be liable for damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyances used to transport the Goods by sea or otherwise even if caused by negligence on the part of the Carrier.

3.4 All charges agreed between the Carrier and the Merchant are based on the Carrier's estimate of the charges that will be incurred at the time the Goods are shipped. Such assessment will be made by the Carrier on reasonable grounds and in good faith. Any additional expenses incurred by the Carrier (such as, but not limited to, an increase in war risk insurance or charges due to congestion) before, during or after the carriage of the Containers and Goods may at any time be charged by the Carrier to the Merchant. The charges can never be lower, even if the actual charges prove to be less than the Carrier's estimate.

3.5 Agreements regarding specific named account, commodity or Goods' weight shall only apply to shipments pertaining to these specific named account, commodity, and Goods' weight. In the event the Carrier discovers that there has been a breach of this provision, the Carrier will be entitled to charge to the Merchant the difference between the price that the Merchant paid and the price the Merchant should have paid. In addition, the Carrier will be entitled to charge an administration fee of USD 250.00 per booking.

3.6 Alterations caused by the Merchant, for instance release of Goods to alternative third parties, issuance of switch bills of lading, etc., are not included in MSC or its agents' quotations. MSC reserves its right to charge a fee against these requested changes as per the locally applicable tariff.

3.7 Unless stated otherwise and expressly confirmed in writing by the Carrier, each quotation issued by the Carrier is based on the following assumptions:

- That the Goods will be harmless Goods. In the event that the Goods consisted of hazardous Goods and/or IMDG Cargo, this would have to be made clear by the Merchant before the booking confirmation was issued and in any event, the carriage of such Goods would always be subject to the Carrier and Master's final approval (in their sole discretion) at the time of loading and in the event that the Carrier and/or Master refuses to carry the Goods then the Carrier would be under no liability whatsoever for any costs incurred by the Merchant in bringing the Goods to the port or removing them.
- That the Goods will comply with all trade sanctions and/or import/export laws applicable to the Merchant, the Carrier and the Goods including but not limited to Swiss and EU regulations, and, when applicable, US regulations (collectively referred to as "Global Sanctions"). In case of any failure by the Merchant to comply with Global Sanctions, the Merchant shall indemnify, defend and hold the Carrier, its servants and agents harmless from any and all claims, demands, costs, losses, expenses, and liabilities (including attorney's fees and costs). The Merchant is strictly liable to indemnify the Carrier for all costs, losses, damages and consequences whatsoever arising out of any failure by the Merchant to comply with Global Sanctions. The Carrier reserves its right to ensure compliance with Global Sanctions. The Carrier may, at its sole discretion, cancel any booking, refuse loading or discharge or otherwise take any action needed to ensure compliance with sanctions, all such actions to be carried out at the Merchant's costs, risks, and expense.
- That the Goods may be shipped and stowed on deck or under deck.
- That the Goods will be in gauge Goods. Any out of gauge Goods must be brought to the attention of the MSC Agent and the MSC Agent will then quote for the Goods accordingly.
- That the value of the Goods per Container does not exceed the sum of USD 200'000.00 (United States Dollars Two Hundred Thousand), hereafter the "Maximum Limit". In the event that the value of the Goods exceeds the Maximum Limit and the Merchant fails to notify the Carrier in writing prior to the booking party's acceptance of the quotation, the Goods will be deemed to be a non-ordinary commercial shipment made in the ordinary course of trade for the purpose of the Hague/Hague-Visby Rules and the Carrier's liability shall be limited to Maximum Limit or the limitation as provided for in the contract of carriage, whichever is the lesser.

3.8 In the event that the booking party wishes to ship Goods that consists of personal effects, exhibition goods and/or used cars, then the booking party must make this clear in writing when it contacts the Carrier and asks the Carrier to quote for the business and a reference to such goods must appear in the booking confirmation issued by the Carrier.

3.9 In the event that the final booking requested by the booking party does not conform with the assumptions set out in clause 3.7 and/or the booking party is in breach of clause 3.8, MSC reserves its right to provide a new quotation. Regardless of whether a new quotation is provided or not, the following shall apply:

- Cargo mis-description fee – The Merchant is liable for all resulting increased charges, costs, expenses, losses and damages whatsoever if the description of the Goods provided at the time of booking or as amended thereafter is inaccurate, unless the inaccuracy is a result of an error or omission on the part of the Carrier, its servants or agents. Failure by the Merchant to describe the Goods in a truthful, accurate and sufficiently detailed way to MSC in compliance with the Agency T&Cs or any applicable law or regulation, whether intentional or otherwise, will result in the application of a mis-description fee of USD 5'000.00 (five thousand US Dollars). It is further expressly agreed and accepted that such charge is in addition to any and all claims available to the Carrier under the terms and conditions of carriage.
- High value commodity mis-declaration fee - Any Goods with a commercial value exceeding the Maximum Limit must be brought to MSC's attention or its agents at the time of booking. Failure by the Merchant to inform MSC will result in the application of a high value commodity mis-declaration fee of USD 25'000.00 (twenty-five thousand US Dollars). The Merchant expressly agrees that such information communicated to MSC, whether made at or after the time of booking, shall not be considered as a declaration of value and the documentation so issued will not be deemed ad valorem, unless this has been agreed by MSC in writing and the corresponding ad valorem surcharge paid by the Merchant before the Goods arrive at the port of loading. Furthermore, in the event that the Carrier has issued a bill of lading in respect of the Goods, the bill of lading shall be void ab initio and it shall be replaced by a sea waybill. The Merchant hereby accepts and agrees that but for the misdeclaration and/or failure to declare the value of the Goods, the Carrier would not have agreed to issue a bill of lading.

3.10 Any situation generating damage or risk of damage to the Goods, Container, crew, Vessel and/or any third parties' property by reason of the carried Goods not being properly stacked, lashed, packed or braced, or due to any other breach by the Merchant of its obligations under the terms of the contract of carriage, will give rise to a Legal Administration Fee (**LAF**) as per clause 17. The LAF will be charged to and will have to be paid by the Merchant in addition to the costs and expenses incurred by the Carrier or its agents to remedy the situation.

3.11 In case of cancellation of the placed booking, a Booking Cancellation Fee (**BCF**) will be applied and charged to the Merchant unless a written notification of the cancellation is received by the Agent at least 10 (ten) days prior to the Vessel's pro-forma sailing as per schedule. The applicable BCF is available from the Agent upon request.

3.12 In addition to the BCF, the Carrier may charge one-third of the estimated total Freight for the shipment in case of cancellation of the booking <u>before</u> receipt of the Goods by the Carrier.

3.13 In case of cancellation of the booking <u>after</u> receipt of the Goods by the Carrier, all the Freight is deemed earned and due (see clause 16.2 of the Carrier' sea waybill / Carrier's bill of lading).

4. CARRIER'S RESPONSIBILITY IN THE AGENT'S JURISDICTION

4.1 The Merchant acknowledges and agrees that pursuant to clause 10.3 of the Carrier's sea waybill / Carrier's bill of lading all contracts are subject to English law and the exclusive jurisdiction of the High Court in London, save as otherwise stipulated in clause 10.3 of the said documents.

4.2 Should a court or a tribunal seized of any dispute in relation to the contract of carriage assumes jurisdiction, then in addition to the Carrier's sea waybill / Carrier's bill of lading and to these Agency T&Cs, the following clauses shall also apply:

- The Carrier shall not be responsible for any fault of his servants or the Vessel's crew if damage has occurred as a result of fire or explosion on board, or as a result of any act, neglect or default in the navigation or in the management of the Vessel.
- The same shall apply in relation to any act, neglect or default of a pilot or any other independent person involved in the navigation or management of the Vessel.

4.3 In the case of any dispute relating to Freight or other sums whatsoever due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the port of loading, port of discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.

4.4 Without prejudice to the generality of the foregoing provisions, the Carrier and its agents expressly reserve all their rights to rely on every exemption, limitation, condition and liberty, defense, and immunity of whatsoever nature which the Carrier, its agents, servants and Subcontractors are entitled to.

5. EXPORT AND CROSS-TRADE BOOKINGS

5.1 The Agent's booking confirmation as sent in writing by the Agent to the Merchant formalizes the contract of carriage concluded between the Merchant and MSC, as a consequence of which all parties that fall within the definition of Merchant as defined in clause 1.11 become jointly and severally contractual partners of the Carrier.

Where the Merchant uses a booking agent, the Merchant warrants that the booking agent has the authority to enter into this contract, receive original bills of lading (if applicable) and provide confirming instructions to the Carrier, until the Merchant advises the Carrier otherwise in writing.

5.2 The Merchant is responsible for and shall have to recheck all information provided concerning the description of Goods, hazardous Goods / IMDG Cargo, reefer and out of gauge shipments details as well as for the correctness of weights indicated. The Merchant must inform MSC or its agents immediately in writing in case of any discrepancies or missing details. Any discrepancy or wrong information at the time of receipt of the Goods, especially in respect of the Goods' weight, may lead to substantial risk and costs for the account of the Merchant such as but not limited to the collapse of Container stacks, and it might result in the Goods not being shipped or being off-loaded and/or delayed. In particular, discrepancies may lead to a status change under the applicable quay / terminal tariff and lead to additional costs for the Merchant's account.

For cross-trade bookings, any instructions given to MSC or its agents by the booking party cancelling, suspending or modifying the booking before issuance of the bill of lading (if applicable) or sea waybill must be confirmed in writing by the shipper.

5.3 The booking party, the shipper and their servants, agents and subcontractors are jointly responsible for checking that the empty Container collected at the depot is used for the Goods/shipment booked with MSC or its agents for this specific Container. Neither MSC nor its agents shall be responsible for any costs arising out of swapping of Containers and/or Goods, including but not limited to repatriation, additional on-carriage costs, taxes or charges, whether the mistake happened during the empty pick-up, during stuffing or otherwise.

5.4 In case of Merchant's haulage, the Merchant is responsible for inspecting the empty Container for its suitability to carry the specific shipment booked at the time of empty pick up from the depot/terminal either directly or via its subcontractor. Any later refusal of a Container will cause additional costs for the account of the Merchant and neither MSC nor its agents shall be held liable for the costs of changing/replacing a Container accepted during empty positioning unless the defect affecting the Container was not detectable during a reasonably careful inspection; in which case the costs of the Container changing shall be shared equally. Notwithstanding the generality of the above, a light-test (visual verification of any light entry from within the Container with closed doors) is compulsory prior to each empty Container's acceptance and no liability shall be borne by the Carrier or its agents for costs of exchanging a Container found with holes or cracks at a later stage if this could have been detected by a light test.

5.5 Unless stated otherwise and expressly confirmed in writing, the Merchant is obliged to ensure that all Goods are properly lashed and secured and fit to withstand the shipment, and all such steps will be carried out at the Merchant's risk and expense.

5.6 It is the Merchant's responsibility to ensure that packaging and packing materials, especially timber, used to secure Goods within the Container comply with all applicable requirements (notably but not only in respect to their fumigation) and their import is permitted in the country of destination. The weight of packaging and packing must be included in the total weight declared for each Container.

5.7 It is the Merchant's responsibility to provide fumigation and/or phytosanitary certificates in good time for presentation to authorities as required and the Merchant is responsible for all consequences of failing to do so. The Merchant declares that all used wooden packing materials comply with International Standards for Phytosanitary Measures number 15 (ISPM-15) regulations.

5.8 Booking party and the shipper are jointly responsible, before pick-up or latest during stuffing of the Goods, for ensuring that the Containers only display the required IMO placards and labels and that other placards or labels from previous shipment are fully removed. Any costs resulting from a breach of the above will be for the Merchant's account.

5.9 The use of dry-van Containers in lieu of reefer or temperature-controlled Containers is entirely in the Merchant's discretion and the Carrier shall have no liability or responsibility whatsoever for thermal or condensation loss or damage to the Goods sustained by reason of this choice and/or natural variations in atmospheric temperatures whether the Container was carried on or under deck. Furthermore, the Carrier is under no obligation to give advice to the Merchant regarding the Merchant's decision in this regard.

5.10 For security reasons all Containers for all destinations must be sealed by the Merchant or their representatives directly after stuffing with a high security bolt seal or equivalent, compliant with the latest ISO regulations at the time of shipment or with equivalent security requirements. Failure to use compliant seals may lead to additional fee as per locally applicable tariff.

Carrier provided seals - The pin and base of any high security seal provided by MSC to the Merchant shall be used together exclusively. The Merchant commits to keep at all time the MSC seal in secured location, to ensure its traceability and in case of loss or mis-appropriation to inform MSC or its agent in writing without undue delay. Further, the Merchant shall hold the Carrier and its agents harmless against all consequences whatsoever of any breach of these obligations. In the event the Merchant requires provision of a replacement seal and the initial seal provided cannot be returned to MSC, MSC may demand that the Merchant issues a letter of indemnity against the potential misuse of the initial seal before MSC will provide a replacement seal.

In the event the Merchant does not use Carrier provided seals, the Merchant shall indemnify the Carrier against any loss, damage, liability or expenses whatsoever and howsoever arising, caused by the Merchant's use of a seal which does not comply with this provision.

All seals must be correctly placed on Containers' doors (for a detailed instruction about correct placement of seals, please see our sealing procedure.).

The shipper shall be responsible for declaring the seal number in the shipping instructions confirmed by the shipper to MSC.

Unsealed and incorrectly sealed Containers may be resealed upon arrival at the terminal at the Merchant's costs and responsibility and may be delayed. Any resulting costs are for account of the Merchant.

Any losses or damages or claims to Goods, Vessel, vehicle or third party or any Person arising or in connection thereof or due to an unsealed, improperly sealed or incorrectly sealed Container shall be for the account of Merchant and the Merchant shall be fully liable for any claims, losses and damages that may arise thereof.

5.11 Loading and stowage of Goods is carried out under the sole instructions of the Vessel's Master. All Goods and Containers may be stowed on deck and without notice to the Merchant, at Merchant's risk. Requests for "under deck" stowage are subject to written approval and confirmation by MSC or its agents.

5.12 Unless otherwise requested by the Agent at time of booking, all Freight and local charges must be paid in USD only or in EUR for shipments sailing from or to European ports. Requests from the Merchant to pay in another currency must be submitted in writing and is subject to MSC's written approval. Freight is deemed earned on receipt of the Goods by the Carrier. All Freight and local charges must be paid prior to receipt of the Goods by the Carrier, unless the Merchant has been granted in writing more favourable credit terms by MSC or its agents. "Payable elsewhere" or "Collect" freight must be previously approved in writing by MSC or its agents and no release of cargo at destination will be allowed until freight has been paid and received in the relevant Agent's bank accounts. Any bank service charges/ transaction costs are for account of the payer.

5.13 Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever.

5.14 Shipping instructions must be submitted latest by 4.30 p.m. on a working day, failing which they will be treated as having been received on the next working day. For shipments to countries/areas requiring an Advanced Manifest System (**AMS**)-filing or comparable procedures, special deadlines shall apply. The Merchant is responsible for enquiring about any specific deadline applicable to their shipment. The Merchant shall furnish correct shipping instructions for AMS-filing or comparable procedures. These filling procedures will be finalized on the basis of the shipping instructions and Advance Cargo Declaration (**ACD**). MSC shall not be under any obligation to send a draft of the bill of lading or sea waybill for the confirmation of the Merchant. Any correction requirement will be chargeable and will be made only after receipt of manifest corrector and security manifest amendment fees. The changes may be allowed subject to feasibility of such changes requested at the port of discharge and within the time frame confirmed, upon request of the Merchant, by the MSC Agency at place of booking.

5.15 Irrevocable choice of the type of contract of carriage – The Merchant is given at the time of booking a shipment the choice between covering the carriage under (1) a bill of lading or (2) a sea waybill (sometimes referred as an "express bill of lading" or "express release bill"). Notwithstanding anything to the contrary in the Carrier's terms and conditions, the Merchant's election to use (1) or (2) shall be deemed irrevocable and the Merchant shall retain no right to ask for the issuance of another type of contract other than the one initially chosen. Notwithstanding the foregoing, in the event that the Merchant does request a different contract of carriage and in the event that the Carrier does agree to this request, then this shall be in Carrier's sole discretion.

5.16 In consideration of the Carrier issuing a sea waybill, the booking party and the shipper undertake to ensure that the consignee designated on the sea waybill receives a legible copy of the sea waybill and agrees to abide by the Carrier's sea waybill terms and conditions as freely accessible under www.msc.com. The booking party and the shipper shall inform the consignee that a formal letter of acceptance of the Carrier's sea waybill terms and conditions may be requested from them at destination prior to delivery, it being made expressly clear that failure by MSC or its agents to obtain such a letter of acceptance prior to release of the Goods shall not be deemed in any way as a waiver by MSC of its rights to rely upon the Carrier's sea waybill terms and conditions, and the consignee accepts that it is bound by the terms and conditions in the Carrier's sea waybill even if the booking party or shipper has failed to provide a copy. In case of any failure by the booking party and the shipper to comply with those obligations or refusal by the consignee to abide by the terms and conditions of Carrier's sea waybill, the booking party and the shipper will be jointly and severally liable to indemnify the Carrier for any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with such failure or refusal.

5.17 Shipping documents will be issued upon receipt of loading confirmation and kept at Merchant's disposition at the at the Agent's local office. Transfer and dispatch of documents (by registered mail or courier) will only be completed upon Merchant's request and after payment of Freight and all other sums due to the Carrier, and at Merchant's sole risk, expense and responsibility and shall be deemed remitted to the Merchant upon sending.

5.18 The booking number as confirmed by the Agent to the Merchant must be provided to the terminal's gate at port of loading upon gate-in of the full Container. The Merchant and/or its servants, agents and subcontractors are jointly responsible to ensure proper communication of the booking number during gate-in and MSC shall in no circumstances whatsoever be liable for any consequence arising from or in connection with improper or incomplete communication of such booking number.

6. GOODS WEIGHT DECLARATION AND VGM COMPLIANCE

6.1 The booking party and shipper must check and ensure that the actual payload per Container complies with all country-specific legal regulations or requirements, including but not limited to any inland transport regulations, at origin, at port of loading, in transit countries, at port of discharge, and at destination. They are expressly reminded that loading Goods in excess of the maximum payload of Containers is not permitted by law and this may result in severe injuries and casualties for which the Merchant will be held fully liable.

As per the Safety of Life at Sea (SOLAS) Convention, it is mandatory for shippers to verify weights of packed Containers, regardless of who packed the Container. The verification of actual Container weight must be performed onshore and must be confirmed to the Vessel operator and the port terminal facility prior to Verified Gross Mass (**VGM**) Cut-off date/time. Neither MSC nor its agents shall be responsible for any costs arising out of or related to the declaration of incorrect Container weights.

If the Merchant fails to comply with these provisions the Carrier reserves its right to deal with such Goods as it sees fit, including but not limited to not loading the Goods, stopping Goods in transit, discharging at the next port and/or repacking them and levying extra charges, and the Merchant is strictly liable to indemnify the Carrier for all costs, losses, delays, damages, fines, increased charges and any other consequences whatsoever arising from the shipment of overloaded Containers.

6.2 All VGM declarations must be submitted to MSC prior to the VGM Cut-off date/time, failing which Containers may not be planned on the scheduled Vessel. All costs, and consequences for any delay in submitting VGM declarations, non-submission of VGM declarations and/or for any noncompliance with VGM statutory guidelines shall be for the Merchant's account. MSC does not permit its Containers to be used in any manner whatsoever to lift, load, move or carry Goods that:

- are wrongly declared, or
- weight in excess of the declared VGM or commercial / manifest weight declared, or
- weight in excess of the payload of the equipment.

6.3 Should MSC be made aware, prior to or during carriage, that its Containers have been used in breach of any of the above prohibitions, the Container(s) concerned may be refused for loading, kept onboard for return to origin, discharged at the next convenient port and/or corrective measures such as, but not limited to, restuffing into other Containers. All such steps may be taken in MSC's sole discretion and shall be done at the Merchant's sole risks and expense, including but not limited to additional Freight.

6.4 The Merchant shall be liable to MSC and its agents for all losses, claims, fines, demands, suits and actions of any kind whatsoever including in respect of death and personal injury, legal and court expenses, whether directly or indirectly resulting from or connected to such unauthorized use of the MSC's Containers.

6.5 Any extra work generated due to a breach of any of the above prohibitions shall give rise to an ad hoc surcharge and MSC reserves it rights to exercise a lien over the infringing Goods and/or any other Goods carried on behalf of the Merchant until the costs due to MSC, including the surcharge and any costs incurred in exercising the lien, have been fully paid.

6.6 The above applies mutatis mutandis to Merchant's owned or operated Containers or equipment tendered to the Carrier for shipment.

7. MILITARY AND/OR PARA-MILITARY CARGO

7.1 For any intended booking regarding the shipment of military and/or para-military cargo (defined in the broadest sense as cargo which has or might have a military purpose and/or cargo that is or might be destined to or originating from military or para-military authorities or their suppliers, including so-called dual-use cargo), it is mandatory to submit the following documents to MSC prior to any possible acceptance of such booking: packing list, commercial invoice, HS codes consisting of minimum 6 (six) digits, full details of the manufacturer and end user of such cargo, copy of the import license and/or export license of the importer/ exporter of such cargo, final destination of the Goods.

7.2 In any case no booking of military / para-military cargo can be accepted without MSC having received the prior approval from the relevant authorities. Furthermore, the compliance policy requirements of MSC must be adhered to.

7.3 Any quotation obtained on the basis of incomplete or inaccurate information as to the nature or value of the cargo shall not be binding on MSC and/ or shall be considered a material breach of contract, entitling MSC to suspend, modify or cancel the transportation at the Merchant´s sole risk and expenses, and without prejudice to any other remedy available to the Carrier.

8. HAZARDOUS GOODS AND IMDG CARGO

8.1 The Merchant and all its subcontractors engaged in the transport of hazardous Goods and IMDG Cargo intended to be transported by sea must have been trained in the contents of hazardous Goods and IMDG Cargo provisions, commensurate with its responsibilities, and must comply with all provisions of the IMDG Code and its amendments.

8.2 The Merchant is responsible to ensure that relevant IMO labels are affixed on the Containers carrying hazardous Goods and IMDG Cargo in such a manner that they are visible to all and stay intact and in place from the moment the Container leaves the place of stuffing and until Container is physically delivered to the final receiver. The Merchant shall be liable for any subsequent liabilities, costs or consequences arising out of a breach of the above responsibility.

8.3 Hazardous Goods and IMDG Cargo bookings are only accepted together with a dangerous goods declaration (DGD).

8.4 The signed "Container Packing Certificate" needs to be presented at the latest 48 hours prior to the export Cut-off date/time at terminal.

8.5 Even if a hazardous Goods and IMDG Cargo booking is accepted by MSC in the first instance, MSC reserves its right to reject the shipment in the Vessel's Master discretion.

8.6 The booking party and shipper are responsible to enquire with MSC or its agents as to the Cut-off date/time applicable to hazardous Goods and IMDG Cargo containers and its documentation.

9. WASTE AND SCRAP CARGO

9.1 The Merchant is responsible to ensure that each booking and shipment of waste and/or scrap cargo is properly and fully declared to MSC and all applicable authorities, and that the shipment complies with all laws and regulations applicable to the shipment throughout its entire carriage. This obligation includes but is not limited to, compliance with all laws and regulations applicable to shipments of waste and/or scrap cargo, as may be amended from time to time, including but not limited to local law and customs regulations in the Agent's jurisdiction on the shipment of waste, EU Regulation 1013/2006 of 14th June 2006 on shipment of waste as amended from time to time, the 1989 Basel convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposals, and any subsequent regulation of similar scope.

9.2 Any wrong declaration or missing documentation will result in a mis- or improper declaration fee of USD 1'000.00 (one thousand US Dollars) per Container being levied by the Carrier and this is payable within 14 days of MSC's written demand. This mis- or improper declaration fee shall be payable to MSC irrespective of whether the Merchant becomes liable to pay an administrative fine imposed by authorities. The Merchant is also obliged to indemnify MSC in respect of any liability that MSC or its agents may incur due to the mis- or improper declaration, and the Merchant is not permitted to off-set such a claim by reference to the mis- or improper declaration fee that it has paid or should pay.

10. REEFER AND TEMPERATURE-CONTROLLED GOODS

10.1 A special reefer booking form shall be provided duly filled out for each reefer booking request, a template being available upon request at the Agent's export desk.

10.2 The Merchant is solely responsible for ensuring that the Container temperature is set at the required carrying temperature, and that the ventilation and humidity control, if such a setting facility exists, are properly set prior to stuffing of the Goods. The Merchant's use of the Container shall be prima facie evidence of its being sound and suitable for use. MSC or its agents shall not be held liable for damages generated by hot stuffing or wrong pre-settings.

10.3 For reefer shipments, the Merchant is responsible for ensuring that the setting parameters (including temperature, humidity and ventilation) given to the Carrier in the corresponding booking form match the shipping instructions. Any consequence arising from any discrepancy and/ or inconsistency in declarations will be the sole responsibility of the Merchant, and the Carrier will be under no liability whatsoever in that regard.

10.4 The maximum load line appearing on the reefer Container panels shall not be exceeded under any circumstance, as this would impair the correct circulation of the cooling air. Neither MSC nor its agents shall accept any liability due to a breach of this term.

10.5 The Merchant must take note that refrigerated Containers are not designed:

- To cool or freeze Goods which have been loaded into a Container at a temperature higher than their designated carrying temperature. The Carrier shall not be responsible for the consequences of the Goods being loaded at a higher temperature than that required for the carriage; nor
- to monitor and control humidity levels, even if a setting facility exists, and because humidity is influenced by many external factors the Carrier does not guarantee and is not responsible for the maintenance of any intended level of humidity inside any Container.

11. RO-RO TRANSPORTATION AND CARRIAGE OF VEHICLES

Should the Merchant request MSC to transport vehicle(s) or any similar cargo, the following conditions shall apply:

11.1 MSC shall not be responsible for:

- scratches, dents, bumps, rusty spots, damaged upholstery fittings and/or engine/mechanical malfunctions/breakdowns on used/second-hand Goods nor for any consequence whatsoever resulting therefrom.
- pilferage and/or damage to personal effects and accessories, equipment, removable fittings, cargo and/or other possessions left onto or inside the Goods carried.

11.2 The Merchant warrants that the vehicle(s) or any similar cargo shipped under the bill of lading / sea waybill, including anything left onto/inside it, are gas free and do not contain used refrigerators, freezers or air-conditioning equipment and cannot be considered toxic or harmful/hazardous waste or any other prohibited Goods banned for import or export under the legislation applicable at the country of the port of loading and/or the port of discharge.

11.3 The Merchant agrees to be fully responsible for and to indemnify and hold MSC harmless against any inaccuracy in the Goods details such as, but not limited to, chassis/VIN number, age, weight, measure, marks, number, quality, contents etc. furnished at the time of booking to MSC.

12. EXPORT AND IMPORT LOCAL CHARGES (STORAGE / DEMURRAGE / DETENTIONS / ETC)

12.1 The Merchant is required to check the applicable export and import local charges to be paid by contacting directly the local Agent or by going to www.msc.com, visiting the MSC Agent country guides' page.

13. IMPORT BOOKINGS

13.1 The provisions set out in these Agency T&Cs apply mutatis mutandis to import bookings as well as the export bookings.

13.2 In addition to the above, the following form / list must be properly filled out with all corresponding information and provided to MSC or its agents for any / all import bookings:

- Client reference (if any)
- Pre-carriage (if any)
- POL
- POD
- On carriage (if any)
- Volume
- Commodity
- Shipper
- Freight Forwarder (for export from USA only)
- Origin (for export from USA only)
- Consignee
- Notify
- Notify 2 (if any)
- Rate reference
- Agreed Ocean/Sea-freight
- Ocean/Sea-freight payable at

- D-THC and local charges payable at
- Type of carriage document (if a choice is allowed by MSC)
- Estimated time of shipment

14. INLAND FORWARDING SERVICES PROVIDED OUTSIDE THE SCOPE OF MSC'S BILL OF LADING OR SEAWAYBILL

14.1 Insofar as an MSC agent agrees to procure, in addition to the voyage expressly covered by the Carrier's bill of lading / sea waybill (or in cases where no transport documents have been issued, by the Carrier's initial freight quotation or booking confirmation), inland forwarding services including but not limited to the procurement of pre- or on-carriage, then that agreement dealing with inland forwarding services (but not the port to port / ocean carriage) will be between the MSC Agent and the Merchant directly. The Carrier shall in no circumstances whatsoever be considered as a party of such agreement.

14.2 Under this inland forwarding services agreement, the Merchant is obliged upon placing of the order to explicitly draw the MSC agent attention to the cargo value, if such value exceeds USD200'000.00 (two hundred thousand US dollars), in order to give MSC Agent the opportunity, without any obligation on MSC's part, to propose appropriate safety measures during the respective carriage and to explain the costs of these measures. Any such forwarding services are provided on terms as proposed by MSC's Agent.

15. IMPORT REQUIREMENTS FOR RELEASE OF GOODS

15.1 Goods / Container(s) will not be authorized for release until all outstanding Freight and charges as well as any costs accrued in connection with the transportation of such Goods (including but not limited to costs of inspection in transit or the consequence thereof and local charges) are fully paid to the Carrier or its agents. Delivery of the Goods before such payment shall not be deemed as a waiver of such costs whatsoever and MSC shall remain entitled to claim all sums owed in full.

15.2 By surrendering of the original bill of lading, the Consignee confirms its acceptance of the Carrier's bill of lading terms and conditions and might be required to sign the bill of lading's back.

15.3 In case the bill of lading is issued "to order" or "to order of" a named consignee, a readable and complete chain of endorsements is necessary to proceed with the release.

15.4 When a telex release is requested, the consignee shall also confirm in writing its acceptance of the Carrier's bill of lading terms and conditions before MSC is obliged to release the Goods.

15.5 When a sea waybill (sometimes referred as an "express bill of lading" or "express release bill") has been issued, Goods/Container(s) will not be authorized for release until the consignee has signed a letter as per MSC's standard wordings which acknowledges consignee's acceptance of the Carrier's sea waybill terms and conditions, including the law and jurisdiction clause. A sample letter is available at www.msc.com.

15.6 Before the Merchant sends a truck to collect a Container, the Merchant shall contact the terminal interchange to check the Container's availability in respect of release and/or transportability. MSC and its agents shall not entertain any claim for waiting time or additional trucking costs if the Merchant fails to take this step and act accordingly.

15.7 In case of Inland Transport from the port of discharge, the Merchant's delivery instruction, together with all required documents, must reach the Agent at least 4 (four) working days prior to the estimated time of arrival (**ETA**) of the Vessel at the port of discharge. Failure by the Merchant to comply with this obligation may result in the Carrier or its agent incurring additional costs, such as but not limited to extra storage, monitoring and plugging costs and/or detention and demurrages, which will be for sole account of the Merchant, and neither MSC nor its agents shall be held liable for any delay and/or additional costs caused by a breach of such obligation.

15.8 All Freight and local charges must be paid without deduction or set-off prior the release of Goods. Delivery of Goods should not be considered as a waiver whatsoever of these Freight and charges.

15.9 Delivery

1. Delivery of the Goods is always subject to the Carrier's applicable Tariff referred to in Clause 3 of terms and conditions of the MSC bill of lading and/or sea waybill.
2. Should the Merchant fail to take delivery of the Goods within 10 (ten) days from the date of discharge or alternative terms of delivery defined in the Carrier's applicable Tariff, such delay shall be deemed as unreasonable for the purpose of clause 20 of the Carrier's sea waybill / bill of lading terms and conditions, and the Carrier shall not thereafter have any further responsibilities or liability in respect of these Goods, even if such loss or damage is caused by negligence on the part of the Carrier.
3. Notwithstanding the above, the Carrier shall be entitled, without notice, to unpack the Goods and/or to store the Goods ashore, afloat, in the open or under cover, at the sole and entire risk of the Merchant and such storage shall constitute due delivery and the costs of such storage (if paid or payable by the Carrier or any agent or sub-contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.
4. If, whether by act or omission, the Merchant directly or indirectly prevents, delay or hinder the discharge or the delivery of the Goods, any costs, expenses or liability that results shall be for the Merchant's sole account.
5. Paperless delivery order - The Merchant expressly agrees that in the context of any MSC contract of carriage, a delivery order shall include and may be validly established by any means, whether in electronic form or not and/ or whether nominal or not and/or whether revocable or not, authorizing the Merchant or its agent~~s~~ to take delivery of the goods. The Merchant shall keep the Carrier fully indemnified and hold the Carrier harmless against any loss, claim, damage, or expense of whatsoever nature arising out of or in connection with the loss, misplacement or misappropriation of such a delivery order or any of the information contained in it, after the same is issued or communicated to the Merchant.

15.10 The empty Container must be returned to the Container depot designated by MSC in a clean, undamaged condition and completely free of Goods, and any residues of Goods, and any residues from chemicals used to clean the Container, with fumigation labels and all other labels relating to Goods removed. Failure to comply with this requirement may result in additional costs for account of the Merchant.

16. EQUIPMENT RE- USE

16.1 Equipment re-use occurs whenever an empty Container is re-used for a new shipment by the Merchant without first being returned to an MSC nominated Container depot for inspection and maintenance. Such equipment re-use must be authorised by MSC in advance and a status changeover date ending the import demurrage period will be agreed. The Merchant agrees to be charged with a re-use fee as set out in the Carrier's applicable Tariff.

16.2 Equipment re-use is tolerated for the sole benefit and convenience of the Merchant, who shall accordingly bear any and all risks associated with the re-use and shall keep the Carrier and its agents fully indemnified (including reasonable legal expenses) against any claim that is raised by any party caused by the re-use of the Container. The Merchant shall inspect the Container (internally & externally) for suitability and bear any expense (including without limitation, re-positioning of the re-used unit to a MSC depot and delivery costs of a replacement Container) in the event the Container is not fit for the intended carriage.

17. LEGAL ADMINISTRATION FEE

17.1 MSC or its agents shall charge the Merchant a Legal Administration Fee (**LAF**) covering the extra coordination / organization work, and subsequent follow-up necessitated by any situation of damage or risk of damage to the Goods, Container, crew, Vessel and/or any third parties' property caused or generated by the Merchant's negligence, fault or misconduct. This fee will be charged in addition to any cost actually incurred by MSC as the result of the situation itself and steps taken to remedy the problem. The amounts that MSC will be entitled to charge are:

- For cost up to USD 500.00 (five hundred US Dollars): USD 40.00 per Container
- For cost between USD 500.00 (five hundred US Dollars) and USD 1'000.00 (one thousand US Dollars): USD 80.00 per Container
- For cost between USD 1'000.00 (one thousand US Dollars) and USD 2'000.00 (two thousand US Dollars): USD 140.00 per Container
- For cost over USD 2'000.00 (two thousand US Dollars): USD 200.00 per Container

17.2 The Carrier and its agents are authorized to charge the LAF in any other legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim. Payment is due in 14 days from MSC's invoice.

17.3 The number of Containers taken into consideration for invoicing will be the number of Containers involved in the incident / casualty, and not the total number of Containers listed on the Bill(s) of Lading or Sea Waybill.

17.4 The costs referred to in clause 17.1 consist of repair costs and extra handling costs as charged to MSC or its agents, including all taxes and charges.

EXHIBIT D

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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New York, NY 10166-0193
Tel 212.351.4000
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Reed Brodsky
Direct: +1 212.351.5334
Fax: +1 212.351.6235
RBrodsky@gibsondunn.com

June 30, 2021

VIA EMAIL AND FEDERAL EXPRESS

David A. Baron
Berliner Corcoran & Rowe LLP
1101 Seventeenth Street NW
Suite 1100
Washington, D.C. 20036

Re: Your Notices of Intent to Commence Action Pursuant to Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

Dear Mr. Baron:

I write on behalf of MSC Mediterranean Shipping Company SA ("MSC SA"), MSC Mediterranean Shipping Company Holding SA ("MSC Holding"), and MSC Mediterranean Shipping Company USA, Inc. ("MSC USA") (collectively, "MSC") in response to your Notices of Intent to Commence Action Pursuant to Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (hereinafter "the Notices"), dated June 3, 2021. MSC SA, MSC Holding, and MSC USA are in receipt of the Notices.

Upon receipt of the Notices, MSC SA promptly instructed that all services offered in relation to the alleged Confiscated Property (as defined in the Notices) must cease with immediate effect. Thus, to the extent any MSC entity has engaged in any alleged trafficking as defined under the Helms-Burton Act (which we strongly dispute), such trafficking even under the broadest possible meaning has terminated. If Claimants still intend to pursue their claims against MSC and to the extent Claimants have any viable uncertified claims (which they do not), MSC will ***not*** be liable to the Claimants for treble damages. *See* 22 U.S.C. § 6082(a)(2)(B).

For a number of reasons, Claimants do not have valid claims against MSC in connection with the Confiscated Property. Accordingly, MSC will vigorously defend against any frivolous claim that Claimants pursue, and then seek both compensatory damages for improperly causing MSC to direct that all operations relating to the Confiscated Property must cease, as well as Rule 11 sanctions. In this letter, we describe a few of the reasons why Claimants do not have valid claims against MSC.

Critically, at the outset, Claimants will be unable to obtain jurisdiction over MSC SA or MSC Holding in the United States. Neither entity is subject to general personal jurisdiction in the United States, and neither was involved in any conduct related to the Confiscated Property that touches upon the United States, which could give rise to specific personal jurisdiction. *See Herederos de Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 2021 WL 1648222, at *3 (S.D. Fla. Apr. 27, 2021) (granting defendant's motion to dismiss for lack of general and specific jurisdiction over foreign entity).

Moreover, MSC USA has not engaged in any conduct related to the Confiscated Property in any way, shape, or form. As a result, Claimants have no viable claims against MSC USA. Further, MSC USA will not be subject to suit on these claims in the Southern District of Florida, where many of the Claimants reside and have brought previous claims under the Helms-Burton Act. MSC USA, which has neither its headquarters or principal place of business in Florida, has not engaged in conduct related to the Confiscated Property at all, much less in Florida, and would therefore not be subject to the jurisdiction of a Florida court. *See Del Valle v. Trivago GmbH*, 2020 WL 2733729, at *2 (S.D. Fla. May 26, 2020) (granting motion to dismiss for lack of jurisdiction under the Florida long-arm statute).

In addition to the fatal jurisdictional obstacles to the potential claims reflected in the Notices, Claimants fail to meet multiple statutory requirements of the Helms-Burton Act. We list some of them here.

First, the plain language of the statute is clear that a U.S. national cannot bring an action on a claim to confiscated property unless that national acquired ownership of the property *before* March 12, 1996. 22 U.S.C. § 6083(a)(4)(B). Here, based on your allegations in other cases, you have admitted that 17 of the 18 Claimants (all except Ms. Odette Blanco de Fernandez) acquired any claims to the alleged Confiscated Property by either inheritance or through estates *after* March 12, 1996, if at all.

More specifically, as you alleged in your filed Helms-Burton complaints against other companies, the claims of 13 of the Claimants arise from their purported acquisition of the Confiscated Property through inheritance ("Inheritor Claimants"). Multiple courts have held that "acquiring" property under the statute includes acquisition through inheritance. Thus, the Inheritor Claimants would need to have inherited the Confiscated Property prior to March 12, 1996. *See Glen v. Trip Advisor LLC*, 2021 WL 1200577, at *7 (D. Del. Mar. 30, 2021); *Gonzalez v. Amazon.com, Inc.*, 835 F. App'x 1011, 1012 (11th Cir. 2021). Yet, as you alleged in other cases, the Inheritor Claimants inherited and acquired rights to such property—if at all—at least five years *after* the statutory cutoff date. With respect to the four Claimants that are estates of the deceased siblings, the same is true. These estates only came into existence *after* the deaths of the four siblings and thus could not have acquired a claim to the Confiscated Property prior to their deaths. As such, the earliest any of the four estates

may have acquired a claim to the Confiscated Property was in 2001, years after the statutory cutoff date. Indeed, as a matter of law and logic, it makes no sense that the estate of a deceased U.S. national would be able to bring an action on a claim to confiscated property when the U.S. national to whom the estate will ultimately distribute the purported property interest would be precluded from bringing a claim through inheritance.

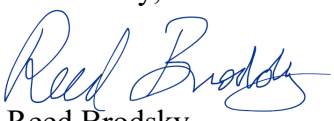
Second, MSC lacks the requisite *scienter* to be held liable for any conduct involving the Confiscated Property. Under Section 6091(b)(2)(A), "a person 'traffics' in confiscated property if that person knowingly and intentionally" engages in conduct prohibited by the statute. "Knowingly" is defined as "with knowledge or having reason to know." 22 U.S.C. § 6023(8). Because the claims referenced in the Notices were uncertified, and MSC had otherwise not been informed of these potential claims, MSC was not on notice that the property at issue was confiscated. *See Havana Docks Corp. v. MSC Cruises SA Co.*, 455 F. Supp. 3d 1355, 1368 (S.D. Fla. 2020) ("Obtaining a *claim certified* by the FCSC allows the victim of such a confiscation to . . . put other actors on notice of the victim's outstanding right to compensation based on the now-extinguished property interest taken.") (emphasis added). Moreover, because MSC "promptly ceased [any and all purported] commercial activities in connection with [the alleged Confiscated Property] upon receiving [the Notices], there is nothing . . . that could support an inference that [MSC] knowingly and intentionally trafficked in [the Confiscated Property]." *Glen*, 2021 WL 1200577, at *11.

It is clear to us that you and your clients launched Notices based on alleged claims and legal contentions not warranted by existing law and fact. Accordingly, your unwarranted threats induced MSC to promptly cease any commercial activities in connection with the alleged Confiscated Property and thus your clients are liable for any and all proximate and consequential damages arising from such termination with immediate effect. Should your clients file suit and such suit is dismissed with prejudice, as we expect based on the law and the facts, our client will take action against your clients to seek proximate and consequential damages arising from ceasing any commercial activities relating to the alleged Confiscated Property. Moreover, as you know, Federal Rule of Civil Procedure 11 "establishes an objective standard intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments." *Simon DeBartolo Grp. L.P. v. Richard E. Jacobs Grp., Inc.*, 186 F.3d 157, 166 (2d Cir. 1999). Given that there is no chance of success and no reasonable argument to extend, modify, or reverse the law as it stands with respect to your Notices, please advise your clients that any lawsuit against MSC will subject them to Rule 11 sanctions, and MSC will seek such sanctions including reasonable attorneys' fees and costs.

For all of the above-mentioned reasons, among others, you and your clients would be well-advised to reconsider and not pursue any claims against MSC. We are of course available to discuss the matter with you. You may contact me at (212) 351-5334 or email me at RBrodsky@gibsondunn.com. MSC expressly reserves all rights, claims, and defenses,

under U.S. and all other applicable laws, in connection with these issues, and the above shall not be construed as a waiver of any rights, defenses, or privileges.

Yours truly,



Reed Brodsky
Co-Chair Litigation Group
Gibson, Dunn & Crutcher LLP

EXHIBIT E

DESCARTES Datamyne

USA Bills Export

Bill of Lading Number	MEDUU1162343

US Port	JACKSONVILLE,FL
US Region	SOUTH ATLANTIC
Carrier	MSC-MEDITERRANEAN SHIPPING COMPANY S A
Carrier Code	MSCU
NVOCC	TECH CARGO

Place of Receipt Declared	JACKSONVILLE, FL
Place of Receipt	JACKSONVILLE
State of Place of Receipt	FLORIDA, FL

Date	04/16/2021	Quantity	711.00
Arrival Date		Quantity Unit	CASE(S)
Vessel	JSP AMIHAN (11603)	Weight	11,063.30
Voyage Number	UE115A	Weight Unit	KG
Containerized	No	Container Quantity	1.00
Container FCL/LCL	FCL	TEUS	1.00
Type of Cargo	REFRIGERATED	Metric Tons	11.06
High Cube	No	Total Calculated Value (US$)	24,837.44

Foreign Port Declared	MARIEL 02, CUBA	Final Destination Declared	
Foreign Port	CUBA	Final Destination	CUBA
Country of Foreign Port	CUBA	Country of Final Destination	CUBA
World Region of Foreign Port	CARIBBEAN	Region of Final Destination	CARIBBEAN

Exporter Declared	TECH CARGO
Exporter Address	8600 NW 17 ST, SUITE DORAL, FL 33126
Exporter Unified	TECH CARGO, FL
Exporter's State Unified	FLORIDA, FL
Exporter's County Unified	MIAMI-DADE, FL
Exporter's City Unified	MIAMI, FL
Exporter's Zip Code Unified	33126 - MIAMI, FL

Obs.: DATA SUBJECT TO MODIFICATIONS
Source: U.S. Customs and Border Protection (CBP).
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DESCARTES Datamyne

USA Bills Export

HS	Teus	Container Quantity	Metric Tons	Calculated Value (US$)
2204 - WINE OF FRESH GRAPES; GRAPE MUST NESOI	1.00	1.00	11.06	**24,837.44**
Total	**1.00**	**1.00**	**11.06**	24,837.44

HS Code	HS Description
2204	WINE OF FRESH GRAPES; GRAPE MUST NESOI

Container Description
711 CASE(S) OF WINE FREIGHT PREPAID (HARMONIZED CODE: 220422)

	Premium Fields (Datamyne)
	Original Fields from CBP

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TRACKING - BILL OF LADING MEDUU1162343

Bill of lading: MEDUU1162343 (1 container)

Departure date	Vessel	Port of load
16/04/2021	JSP AMIHAN	JACKSONVILLE, US
Port of discharge	**Transhipment**	**Price calculation date***
MARIEL, CU	FREEPORT, GRAND BAHAMA, BS CRISTOBAL, PA	15/04/2021

* Price calculation date is indicative. Please contact your local MSC office to verify this information.

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TRACKING - BILL OF LADING MEDUU1162343

Container: MEDU1954670

Type	Final POD
20' DRY VAN	MARIEL, CU
Shipped to	**Price calculation date***
MARIEL, CU	15/04/2021

* Price calculation date is indicative. Please contact your local MSC office to verify this information.

Movements

Location	Description	Date	Vessel	Voyage
MARIEL, 02, CU	Discharged	10/07/2021	CARIBBEAN EXPRESS	21011A
MANZANILLO, PA	Transshipment Loaded	02/07/2021	CARIBBEAN EXPRESS	21011N
CRISTOBAL, 3, PA	Transshipment Discharged	03/06/2021	MSC DAMLA	FR117W
FREEPORT, GRAND BAHAMA, BS	Transshipment Loaded	30/05/2021	MSC DAMLA	FR117W
FREEPORT, GRAND BAHAMA, BS	Transshipment Discharged	05/05/2021	JSP AMIHAN	UE117R
JACKSONVILLE, FL, US	Loaded	16/04/2021	JSP AMIHAN	UE115A
JACKSONVILLE, FL, US	Gate In Full	15/04/2021		

Results Generated 15:22, 12/07/2021 *

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EXHIBIT F

DESCARTES Datamyne

USA Bills Export

Bill of Lading Number	MEDUU1703872

US Port	LONG BEACH,CA
US Region	WEST
Carrier	MSC-MEDITERRANEAN SHIPPING COMPANY S A
Carrier Code	MSCU
NVOCC	INTERNATIONAL FREIGHT TRANSPORT INC

Place of Receipt Declared	SALT LAKE CITY, UT
Place of Receipt	SALT LAKE CITY
State of Place of Receipt	UTAH, UT

Date	05/30/2021	Quantity	1,470.00
Arrival Date		Quantity Unit	PACKAGE(S)
Vessel	AGAMEMNON (13138)	Weight	17,462.00
Voyage Number	MC120R	Weight Unit	KG
Containerized	No	Container Quantity	1.00
Container FCL/LCL	FCL	TEUS	2.00
Type of Cargo	NON REFRIGERATED	Metric Tons	17.46
High Cube	Yes	Total Calculated Value (US$)	0.00

Foreign Port Declared	MARIEL 02, CUBA	Final Destination Declared	
Foreign Port	CUBA	Final Destination	CUBA
Country of Foreign Port	CUBA	Country of Final Destination	CUBA
World Region of Foreign Port	CARIBBEAN	Region of Final Destination	CARIBBEAN

Exporter Declared	INTERNATIONAL FREIGHT TRANSPORT,
Exporter Address	INC KEVIN BROWN 251 20TH STREET SUITE 102 OGDEN, UT 84401 PHONE NO : 8017739000 FAX NO : 8017735400
Exporter Unified	INTERNATIONAL FREIGHT TRANSPORT, UT
Exporter's State Unified	UTAH, UT
Exporter's County Unified	WEBER, UT
Exporter's City Unified	OGDEN, UT
Exporter's Zip Code Unified	84401 - OGDEN, UT

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USA Bills Export

HS	Teus	Container Quantity	Metric Tons	Calculated Value (US$)
630900 - WORN CLOTHING AND OTHER WORN TEXTILE ARTICLES	2.00	1.00	17.46	**0.00**
Total	**2.00**	**1.00**	**17.46**	0.00

HS Code	HS Description
630900	WORN CLOTHING AND OTHER WORN TEXTILE ARTICLES

Container Description
1470 PACKAGE(S) OF 272 CASES 000003-BEEF CHUNKS 150 CASES 000159-OIL,VEGETABLE 260 CASES 000187-BEANS,PINTO 144 CASES 000211-FLOUR,WHITE 260 CASES 000228-RICE 2# 168 BOXES 003634-DP MACARONI 216 BOXES 003637-DP SPAGHETTI HS CODE: 6309.00.0000 PROJECT: WE202100121-1-1 SHIPMENT REFERENCE NUMBER: N04U21EX34105 FREIGHT PREPAID (HARMONIZED CODE: 6309)

	Premium Fields (Datamyne)
	Original Fields from CBP

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TRACKING - BILL OF LADING MEDUU1703872

Bill of lading: MEDUU1703872 (1 container)

Departure date	Vessel	Port of load
30/05/2021	AGAMEMNON	LONG BEACH, US
Port of discharge	**Transhipment**	**Price calculation date***
MARIEL, CU	CRISTOBAL, PA	14/05/2021

* Price calculation date is indicative. Please contact your local MSC office to verify this information.

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TRACKING - BILL OF LADING MEDUU1703872

Container: MEDU7146427

Type	Final POD
40' HIGH CUBE	MARIEL, CU
Shipped to	**Price calculation date***
MARIEL, CU	14/05/2021

* Price calculation date is indicative. Please contact your local MSC office to verify this information.

Movements

Location	Description	Date	Vessel	Voyage
MARIEL, 02, CU	Discharged	25/07/2021	CARIBBEAN EXPRESS	21012A
MANZANILLO, PA	Transshipment Loaded	16/07/2021	CARIBBEAN EXPRESS	21012N
CRISTOBAL, 3, PA	Transshipment Discharged	08/07/2021	MSC ROMANE	NX125R
LAZARO CARDENAS, MIC, MX	Transshipment Loaded	02/07/2021	MSC ROMANE	MC121R
LAZARO CARDENAS, MIC, MX	Transshipment Discharged	01/07/2021	AGAMEMNON	XA125A
LONG BEACH, CA, US	Loaded	28/05/2021	AGAMEMNON	MC120R
LONG BEACH, CA, US	Unloaded from Rail	19/05/2021		
LONG BEACH, CA, US	Arrived at rail ramp	18/05/2021		
SALT LAKE CITY, UT, US	Rail departed Origin	17/05/2021		
SALT LAKE CITY, UT, US	Loaded on Rail	16/05/2021		
SALT LAKE CITY, UT, US	Gate In Full	14/05/2021		
SALT LAKE CITY, UT, US	Empty to Shipper	06/05/2021		

Results Generated 20:16, 10/08/2021 *

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