

CASE NO. 1:21-CV-22778-COOKE/O’SULLIVAN

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

ODETTE BLANCO DE FERNANDEZ  
*née* BLANCO ROSELL, et al.,

Plaintiffs,

v.

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COOKE/O’SULLIVAN

CMA CGM S.A. (a/k/a CMA CGM  
THE FRENCH LINE, a/k/a CMA CGM  
GROUP) and CMA CGM  
(AMERICA) LLC,

Defendants.

**DEFENDANT CMA CGM (AMERICA) LLC’s MOTION TO STAY  
PROCEEDINGS PENDING INTERNATIONAL REQUEST**

COMES NOW Defendant CMA CGM (AMERICA) LLC (hereinafter sometimes referred to as “AMERICA”). It files this motion to temporarily stay all proceedings while co-defendant CMA CGM S.A. pursues a “request for authorization” to participate in these proceedings to avoid violating European Union and French blocking statutes. In support of its motion, AMERICA submits the Declaration of Me. Le Franc-Barthe and following memorandum of law.

**I. INTRODUCTION**

Litigation against European companies under the Helms-Burton Act of 1996 can subject such companies to “differing legal commands of separate sovereigns.”<sup>1</sup> In two recent cases, judges in this District thus recognized that the “interest of international comity” necessitated stays pending an international “request for authorization” from the European

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<sup>1</sup> See *In re Grand Jury Proc.*, 691 F.2d 1384, 1391 (11th Cir. 1982) (citations and internal quotation marks omitted).

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Union.<sup>2</sup> CMA CGM (AMERICA) LLC respectfully seeks such a stay. America acts as general agent for Defendant CMA CGM S.A. in the United States. A stay is necessary to avoid violating European Union and French blocking statutes for participating in this case and thereby defending against Plaintiffs’ self-described “bank shot” theory of monetary liability, on decades-old claims, regarding the same property that Plaintiffs are litigating over elsewhere.

**II. PRELIMINARY STATEMENT**

1. CMA CGM S.A. is a company organized and existing under the laws of the French Republic and is confronted with conflicting legal obligations. AMERICA is the general agent in the United States for CMA CGM S.A. This necessitates a temporary stay of the proceedings.

2. On July 30, 2021, Plaintiffs filed the Complaint. [D.E. 1]. Twenty-four of the 25 Plaintiffs are the estates or decedent representatives of Cuban emigres. The Complaint solely seeks monetary payments for decades-old claims, plus statutory interest.

3. The Complaint names CMA CGM S.A. and AMERICA (hereinafter sometimes referred to collectively as the “CMA CGM Companies”) as the sole defendants. Plaintiffs have alleged that both defendants violated 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”).

4. Under U.S. law, the CMA CGM Companies, including AMERICA, must defend themselves in these proceedings. However, CMA CGM S.A.<sup>3</sup> is legally precluded by another sovereign from participating in the lawsuit. It must receive authorization from the

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<sup>2</sup> See Ex.1, Order Granting Iberostar’s Motion to Stay, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 17]; *Rodriguez et al. v. Imperial Brands PLC, et al.*, No. 20-CV-23287-Gayles (S.D. Fla. Sept. 23, 2020) [D.E. 49].

<sup>3</sup> As of September 20, 2021, the only defendant served with the summons and complaint has been AMERICA. CMA CGM S.A. has not been served. The parties have conferred, and CMA CGM S.A. will waive service under Federal Rule of Civil Procedure 4(d). In accordance with Fed. R. Civ. P. 4(d)(5), waiver of service preserves CMA CGM S.A.’s objections to jurisdiction and venue and other Rule 12 defenses. Pending completion of the waiver process, AMERICA is the only party filing the instant motion to stay proceedings. Should the instant motion be granted, it will likewise be for the benefit of CMA CGM S.A. As set forth in the instant motion, CMA CGM S.A.’s international request for authorization is likewise for the benefit of AMERICA.

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European Commission in compliance with a European Union “blocking statute” (“EU Blocking Statute”), and various articles of a French national blocking statute are similarly at issue.<sup>4</sup>

5. The EU Blocking Statute prohibits compliance by European Union operators with any requirement or prohibition based on specified foreign laws, which includes Title III of the Helms-Burton Act. In compliance with the EU Blocking Statute, on September 19, 2021, CMA CGM S.A. filed a request for authorization before the European Commission.<sup>5</sup>

6. In its request for authorization to the European Commission, CMA CGM S.A. requested expedited treatment. The request for authorization does not have suspensive effect, and the European Commission’s authorization becomes effective as of the date the applicant receives such authorization. Therefore, in the interim, CMA CGM S.A. is obligated to comply with the EU Blocking Statute.<sup>6</sup>

7. CMA CGM S.A. is also subject to obligations under the French blocking statute enacted in 1968 (“French Blocking Statute”). To avoid any further delay and ensure compliance with French law, CMA CGM S.A. has initiated a process to comply with provisions of the French blocking statute as well.

8. Moreover, CMA CGM S.A.’s participation—even if ultimately dismissed as a defendant to this case—is necessary to the fair and effective defense of its agents, such as AMERICA, and the efficient, coordinated conduct of any proceedings. In this regard, Plaintiffs rely on an attenuated theory of causation. They allege that AMERICA is liable by virtue of its connection to CMA CGM S.A. Specifically, Plaintiffs claim that AMERICA is an agent for CMA CGM S.A. in shipping transactions going to Jamaica. Those shipments are said to be ultimately bound for Cuba, with the cargo “offloaded” in Jamaica. Compl. ¶ 121. CMA CGM S.A. subsidiaries and agents allegedly then take possession of the cargo, which is

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<sup>4</sup> See Ex. 2, Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (“Council Regulation (EC) No 2271/96”).

<sup>5</sup> See Ex. 3, Declaration of Me. Le Franc-Barthe Regarding the Filing of CMA CMG S.A.’s Request for Authorization before the European Commission.

<sup>6</sup> See Ex. 2.

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“then loaded onto other ships” that go to Cuba, thereby “utilizing a ‘bank shot’ off of Kingston, Jamaica.” *Id.* ¶ 122.

9. To complete its “bank shot” theory of liability, Plaintiffs’ Complaint further contains numerous additional paragraphs alleging facts and activity by *other* CMA CGM S.A. subsidiaries and agents. These entities—not named as defendants in this case—are then allegedly operating in Cuba. None of these activities have been claimed to have occurred under the control or supervision of AMERICA. Therefore, without the participation of CMA CGM S.A. and its other affiliates or agents, AMERICA cannot appropriately defend itself in this case from Plaintiffs’ daisy-chain theories of liability.

10. Subject to and without waiving any of its defenses, including defenses as to personal jurisdiction, and other Rule 12 defenses, AMERICA as an agent now seeks a temporary stay of the proceedings. This should continue until thirty (30) days after the European Commission has granted CMA CGM S.A.’s request for authorization, subject to status reports on the progress of its application every sixty (60) days, or as otherwise directed by the Court.<sup>7</sup>

11. Such a stay will not prejudice Plaintiffs. The CMA CGM Companies are just one of many defendants now subject to Plaintiffs’ expansive interpretations of the Helms-Burton Act. Plaintiffs have previously sued numerous other defendants—all seeking purely monetary compensation for the *same property* claimed to have been confiscated decades ago in Cuba. Thus, Plaintiffs’ pursuit of this particular case is not urgent. This Complaint came many months after other cases were instituted against other defendants. Further, Plaintiffs filed all of their cases more than two years after the Trump administration had reinstated Title III of the Helms-Burton Act. The stay will serve judicial economy. It will preserve scarce judicial resources until such time as all entities necessary to fairly and efficiently adjudicate

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<sup>7</sup> A motion to stay is neither a responsive pleading nor a motion brought under Federal Rule of Civil Procedure 12, and thus does not operate as a waiver of the defense of lack of personal jurisdiction. *See Lane v. XYZ Venture Partners, L.L.C.*, 322 F. App’x 675, 678 (11th Cir. 2009). AMERICA reserves all rights and intends to move to dismiss the Complaint on multiple grounds under Federal Rule of Civil Procedure 12. The motion to stay is also in lieu of a Conference Report pursuant to L.R. 16.1(b), the contents of which are likewise impacted by the instant motion and the international requests.

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Plaintiffs’ “bank shot” theories of liability—in a uniform and coordinated fashion—can participate.

**III. FACTUAL BACKGROUND**

12. On July 30, 2021, Plaintiffs filed the instant lawsuit [D.E. 1] against CMA CGM S.A., and AMERICA. It alleges a claim under Title III of the Helms-Burton Act.

**The Foreign Claims Settlement Act**

13. In the wake of the Cuban Revolution, Congress enacted the Foreign Claims Settlement Act (“Settlement Act”). This authorized the Foreign Claims Settlement Commission of the United States to consider compensation claims of United States nationals against the government of Cuba.<sup>8</sup> The Foreign Claims Settlement Commission was authorized to consider, *inter alia*, claims based upon “losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property” by the Cuban government.<sup>9</sup> The Settlement Act generally required claims for compensation within “sixty days after October 16, 1964,” and only applied to “national[s] of the United States.”<sup>10</sup> Therefore, Cuban emigres who were not citizens were not eligible for compensation.

**International Objection to the Helms-Burton Act**

14. On March 1, 1996, President Bill Clinton signed the Helms-Burton Act into law. This codified certain aspects of the U.S.-Cuba embargo. The Act consists of four titles. Title I was intended to strengthen sanctions against the Cuban government. Title II was intended to provide assistance towards a “free and independent Cuba,” describing the policy and requirements for an embargo termination. Title III was intended to deter foreign investors from investing in Cuba and protect the claims of United States nationals who had property

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<sup>8</sup> 22 U.S.C.A. § 1643.

<sup>9</sup> 22 U.S.C.A § 1643b(a)–(b).

<sup>10</sup> 22 U.S.C.A. § 1643b(a); 22 U.S.C.A § 1643a(1).

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confiscated.<sup>11</sup> Title IV was intended to exclude from the United States certain aliens who either participated in the confiscation or had “trafficked” in confiscated property.

15. The international community vigorously opposed the extraterritorial effects of Titles III and IV. A prime example of the international reaction against the Helms-Burton Act is the complaint filed by the European Union (the “European Communities” at the time) before the World Trade Organization (“WTO”). The European Communities, joined by other countries such as Canada, Japan, Malaysia, Mexico, and Thailand, claimed “that US trade restrictions on goods of Cuban origin, as well as the possible refusal of visas and the exclusion of non-US nationals from US territory, are inconsistent with the US obligations under the WTO Agreement.”<sup>12</sup>

16. Opposition from the international community concerning the extraterritorial effects of Titles III and IV continues today. On June 23, 2021, the United Nations General Assembly adopted a resolution “reiterat[ing] its call upon all States to refrain from promulgating and applying such laws and measures as the United States Helms-Burton Act, in conformity with their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation.”<sup>13</sup> This is the twenty-eighth consecutive year that the United Nations General Assembly has adopted such a resolution.

17. In addition, many jurisdictions enacted domestic “blocking” regulations to prohibit the extraterritorial effects of the Act, such as Canada, Mexico, and the European Union. Specifically, the European Union adopted the EU Blocking Statute in 1996 to counteract the extraterritorial effects of the Act.<sup>14</sup> The EU Blocking Statute provides, *inter alia*, the following prohibition:

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<sup>11</sup> 22 USC 6082(a)(5).

<sup>12</sup> See World Trade Organization Summary of elapsed proceedings against the United States relating to the Cuban Liberty and Democratic Solidarity Act, available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds38\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds38_e.htm).

<sup>13</sup> See United Nations Meetings Coverage and Press Releases, on “Adopting Annual Resolution, Delegates in General Assembly Urge Immediate Repeal of Embargo on Cuba, Especially amid Global Efforts to Combat COVID-19 Pandemic,” available at: <https://www.un.org/press/en/2021/ga12341.doc.htm>.

<sup>14</sup> See Ex. 2.

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No person . . . shall comply, whether directly **or through a subsidiary** or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex [which includes the Helms-Burton Act] or from actions based thereon or resulting therefrom. Persons may be authorized, in accordance with the procedures provided in Articles 7 and 8, to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the Community.<sup>15</sup>

18. The basic principle of the EU Blocking Statute is that European Union operators shall not comply with the listed extraterritorial legislation, or any decision, ruling, or award based thereon, given that the European Union does not recognize its applicability to or effects towards EU operators.<sup>16</sup> The listed extraterritorial legislation expressly includes the Helms-Burton Act.<sup>17</sup> The EU Blocking Statute mandates EU Member States to impose effective, proportional, and dissuasive sanctions for any violation of its provisions.<sup>18</sup>

19. In addition to obligations under the EU Blocking Statute, CMA CGM S.A. is subject to obligations under the French Blocking Statute. In 1968, France enacted the long-standing domestic law that imposes additional obligations on CMA CGM S.A.<sup>19</sup> In particular, the French Blocking Statute provides the following prohibition for French nationals against U.S. procedures:

Subject to international treaties or agreements, *it is forbidden for any natural person of French nationality* or habitually resident on French territory and for any director, representative, agent or servant of a legal entity having its registered office or an establishment *therein to communicate in writing, orally or in any other form, in any place whatsoever to foreign public authorities*, documents or information of an economic, commercial, industrial, financial or technical nature, the communication of which is *likely to affect the sovereignty, security, essential economic interests of France or public order, specified by the administrative authority as necessary*.<sup>20</sup>

<sup>15</sup> See Ex. 2, Annex 2, (emphasis added).

<sup>16</sup> *Id.*, Art. 5 (1).

<sup>17</sup> *Id.*, Annex 2.

<sup>18</sup> *Id.*, Art. 9.

<sup>19</sup> See Ex. 4, French Blocking Statute, *Loi n° 68-678 du 26 juillet 1968 relative à la communication de documents et renseignements d'ordre économique, commercial, industriel, financier ou technique à des personnes physiques ou morales étrangères*.

<sup>20</sup> See Ex. 4, Art. 1, (emphases added).

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20. The French Blocking Statute also imposes an obligation on CMA CGM S.A. to follow the necessary processes under the Hague Convention on Evidence before submitting any documentation or information to a foreign court.<sup>21</sup>

**The Suspension and Reinstatement of the Helms-Burton Act**

21. With the intention to appease the international community, each president since the enactment of the Act in 1996—including President Clinton, who signed the Act—suspended the application of Title III and its private right of action.<sup>22</sup> In May 2019, President Donald Trump lifted the almost three-decade suspension of Title III of the Helms-Burton Act.<sup>23</sup>

22. The international community once again vigorously objected to Title III’s reinstatement and its extraterritorial consequences. For instance, the EU and Canada issued a joint statement rejecting the decision to reinstate Title III of the Act.<sup>24</sup> Per the joint statement, both “the EU and Canada consider the extraterritorial application of unilateral Cuba-related measures contrary to international law.” The governments of Spain and the United Kingdom for instance also publicly rejected the reinstatement of Title III.<sup>25</sup>

23. Since the Trump administration reinstated Title III in May 2019, claims filed under the Act have exploded.<sup>26</sup> More than 14 countries have been impacted by the influx of

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<sup>21</sup> *Id.*, Art. 1 bis.

<sup>22</sup> *See Odebrecht Const., Inc. v. Prasad*, 876 F. Supp. 2d 1305, 1312 (S.D. Fla. 2012), *aff’d sub nom.*, 715 F.3d 1268 (11th Cir. 2013).

<sup>23</sup> *See* U.S. Department of State, Secretary of State Michael R. Pompeo’s Remarks to the Press (Apr. 17, 2019), available at: <https://www.c-span.org/video/?459893-1/us-lawsuits-foreign-firms-cuba-secretary-pompeo>.

<sup>24</sup> *See* Joint Statement by Federica Mogherini, Chrystia Freeland and Cecilia Malmstrom on the decision of the United States to further activate Title III of the Helms Burton (Libertad Act), available at: <https://eeas.europa.eu/headquarters/headquarters-homepage/61181/joint-statement-federica-mogherini-chrystia-freeland-and-cecilia-malmstr%C3%B6m-decision-united-en>.

<sup>25</sup> *See* Press Release from the Spanish Foreign Ministry of Affairs and Cooperation, “Spain rejects U.S. announcement of implementation of Title III of the Helms-Burton Act,” available at: [http://www.exteriores.gob.es/Portal/en/SalaDePrensa/Comunicados/Paginas/2019\\_COMUNICADOS/20190417\\_COMU072.aspx](http://www.exteriores.gob.es/Portal/en/SalaDePrensa/Comunicados/Paginas/2019_COMUNICADOS/20190417_COMU072.aspx); *See also*, Press Release from the UK Foreign & Commonwealth Office, “Foreign Office statement on Title III of the Helms-Burton Act,” available at: <https://www.gov.uk/government/news/foreign-office-statement-on-title-iii-of-the-helms-burton-act>.

<sup>26</sup> *See* “When U.S. Law Extends Beyond its Borders: The LIBERTAD Act and Extraterritoriality,” Columbia Undergraduate Law Review, January 6, 2021, available at: <https://www.culawreview.org/journal/when-us-law-extends-beyond-its-borders-the-libertad-act-and-extraterritoriality>.



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Title III lawsuits.<sup>27</sup> More than 60 years after the alleged expropriation of their property, Plaintiffs have filed four other cases. Each alleges damages for trafficking in the same property:

- *Blanco de Fernandez v. Crowley Maritime Corp.*, No. 3:20-CV-426 (M.D. Fla. Dec. 20, 2020);
- *Blanco de Fernandez v. Crowley Holdings, Inc.*, No. 1:21-CV-20443 (S.D. Fla. Apr. 30, 2021);
- *Blanco de Fernandez v. Seaboard Marine Ltd.*, No. 1:20-CV-25176 (S.D. Fla. Feb. 16, 2021);
- *Blanco de Fernandez v. A.P. Moller-Maersk A/S*, No. 2:21-CV-339 (E.D. La. Feb. 17, 2021).

24. Plaintiffs are primarily the personal representatives of estates and administrators of individuals who allege to have held “share or stock certificates” in Maritima Mariel SA, “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.”<sup>28</sup> Plaintiffs allege “the Blanco Rosell Siblings owned several other companies.”<sup>29</sup> Plaintiffs further allege the Cuban government confiscated these companies in 1960.<sup>30</sup>

**CMA CGM (AMERICA) LLC’s Request for a Temporary Stay**

25. AMERICA was served with the Complaint on August 2, 2021 [D.E. 6]. Plaintiffs’ factual allegations in the Complaint demonstrate that Plaintiffs seek to hold AMERICA liable under Title III of the Helms-Burton Act by virtue of CMA CGM S.A.’s business transactions in Cuba. In particular, Plaintiffs allege “[t]he business that CMA CGM America transacts in Florida includes trafficking in the Confiscated Property by acting as Defendant’s agent for Defendant’s carrying of containers from Port of Miami to the Port of Mariel.”<sup>31</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Compl. ¶ 79.

<sup>29</sup> *Id.* ¶ 84

<sup>30</sup> *Id.* ¶ 87.

<sup>31</sup> *Id.* ¶ 37 (emphasis added).

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26. Plaintiffs admit, however, that AMERICA does not transact with ships going from Miami to Cuba. Instead, “Defendant first carries the containers to Kingston, Jamaica, where the containers are off-loaded and then loaded onto other ships (including some ships owned by Defendant) and are then carried to the Port of Mariel.”<sup>32</sup> Plaintiffs’ Complaint distinctly defines “Defendant” as the foreign corporation CMA CGM S.A., not AMERICA.<sup>33</sup> Plaintiffs’ allegations against AMERICA thus depend on this self-described “bank shot” theory of liability for the extraterritorial acts of CMA CGM S.A.<sup>34</sup>

27. Plaintiffs’ Complaint is replete with allegations further premising AMERICA’s liability on its status as a CMA CGM S.A.’s subsidiary, which it is not. Specifically, CMA CGM S.A., itself, is only one link in an alleged daisy chain of causation from *other* subsidiaries that have “an interest in the Confiscated Property”:<sup>35</sup>

In sum, and as the facts demonstrate in Paragraphs 97 – 135, supra, CMA CGM and CMA CGM America traffic in the Confiscated Property because:

(a) TCM, AUSA, ZEDM, CEVA Logistics (known in Cuba as **CMA CGM LOG**), and CARILOG *all use an interest in the Confiscated Property* pursuant to 22 U.S.C. § 6023(13)(A)(i);

(b) TCM, AUSA, and ZEDM all 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, CEVA Logistics (known in Cuba as CMA CGM LOG), and CARILOG all lease or have otherwise acquired or *hold an interest in the Confiscated Property* pursuant to 22 U.S.C. § 6023(13)(A)(i).<sup>36</sup>

28. CMA CGM S.A. has a genuine interest in participating in the proceedings before this Court. At the same time, CMA CGM S.A. must comply with the laws of its home

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<sup>32</sup> *Id.* ¶ 35.

<sup>33</sup> *Id.* Preamb.

<sup>34</sup> *Id.* ¶ 122.

<sup>35</sup> *Id.* ¶ 136(a)–(c), (h) (“CMA CGM America cause, direct and/or participate in trafficking by CEVA Logistics (known in Cuba as CMA CGM LOG)”); ¶ 144 (“CMA CGM America continues to traffic by carrying cargo from PortMiami to the Port of Mariel.”).

<sup>36</sup> *Id.* ¶ 136(a)–(c) (emphases added).

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jurisdiction. The European Commission grants authorizations to EU operators in specific and duly motivated circumstances, when it is necessary to avoid serious damage to an EU operator's interests or those of the European Union.

29. AMERICA cannot properly defend itself without CMA CGM S.A.'s participation. AMERICA's meritorious defenses are factually intertwined with Plaintiffs' allegations relating to CMA CGM S.A. CMA CGM S.A.'s participation is critical to both providers putting forth a defense in the proceedings.

30. CMA CGM S.A. has a strong and compelling interest in protecting its subsidiaries, agents, and other interests in the United States. It anticipates that the European Commission and the French Ministry of Justice will grant authorization without causing an unreasonable delay in the proceedings.

31. There are currently two such requests pending from other cases filed under the Helms-Burton Act in the United States District Court for the Southern District of Florida. The Honorable Robert N. Scola Jr. and the Honorable Darrin P. Gayles both granted motions to stay the proceedings under similar circumstances. *See* Order Granting Iberostar's Motion to Stay, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 17]; Paperless Order Granting Motion to Stay, *Rodriguez et al. v. Imperial Brands PLC, et al.*, No. 20-CV-23287-Gayles (S.D. Fla. Sept. 23, 2020), [D.E. 49].

32. Following reinstatement of Title III, the EU Commission received a "substantial number of notifications" concerning the EU Blocking Statute, as demonstrated below.<sup>37</sup>

In total, 28 notifying parties informed the Commission or the relevant national competent authority about litigation before a US judicial authority or proceedings before a US administrative authority. Most of these notifications concern the application of Title III of the Helms-Burton Act which covers "trafficking" in property expropriated by the Cuban government.<sup>38</sup>

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<sup>37</sup> *See* Report from the Commission to the European Parliament and the Council Relating to Article 7(a) of Council Regulation (EC) No 2271/96 ('Blocking Statute') ("Commission Report"), available at: <https://data.consilium.europa.eu/doc/document/ST-11593-2021-INIT/en/pdf>.

<sup>38</sup> *Id.*

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33. The Commission is actively considering these requests. Just two weeks ago, the Secretary General of the European Commission issued a report specifically confirming the “Commission is currently assessing an application for authorisation in” one of the two cases stayed in the Southern District of Florida.<sup>39</sup>

**IV. LEGAL STANDARD**

34. Special concerns of “international comity” provide that “in some private international disputes the prudent and just action for a federal court is to abstain from the exercise of jurisdiction.” *See Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1518 (11th Cir. 1994) (citations omitted) (internal quotation marks omitted). Therefore, federal courts have fashioned the following principles that guide courts’ actions in cases of concurrent jurisdiction in a federal court and the court of a foreign nation: “(1) a proper level of respect for the acts of our fellow sovereign nations—a rather vague concept referred to in American jurisprudence as international comity; (2) fairness to litigants; and (3) efficient use of scarce judicial resources.” *Id.*

35. Consistently, federal courts have “broad authority to grant a stay,” and such authority is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *See In re Application of Alves Braga*, 789 F. Supp. 2d 1294, 1307 (S.D. Fla. 2011); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Such a stay may be justified when principles of abstention, such as international comity, are implicated as long as the stay is not “immoderate.” *See Ortega Trujillo v. Conover & Co. Commc’ns*, 221 F.3d 1262, 1264 (11th Cir. 2000) (citations omitted).

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<sup>39</sup> *Id.* at 12.

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**V. ARGUMENT**

**International Comity Requires a Temporary Stay to Allow European and French Authorities an Opportunity to Authorize CMA CGM S.A.’s Participation in the Lawsuit**

36. The Court should exercise its discretion and temporarily stay the proceedings in the interest of international comity and judicial efficiency. *See Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1518 (11th Cir. 1994) (reversing and remanding for an entry of stay based on principles of international comity); *see also* Order Granting Iberostar’s Motion to Stay, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 17]; Paperless Order Granting Motion to Stay, *Rodriguez et al. v. Imperial Brands PLC, et al.*, No. 20-CV-23287-Gayles (S.D. Fla. Sept. 23, 2020), [D.E. 49]. A temporary stay will allow CMA CGM S.A. to (i) comply with the EU Blocking Statue and obtain authorization before filing a response to the Complaint; (ii) comply with the French Blocking Statute and obtain authorization to participate in the lawsuit; and (iii) advance judicial efficiency.

37. The principles of international comity direct federal courts to “take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state.” *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 546 (1987). Thus, “[c]ourts and legislatures should take every reasonable precaution” to avoid subjecting participants in global commerce to “*differing legal commands of separate sovereigns.*” *See In re Grand Jury Proc.*, at 1391 (emphasis added) (citations and internal quotation marks omitted).

38. Consistent with these principles, two district courts in the Eleventh Circuit have held that a stay in the interest of international comity is appropriate pending authorization from the European Union before filing a responsive pleading or other motion in a lawsuit under the Helms-Burton Act. *See* Order Granting Iberostar’s Motion to Stay, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 17]; Paperless Order Granting Motion to Stay, *Rodriguez et al. v. Imperial Brands PLC, et al.*, No. 20-

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CV-23287-Gayles (S.D. Fla. Sept. 23, 2020), [D.E. 49].<sup>40</sup> The Honorable Robert N. Scola observed the significant risk of “sanctions for failure to first obtain authorization” and granted the defendant’s motion for stay “[i]n the interest of international comity . . . until the European Union grants Iberostar’s request for authorization.” Order Granting Iberostar’s Motion to Stay, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 17].<sup>41</sup>

39. The Court should adopt a similar analysis and grant AMERICA’s request for a limited stay. A stay of the proceedings will afford CMA CGM S.A. sufficient time to receive authorization from the European Commission and French authorities to participate in the lawsuit and reconcile “differing legal commands of separate sovereigns.” See *In re Grand Jury Proc.*, 691 F.2d at 1391. Further, such a stay would be consistent with the principles the Court should consider when judging abstention pursuant to international comity. These include respect to international law, fairness to the litigants, and efficient use of scarce judicial resources. Here, AMERICA has been served with the summons and complaint and is required to respond to the Complaint. And Plaintiffs have requested that CMA CGM S.A. waive service under Federal Rule of Civil Procedure 4(d).<sup>42</sup> Article 5 of the EU Blocking Statute prohibits CMA CGM S.A. and its “subsidiary or other intermediary person” (such as its agent AMERICA) from participating in these proceedings without authorization from the European Commission. Art. 5 Council Regulation (EC) No 2271/96. Consequently, CMA CGM S.A.

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<sup>40</sup> Other courts of this Circuit have similarly held that a stay of proceedings is appropriate in the interest of international comity in cases involving parallel proceedings in other jurisdictions. See, e.g., *Turner*, 25 F.3d at 1523; *Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1223-24 (11th Cir. 1999) (concluding based on *Turner* factors that trial court should have stayed rather than dismissed underlying lawsuit); *Dash 224, LLC v. Aerovias de Integracion Reg'l Aires, S.A.*, No. 1:13-cv-22796, 2014 WL 11456463, at \*5 (S.D. Fla. Mar. 27, 2014), *aff'd*, 605 F. App'x 868 (11th Cir. 2015) (granting stay where court was “confident that sufficient progress has been made in the [foreign proceeding] to justify a stay of this matter, ensuring fairness to the litigants as well as an efficient use of judicial resources”).

<sup>41</sup> An appeal to the United States Court of Appeals for the Eleventh Circuit from the Court’s Order denying Plaintiff’s motion to vacate the stay [D.E. 38] is currently pending. See *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 20-CV-20078-Scola (S.D. Fla. Apr. 24, 2020), [D.E. 42].

<sup>42</sup> CMA CGM S.A. does not waive its right to challenge personal jurisdiction by waiving service of the summons. See Fed. R. Civ. P. 4(d)(5) (“Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.”); *Don't Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1294 (11th Cir. 2021).

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is seeking such authorization consistent with Article 5’s required procedure. The same reasoning applies for the French Blocking Statute authorization.

40. A stay of the proceedings is appropriate as to both AMERICA and CMA CGM S.A. Plaintiffs’ own “bank shot” theory of liability for AMERICA depends on CMA CGM S.A.—and in turn CMA CGM S.A. subsidiaries and/or other agents allegedly operating in Cuba—as a basis to hold AMERICA liable under the Helms-Burton Act. Indeed, CMA CGM S.A. is tellingly defined as the “Defendant” in the Complaint; and AMERICA is contrarily referred to as the “co-Defendant.” Compl. ¶ 26. AMERICA needs CMA CGM S.A. to contribute to its defense once CMA CGM S.A. has received authorization under EU and French law. But without the contributions of CMA CGM S.A.—even if CMA CGM S.A. is dismissed as a formal party from the case<sup>43</sup>—AMERICA will be unable to properly and fairly defend itself. *See Turner Ent. Co.*, 25 F.3d at 1522 (“Ensuring the ability of the parties to fully and fairly litigate their claims in some tribunal surely is a paramount goal of international abstention principles.”).

**The Temporary Stay Sought Is Fair to the Parties**

41. A stay of these proceedings pending action by the European authorities (or further Order by the Court after 60-day status reports) will not prejudice any party. *See id.* (“[A] federal court must be satisfied that its decision will not result in prejudice to the party opposing the stay.”). Plaintiffs are seeking only monetary relief. This includes prejudgment interest by statute. 22 U.S.C. 6082(a)(1)(A)(i). This will fully compensate them for any delay in payment if Plaintiffs are the prevailing party.

42. Further, the parties have not commenced any discovery and are in the early stages of litigation. There is no tactical advantage to any party. A scheduling order has not yet been entered. And the case has not yet been set for trial. Thus, Plaintiffs will not be prejudiced by a temporary stay of the proceedings.

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<sup>43</sup> AMERICA further contends that Plaintiffs’ Complaint fails to state a claim, and that the Court lacks subject-matter jurisdiction. By filing this Motion to Stay, AMERICA does not waive—but expressly reserves—all further responses, defenses, objections, and putative motions to dismiss.

CASE NO. 1:21-CV-22778-COOKE/O’SULLIVAN

43. Plaintiffs’ lack of prejudice is further underscored by the fact that Plaintiffs waited more than two years after Title III became effective to commence their campaign of lawsuits. Once Plaintiffs did file suit, Plaintiffs sued four other entities before suing the CMA CGM Companies for compensation regarding *the same* property. This included Crowley Maritime Corporation, Crowley Holdings, Inc., Seaboard Marine, LTD, and A.P. Moller-Maersk A/S (*see supra* para. 21). The first of these lawsuits was filed on December 20, 2020.

44. Plaintiffs then waited more than eight months after the first of their many lawsuits to file a complaint against the CMA CGM Companies. There are, presumably, other companies and entities that Plaintiffs can and will pursue with their expansive (incorrect) interpretations of Title III of Helms-Burton and “bank shot” theories of liability. Given the circumstances, Plaintiffs are without good basis to claim a temporary stay of the proceedings against just one of their many putative defendants would cause any cognizable prejudice.

45. Against that lack of material harm, absent a stay, CMA CGM S.A. and AMERICA will be required to either (i) respond to the Complaint and participate in the lawsuit in violation of the EU Blocking Statute and the French Blocking Statute or (ii) risk the entry of a default judgment. Both alternatives put AMERICA and CMA CGM S.A. at risk for significant liability in addition to reputational harm. In particular, noncompliance with the European Union blocking statute puts CMA CGM S.A. and AMERICA at risk for civil liability. Moreover, if the Court does not grant AMERICA’s request for a temporary stay, AMERICA will be unable to appropriately defend itself against Plaintiffs’ claims. At a minimum, AMERICA will have to defend—and this Court will need to adjudicate—this case in a disjointed, inefficient manner. A temporary stay will allow the CMA CGM Companies to avoid the aforementioned risks and protect their economic and financial interests in the United States.

**A Temporary Stay Would Preserve Scarce Judicial Resources**

46. A temporary stay of the proceedings will promote judicial economy and preserve “scarce judicial resources.” *Turner Ent. Co.*, 25 F.3d at 1522. Criteria relevant to judicial efficiency include “whether the actions have parties and issues in common.” *Id.*



## CASE NO. 1:21-CV-22778-COOKE/O'SULLIVAN

AMERICA seeks a temporary stay for precisely this reason. As discussed above, the temporary stay is necessary because Plaintiffs seek to impose liability against AMERICA on the basis of conduct that derives in turn from CMA CGM S.A.'s subsidiaries' or other agents' alleged business transactions in Cuba. *See supra* paras. 24-28. Plaintiffs' claims against the CMA CGM Companies are factually intertwined. As set forth in Plaintiffs' Complaint, the line of causation for AMERICA's alleged liability literally "bank[s]" off CMA CGM S.A. in Jamaica. Compl. ¶¶ 35, 120-122. The causal theory then stretches back down from CMA CGM S.A.—ultimately attributing liability to AMERICA on the basis of three other, nonparty subsidiaries and/or agents of CMA CGM S.A. *Id.* ¶ 136(a)–(c). CMA CGA S.A.'s participation in the lawsuit is critical to a unified, coordinated schedule and proceedings for this Court's efficient adjudication. Hence, a temporary stay is necessary to preserve scarce judicial resources.

**The Requested Stay Is Limited in Duration**

47. CMA CGM S.A. is entangled between two conflicting legal systems and therefore AMERICA seeks a stay until thirty (30) days after CMA CGM S.A. receives authorization from the EU.

48. The duration of the requested stay is reasonable and will be further limited if Defendant's request for authorization is granted prior to the stay's expiration date. *See Ortega Trujillo*, 221 F.3d at 1264 (observing that a district court's stay must not be "immoderate").

49. The European Commission has received at least two comparable requests for authorization to participate in lawsuits under the Helms-Burton Act. The two requests are currently pending before the European Commission and have been pending for at least 17 months.<sup>44</sup> Given the circumstances and overlapping policy considerations, AMERICA anticipates that the European Commission will act on its authorization in a much shorter period of time than with the prior applicants.

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<sup>44</sup> *See* Commission Report at 12.

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50. Moreover, in the event the European Commission or French authorities issue a decision relating to similarly situated litigants subject to the EU Blocking Statute or the French Blocking Statute, the Court can revisit the stay.

51. If the motion to stay is granted, to prevent any potentially immoderate length, AMERICA will provide status reports on the progress of CMA CGM S.A.'s application every sixty (60) days, or as otherwise directed by the Court. AMERICA further warrants that it will continue to press for an expeditious disposition of CMA CGM S.A.'s pending application before the European Commission and the French Ministry of Justice.

**VI. CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1 (a)(3)**

In accordance with Local Rule 7.1 (a) (3) AMERICA's counsel has conferred with Plaintiffs' counsel about its request to stay these proceedings, and counsel does not agree to the requested relief.

**WHEREFORE, Defendant CMA CGM (AMERICA) LLC** respectfully requests that this Court enter an order staying the proceedings against it until thirty (30) days after CMA CGM S.A. has received authorization from the European Union, subject to the status reports, and such other relief that this Court deems just and equitable.

Date: September 20, 2021.

Respectfully submitted,

/s/ Jonathan Brightbill

Cari N. Stinebower (admitted *pro hac vice*)

Jonathan Brightbill (admitted *pro hac vice*)

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Attorneys for Defendant  
CMA CGM (AMERICA) LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2021, the foregoing Amended Motion was electronically filed with the Clerk of this Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/Jan M. Kuylenstierna

Jan M. Kuylenstierna

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# Exhibit 1

United States District Court  
for the  
Southern District of Florida

Maria Dolores Canto Marti, )  
Plaintiff, )  
 )  
v. ) Civil Action No. 20-20078-Civ-Scola  
 )  
Iberostar Hoteles y Apartamentos )  
S.L., Defendant. )

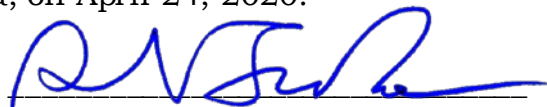
**Order Granting Iberostar’s Motion to Stay**

Iberostar Hoteles y Apartamentos S.L. requests that this Court stay the case until it can comply with the European Commission’s requirement for companies from the European Union to obtain authorization before filing a response to any lawsuit under the Helms Burton Act.

This requirement comes from a European Union blocking statute enacted to counteract the effects of the Helms-Burton Act, and Iberostar faces EUR 600,000 in sanctions for failure to first obtain authorization. (ECF No. 16 at ¶ 3.) Iberostar’s request for authorization has already been filed and is currently pending before the European Commission. (*Id.* at ¶ 18.) In the interest of international comity, this Court has determined that it is appropriate to stay this case pending the Iberostar’s request for authorization from the European Commission.

The Court **grants** Iberostar’s motion for a stay (**ECF No. 16**), and the case is **stayed** until the European Union grants Iberostar’s request for authorization. Iberostar shall submit status reports on its request for authorization **every 30 days**. In the interim, the Court directs the **Clerk** to **administratively close** this case.

**Done and ordered** at Miami, Florida, on April 24, 2020.

  
Robert N. Scola, Jr.  
United States District Judge

## ***Rodriguez et al v. Imperial Brands PLC, et al***

**Florida Southern District Court**

Case no. 1:20-cv-23287-DPG (S.D. Fla.)

Filed date: September 23, 2020

Docket entry no.: 49

Docket text:

PAPERLESS ORDER. Having considered the factors set forth in *Turner Entm't Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1518 (11th Cir. 1994), the Court finds that a limited stay is warranted for the reasons stated on the record. Accordingly, this Court grants 14 Defendant Imperial Brands PLC's ("Imperial") Motion for a Limited Stay and 26 Defendants WPP PLC, Young & Rubicam LLC, and BCW LLC's ("WPP Defendants") Motion to Join Stay for Defendant Imperial Brands PLC. This action shall be stayed through February 9, 2021, or until further order of the Court, while the European Union considers Imperial's request for authorization. Starting October 23, 2020, Imperial shall file monthly status reports on its request for authorization. Based on the advanced age of two individuals identified by Plaintiff at the hearing, the Court finds good cause to permit Plaintiff and the WPP Defendants to proceed with the deposition testimony of those witnesses during the stay. For the reasons stated on the record, 41 Plaintiff's Motion to Strike the Declaration of Andrew Rhys Davies is denied. Further, 24 Imperial's Motion to Extend Time to Respond to the Complaint While the Court Considers Imperial's Pending Motion to Stay is denied as moot. This case is stayed and administratively closed. Signed by Judge Darrin P. Gayles (mcy) (Entered: 09/23/2020)

This PDF was generated on February 22, 2021 by PacerPro for a text-only docket entry.

<https://app.pacerpro.com/cases/13447923>

# Exhibit 2



# Official Journal

## of the European Communities

L 309

Volume 39

29 November 1996

English edition

## Legislation

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Contents

I *Acts whose publication is obligatory*

- ★ Council regulation (EC) no 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom ..... 1
- 

*Acts adopted pursuant to Title V of the Treaty on European Union*

96/668/CFSP:

- ★ Joint Action of 22 November 1996 adopted by the Council on the basis of Articles J.3 and K.3 of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom ..... 7



Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

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## I

*(Acts whose publication is obligatory)*

## COUNCIL REGULATION (EC) No 2271/96

of 22 November 1996

**protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 73c, 113 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas the objectives of the Community include contributing to the harmonious development of world trade and to the progressive abolition of restrictions on international trade;

Whereas the Community endeavours to achieve to the greatest extent possible the objective of free movement of capital between Member States and third countries, including the removal of any restrictions on direct investment — including investment in real estate — establishment, the provision of financial services or the admission of securities to capital markets;

Whereas a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member State;

Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law and impede the attainment of the aforementioned objectives;

Whereas such laws, including regulations and other legislative instruments, and actions based thereon or

resulting therefrom affect or are likely to affect the established legal order and have adverse effects on the interests of the Community and the interests of natural and legal persons exercising rights under the Treaty establishing the European Community;

Whereas, under these exceptional circumstances, it is necessary to take action at Community level to protect the established legal order, the interests of the Community and the interests of the said natural and legal persons, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned;

Whereas the request to supply information under this Regulation does not preclude a Member State from requiring information of the same kind to be provided to the authorities of that State;

Whereas the Council has adopted the Joint Action 96/668/CFSP of 22 November 1996 <sup>(2)</sup> in order to ensure that the Member States take the necessary measures to protect those natural and legal persons whose interests are affected by the aforementioned laws and actions based thereon, insofar as those interests are not protected by this Regulation;

Whereas the Commission, in the implementation of this Regulation, should be assisted by a committee composed of representatives of the Member States;

Whereas the actions provided for in this Regulation are necessary to attain objectives of the Treaty establishing the European Community;

Whereas for the adoption of certain provisions of this Regulation the Treaty does not provide powers other than those of Article 235,

<sup>(1)</sup> Opinion delivered on 25 October 1996 (OJ No C 347, 18. 11. 1996).

<sup>(2)</sup> See page 7 of this Official Journal.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

This Regulation provides protection against and counteracts the effects of the extra-territorial application of the laws specified in the Annex of this Regulation, including regulations and other legislative instruments, and of actions based thereon or resulting therefrom, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries.

Acting in accordance with the relevant provisions of the Treaty and notwithstanding the provisions of Article 7 (c), the Council may add or delete laws to or from the Annex to this Regulation.

#### *Article 2*

Where the economic and/or financial interests of any person referred to in Article 11 are affected, directly or indirectly, by the laws specified in the Annex or by actions based thereon or resulting therefrom, that person shall inform the Commission accordingly within 30 days from the date on which it obtained such information; insofar as the interests of a legal person are affected, this obligation applies to the directors, managers and other persons with management responsibilities <sup>(1)</sup>.

At the request of the Commission, such person shall provide all information relevant for the purposes of this Regulation in accordance with the request from the Commission within 30 days from the date of the request.

All information shall be submitted to the Commission either directly or through the competent authorities of the Member States. Should the information be submitted directly to the Commission, the Commission will inform immediately the competent authorities of the Member States in which the person who gave the information is resident or incorporated.

#### *Article 3*

All information supplied in accordance with Article 2 shall only be used for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

<sup>(1)</sup> Information should be supplied to the following address: European Commission, Directorate General I, Rue de la Loi/Wetstraat 200, B — 1049 Brussels (fax (32-2) 295 65 05).

Communication of such information shall be permitted where the Commission is obliged or authorized to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if this is incompatible with the original purpose of such information.

In the event of a breach of confidentiality, the originator of the information shall be entitled to obtain that it be deleted, disregarded or rectified, as the case may be.

#### *Article 4*

No judgment of a court or tribunal and no decision of an administrative authority located outside the Community giving effect, directly or indirectly, to the laws specified in the Annex or to actions based thereon or resulting therefrom, shall be recognized or be enforceable in any manner.

#### *Article 5*

No person referred to in Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom.

Persons may be authorized, in accordance with the procedures provided in Articles 7 and 8, to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the Community. The criteria for the application of this provision shall be established in accordance with the procedure set out in Article 8. When there is sufficient evidence that non-compliance would cause serious damage to a natural or legal person, the Commission shall expeditiously submit to the committee referred to in Article 8 a draft of the appropriate measures to be taken under the terms of the Regulation.

#### *Article 6*

Any person referred to in Article 11, who is engaging in an activity referred to in Article 1 shall be entitled to recover any damages, including legal costs, caused to that person by the application of the laws specified in the Annex or by actions based thereon or resulting therefrom.

Such recovery may be obtained from the natural or legal person or any other entity causing the damages or from any person acting on its behalf or intermediary.

The Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters shall apply to proceedings brought and judgments given under this Article. Recovery may be obtained on the basis of the provisions of Sections 2 to 6 of Title II of that Convention, as well as, in accordance with Article 57 (3) of that Convention, through judicial proceedings instituted in the Courts of any Member State where that person, entity, person acting on its behalf or intermediary holds assets.

Without prejudice to other means available and in accordance with applicable law, the recovery could take the form of seizure and sale of assets held by those persons, entities, persons acting on their behalf or intermediaries within the Community, including shares held in a legal person incorporated within the Community.

#### Article 7

For the implementation of this Regulation the Commission shall:

- (a) inform the European Parliament and the Council immediately and fully of the effects of the laws, regulations and other legislative instruments and ensuing actions mentioned in Article 1, on the basis of the information obtained under this Regulation, and make regularly a full public report thereon;
- (b) grant authorization under the conditions set forth in Article 5 and, when laying down the time limits with regard to the delivery by the Committee of its opinion, take fully into account the time limits which have to be complied with by the persons which are to be subject of an authorization;
- (c) add or delete, where appropriate, references to regulations or other legislative instruments deriving from the laws specified in the Annex, and falling under the scope of this Regulation;
- (d) publish a notice in the *Official Journal of the European Communities* on the judgments and decisions to which Articles 4 and 6 apply;
- (e) publish in the *Official Journal of the European Communities* the names and addresses of the competent authorities of the Member States referred to in Article 2.

#### Article 8

For the purposes of the implementation of Article 7 (b) and (c), the Commission shall be assisted by a Committee

composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of two weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

#### Article 9

Each Member State shall determine the sanctions to be imposed in the event of breach of any relevant provisions of this Regulation. Such sanctions must be effective, proportional and dissuasive.

#### Article 10

The Commission and the Member States shall inform each other of the measures taken under this Regulation and of all other relevant information pertaining to this Regulation.

#### Article 11

This Regulation shall apply to:

1. any natural person being a resident in the Community <sup>(1)</sup> and a national of a Member State,

<sup>(1)</sup> For the purposes of this Regulation, 'being a resident in the Community' means: being legally established in the Community for a period of at least six months within the 12-month period immediately prior to the date on which, under this Regulation, an obligation arises or a right is exercised.

2. any legal person incorporated within the Community, any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.
3. any natural or legal person referred to in Article 1 (2) of Regulation (EEC) No 4055/86 <sup>(1)</sup>,
4. any other natural person being a resident in the Community, unless that person is in the country of which he is a national, *Article 12*
5. any other natural person within the Community, including its territorial waters and air space and in This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 November 1996.

*For the Council*  
*The President*  
S. BARRETT

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<sup>(1)</sup> Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ No L 378, 31.12.1986, p. 1). Regulation as last amended by Regulation (EC) No 3573/90 (OJ No C 353, 17.12.1990, p. 16).

## ANNEX

LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS <sup>(1)</sup>

referred to in Article 1

COUNTRY: UNITED STATES OF AMERICA

## ACTS

1. 'National Defense Authorization Act for Fiscal Year 1993', Title XVII 'Cuban Democracy Act 1992', sections 1704 and 1706

Required compliance:

The requirements are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

Possible damages to EU interests:

The liabilities incurred are now incorporated within the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

2. 'Cuban Liberty and Democratic Solidarity Act of 1996'

Title I

Required compliance:

To comply with the economic and financial embargo concerning Cuba by the USA, by, *inter alia*, not exporting to the USA any goods or services of Cuban origin or containing materials or goods originating in Cuba either directly or through third countries, dealing in merchandise that is or has been located in or transported from or through Cuba, re-exporting to the USA sugar originating in Cuba without notification by the competent national authority of the exporter or importing into the USA sugar products without assurance that those products are not products of Cuba, freezing Cuban assets, and financial dealings with Cuba.

Possible damages to EU interests:

Prohibition to load or unload freight from a vessel in any place in the USA or to enter a USA port; refusal to import any goods or services originating in Cuba and to import into Cuba goods or services originating in the USA, blocking of financial dealings involving Cuba.

Title III and Title IV:

Required compliance:

To terminate 'trafficking' in property, formerly owned by US persons (including Cubans who have obtained US citizenship) and expropriated by the Cuban regime. (Trafficking includes: use, sale, transfer, control, management and other activities to the benefit of a person).

Possible damages to EU interests:

Legal proceedings in the USA, based upon liability already accruing, against EU citizens or companies involved in trafficking, leading to judgments/decisions to pay (multiple) compensation to the USA party. Refusal of entry into the USA for persons involved in trafficking, including the spouses, minor children and agents thereof.

<sup>(1)</sup> Further information with regard to the aforementioned laws and regulations can be obtained from the European Commission, Directorate General I.E.3, Rue de la Loi/Wetstraat 200, B-1049 Brussels (fax: (32-2) 295 65 05).

### 3. 'Iran and Libya Sanctions Act of 1996'

#### Required compliance:

Not to invest in Iran or Libya any amount greater than USD 40 million during a period of 12 months that directly and significantly contributes to the enhancement of the Iranian or Libyan ability to develop their petroleum resources. (Investment covering the entering into a contract for the said development, or the guaranteeing of it, or the profiting therefrom or the purchase of a share of ownership therein.)

*NB:* Investments under contracts existing before 5 August 1996 are exempted.

Respect of embargo concerning Libya established by Resolutions 748 (1992) and 883 (1993) of the Security Council of the United Nations <sup>(1)</sup>.

#### Possible damages to EU interests:

Measures taken by the US President to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of USA Government funds, denial of access to loans from USA financial institutions, export restrictions by USA, or refusal of assistance by EXIM-Bank.

### REGULATIONS

#### 1. 1 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 — Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties)

#### Required compliance:

The prohibitions are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see above. Furthermore, requires the obtaining of licences and/or authorizations in respect of economic activities concerning Cuba.

#### Possible damages to EU interests:

Fines, forfeiture, imprisonment in cases of violation.

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<sup>(1)</sup> See Community implementation of those Resolutions through Council Regulation (EC) No 3274/93 (OJ No L 295, 30. 11. 1993, p. 1).

*(Acts adopted pursuant to Title V of the Treaty on European Union)*

## JOINT ACTION

of 22 November 1996

adopted by the Council on the basis of Articles J.3 and K.3 of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

(96/668/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Articles J.3 and K.3 (2) (b) thereof,

Having regard to the general guidelines given by the European Council meeting in Florence on 21 and 22 June 1996,

Whereas a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union;

Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law;

Whereas such laws including regulations and other legislative instruments and actions based thereon or resulting therefrom affect or are likely to affect the established legal order and have adverse affects on the interests of the European Union, and the interests of the said natural and legal persons;

Whereas the Council has adopted Regulation (EC) No 2271/96<sup>(1)</sup> in order to protect the interests of the Community and of natural and legal persons exercising rights under the Treaty establishing the European Community;

Whereas, in these exceptional circumstances, the Member States should take the necessary measures in order to ensure protection for the interests of the said natural and legal persons insofar as such protection is not provided under Regulation (EC) No 2271/96;

Whereas this Joint Action and Regulation (EC) No 2271/96 constitute together an integrated system involving the Community and the Member States each in accordance with its own powers,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

### *Article 1*

Each Member State shall take the measures it deems necessary to protect the interests of any person referred to in Article 11 of Regulation (EC) No 2271/96 and affected by the extra-territorial application of laws including regulations and other legislative instruments referred to in Annex to Regulation (EC) No 2271/96, and actions based thereon or resulting therefrom, insofar as these interests are not protected under that Regulation.

### *Article 2*

This Joint Action shall enter into force on the day of its adoption.

### *Article 3*

This Joint Action shall be published in the Official Journal.

Done at Brussels, 22 November 1996.

*For the Council*

*The President*

S. BARRETT

<sup>(1)</sup> See page 1 of this Official Journal.



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

ODETTE BLANCO DE FERNANDEZ  
*née* BLANCO ROSELL, et al.,

Plaintiffs,

v.

CASE NO. 1:21-CV-22778-  
COOKE/O'SULLIVAN

CMA CGM S.A. (a/k/a CMA CGM THE  
FRENCH LINE, a/k/a CMA CGM  
GROUP) and CMA CGM  
(AMERICA) LLC,

Defendants.

**DECLARATION OF MATHILDE LEFRANC-BARTHE**

I, Mathilde Lefranc-Barthe, declare:

1. I am over the age of eighteen, competent to testify and have personal knowledge of all the facts stated in this affidavit.
2. I am a Partner in the Paris office of the law firm W&S SELARL, and admitted to the practice of law in Paris, France.
3. On September 19, 2021, I filed a Request for Authorization under Article 5 paragraph 2 of Council Regulation (EC) No 2271/96 of 22 November 1996 *protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom*, on behalf of the French company CMA CGM S.A.
4. CMA CGM S.A.'s application seeks authorization from the European Commission to defend its interests before this Court and particularly to address the request made by this Court in the Summons in a civil action in relation to the complaint filed against CMA CGM S.A. and CMA CGM America in this Court by Plaintiffs pursuant to Title III of the Cuban Liberty Democratic and Solidarity Act of 1996.
5. The application was submitted on an expedited basis and I would expect the European Commission to grant the request for authorization within a reasonable period of time.

6. Equally, on September 20, 2021, I initiated the necessary authorization process to comply with provisions of the French blocking statute by contact to the French Ministry of Justice.
7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this September 20, 2021, in Paris, France.



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Mathilde Lefranc-Barthe  
Avocate au Barreau de Paris

# Exhibit 4



## **Loi n° 68-678 du 26 juillet 1968 relative à la communication de documents et renseignements d'ordre économique, commercial, industriel, financier ou technique à des personnes physiques ou morales étrangères**

**i** Dernière mise à jour des données de ce texte : 01 janvier 2002

### **Version en vigueur au 17 septembre 2021**

#### **Article 1**

**Modifié par Loi 80-538 1980-07-16 art. 2 I JORF 17 juillet 1980**

Sous réserve des traités ou accords internationaux, il est interdit à toute personne physique de nationalité française ou résidant habituellement sur le territoire français et à tout dirigeant, représentant, agent ou préposé d'une personne morale y ayant son siège ou un établissement de communiquer par écrit, oralement ou sous toute autre forme, en quelque lieu que ce soit, à des autorités publiques étrangères, les documents ou les renseignements d'ordre économique, commercial, industriel, financier ou technique dont la communication est de nature à porter atteinte à la souveraineté, à la sécurité, aux intérêts économiques essentiels de la France ou à l'ordre public, précisés par l'autorité administrative en tant que de besoin.

#### **Article 1 bis**

**Création Loi 80-538 1980-07-16 art. 2 II JORF 17 juillet 1980**

Sous réserve des traités ou accords internationaux et des lois et règlements en vigueur, il est interdit à toute personne de demander, de rechercher ou de communiquer, par écrit, oralement ou sous toute autre forme, des documents ou renseignements d'ordre économique, commercial, industriel, financier ou technique tendant à la constitution de preuves en vue de procédures judiciaires ou administratives étrangères ou dans le cadre de celles-ci.

#### **Article 2**

**Modifié par Loi 80-538 1980-07-16 art. 3 JORF 17 juillet 1980**

Les personnes visées aux articles 1er et 1er bis sont tenues d'informer sans délai le ministre compétent lorsqu'elles se trouvent saisies de toute demande concernant de telles communications.

#### **Article 3**

Sans **Modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 3 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002** préjudice des peines plus lourdes prévues par la loi, toute infraction aux dispositions des articles 1er et 1er bis de la présente loi sera punie d'un emprisonnement de six mois et d'une amende de 18000 euros ou de l'une de ces deux peines seulement.