

(S E R V E D)
(DECEMBER 8, 2010)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 10-10

DRAFT CARGOWAYS INDIA (PVT.) LTD.

v.

**DAMCO USA, INC., DAMCO A/S, A.P. MOLLER-MAERSK A/S, GLENCORE LTD.,
AND ALLEGHENY ALLOYS TRADING LP**

NOTICE OF FILING OF AMENDED COMPLAINT

Notice is given that an Amended Complaint has been filed with the Federal Maritime Commission ("Commission") by DRAFT CARGOWAYS (INDIA) PVT. LTD. ("Complainant") in this proceeding against DAMCO USA, INC., DAMCO A/S, AND A.P. MOLLER-MAERSK A/S ("Respondent") noticed on November 16, 2010 (75 FR 20005). Complainant asserted in its original complaint that Respondents violated Sections 8(a)(1), 10(b)(2)(A), 10(b)(11), 10(b)(13) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. §§40501(a)(1), 41104(2) and (11), 41103(a) and 41102(c). Complainant alleged that Respondents "invoiced and attempted to collect amounts from Complainant for demurrage and detention" on the shipments at issue and that "DAMCO A/S' published

tariff did not contain any demurrage and detention provisions....” Complainant alleged that Respondent DAMCO US has “made... false representations, misleading statements or omissions in a Complaint (...) filed in the United States District Court for the Eastern District of Virginia” pertaining to the same shipping transactions. Complainant also alleged that Respondents “have repeatedly utilized a ‘bait and switch’ scheme... in misleading the shipping public, including DRAFT, ... by utilizing DAMCO US, DAMCO A/S , and MAERSK as interchangeable parts” and that the scheme is a “practice.” Complainant asserted that by using this scheme Respondents “knowingly disclosed, offered, solicited and received information concerning the nature, kind, quantity, destination, shipper, consignee, and routing of the property...without the consent of DRAFT and us(ed) that information to the detriment and disadvantage to DRAFT.” Complainant asserted that it “has lost significant business to MAERSK generated by its Indian accounts related to subject shipments.”

The Amended Complaint describes further allegations raised by DAMCO A/S in the district court proceeding and makes further allegations indicating that DAMCO A/S “by cross-referencing MAERSK’s demurrage clause in its tariff violated 46 C.F.R. 520.7(a)(3)” and “by having two conflicting tariffs violated 46 C.F.R. 520.7(a)(4). Also, the Amended Complaint adds as parties to this proceeding, Glencore Ltd. (“Glencore”) and Allegheny Alloys Trading LP (“Allegheny”), as they were “the actual consignees for subject shipments,” and requests that “[i]f the Commission finds that DAMCO A/S is entitled to demurrage/detention”, Glencore and Allegheny be found in violation of Section 10(a)(1) of the Shipping Act, 46 U.S.C. § 41102(a), and be required to make reparations

to Complainant in the amount of \$20,725. The Amended Complaint does not alter the Complainant's original request that the Commission: compel Respondents to answer the complaint; find Respondents DAMCO A/S , DAMCO US and MAERSK in violation of the Shipping Act; order Respondents DAMCO A/S , DAMCO US and MAERSK to make reparations to Complainant in the amount of \$20,725 "for amounts paid for demurrage and detention", and \$150,000 for lost business and clients; pay interest, costs and attorneys' fees; order Respondents DAMCO A/S , DAMCO US and MAERSK to "cease and desist in the action filed in the United States District Court, Eastern District of Virginia... and to cease and desist in attempting to collect amounts for demurrage and detention in the amount of \$174,412.50; and impose any other relief as the Commission determines to be proper, fair, and just.

Notice is also given that Glencore and Allegheny are now identified as Respondents in the caption for this proceeding.

Karen V. Gregory
Secretary