

**BEFORE THE
FEDERAL MARITIME COMMISSION**

STREAK PRODUCTS, INC., and
SYX DISTRIBUTION INC.

Complainants,

v.

Docket No. 13-04

UTi, UNITED STATES, INC.,

Respondent.

**UTi UNITED STATES, INC.’S OPPOSITION TO
COMPLAINANTS’ MOTION TO DISMISS COUNTERCLAIM**

Respondent UTi, United States, Inc. (“UTi” or “Respondent”), by its counsel, hereby responds to Streak Products, Inc. (“Streak”) and SYX Distribution Inc.’s (“SYX”) (collectively “Complainants”) Motion to Dismiss Respondent’s Counterclaim (“Motion to Dismiss”).

The Commission Has Jurisdiction Over UTi’s Counterclaim

UTi’s counterclaim alleges that SYX failed to repay UTi for U.S. Customs and Border Protection (“CBP”) duties of \$40,958 in connection with shipments that UTi transported on behalf of SYX. UTi’s counterclaim falls squarely within the scope of this proceeding. First, the proper payment of customs duties promotes “an efficient and economic transportation system” pursuant to the Shipping Act, 46 USC § 40101 (2) and (3). Further, shipments for which the duties are owed constitute, in part, the subject of the Complaint in this proceeding, giving the Commission supplemental jurisdiction over the counterclaim.

I. The Counterclaim Raises Issues Beyond Contractual Obligations

Complainants allege that UTi's counterclaim constitutes "a straightforward breach of contract claim for failure to pay Customs' duties," outside the scope of the Commission's jurisdiction. *See* Motion to Dismiss at 2. UTi responds that the counterclaim is not so limited as a straightforward breach of contract claim and is appropriately within the Commission's jurisdiction, which is also not so limited.

The Commission's Rules of Practice and Procedure expressly provide for counterclaims "within the jurisdiction of the Commission." 46 CFR § 502.62. Where the alleged violation "raises issues beyond contractual obligations, the Commission will likely presume, unless the facts as proven do not support a claim, that the matter is appropriately before the agency." *Anchor Shipping Co. v. Alianca Navegacaoe Logistica Ltda*, 300 S.R.R. 998 (2006), *quoting Cargo One, Inc. v. COSCO Container Lines Co.*, 28 S.R.R. 1635, 1645 n. 17 (2000). The Commission may retain jurisdiction over a counterclaim involving elements of breach of contract where it also involves elements "peculiar to the Shipping Act." *Id.* Furthermore, an issue is "within the agency's expertise if it 'is not merely technical but extends to the policy judgments needed to implement an agency's mandate.'" *Pasha Auto Warehouse, Inc. v. Philadelphia Regional Port Authority*, 1998 WL 188848 at *6 (E.D. Pa. 1998), *quoting Allnet Communication Service, Inc. v. National Exchange Carrier Association, Inc.*, 965 F.2d 1118, 1120 (D.C. Cir. 1992).

Here, Complainant's failure to pay the \$40,958 owed to Respondent for duties paid to CBP on Complainant's behalf raises issues beyond Complainant's contractual obligations to Respondent. Complainant is obligated to pay import duties by U.S. law and CBP regulations. It

is increasingly common practice in international shipping for an FMC-licensed Ocean Transportation Intermediary (OTI) such as UTi to pay CBP import duties on a customer's behalf, in order to facilitate efficient ocean transportation and entry into U.S. commerce. As the regulator of ocean transport and OTI activities, this practice is directly related to the Commission's regulatory authority under the Shipping Act. In fact, the Commission has directly addressed this practice. The Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) regularly receives and resolves inquiries and consumer complaints regarding OTIs' payment (or non-payment) of CBP duties and related charges, often leading to cargo holds.

Moreover, the payment of CBP duties by a licensed OTI on behalf of a shipper-customer concerns policy judgments needed to implement the Commission's mandate to regulate licensed OTIs and to provide "an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices." 46 USC § 40101 (2) and (3).

Thus Respondent's payment of import duties on behalf of Complainant and Complainant's failure to pay those duties, giving rise to the counterclaim, are squarely within the Commission's jurisdiction as a breach of contract claim "peculiar to the Shipping Act."

II. Judicial Efficiency

The Commission should retain jurisdiction over the counterclaim, consistent with the federal jurisprudence that applies supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy. 28 USC § 1367(a). Because UTi's counterclaim arises from the same set of

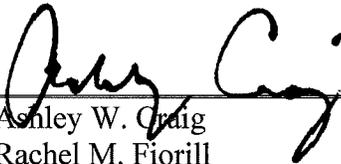
operative facts, the federal doctrine of judicial efficiency allows the Commission to retain jurisdiction over the counterclaim. *Finley v. United States*, 490 U.S. 545 (1989) (judicial economy and efficiency favor trying actions together where claims arose from a common nucleus of operative facts). UTi's counterclaim for CBP duties paid on Complainant's behalf arose from the same transaction and facts giving rise to Complainants' action—UTi's provision of ocean transportation services, as a licensed OTI, to Complainant for the shipments at issue. Therefore, judicial economy favors the Commission retaining jurisdiction over the counterclaim, which is by itself appropriately within the Commission's jurisdiction as a claim raising issues beyond breach of contract, consistent with 46 CFR § 502.62.

CONCLUSION

Respondent UTi respectfully requests that Complainants' Motion to Dismiss be denied.

Dated: April 1, 2014

Respectfully submitted,



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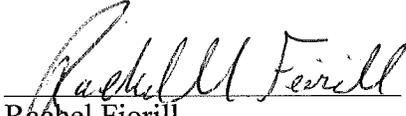
Counsel for Respondent UTi United States, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following individuals by e-mail and first-class mail:

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Dated in Washington, D.C. this 1st day of April, 2014.