

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC

RESPONDENT

COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

Complainant, Econocaribe Consolidators, Inc. ("Econocaribe") pursuant to the Scheduling Order dated October 4, 2014, Order on Complainant's Motion to Extend Time to File Proposed Findings of Fact and Brief dated March 10, 2015, and 46 C.F.R. 502.221, hereby submits this Reply to the Opposition Brief submitted by Respondent Amoy International, LLC ("Amoy").

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FINDINGS OF FACT

Econocaribe's Findings of Fact, which were filed with the Commission on April 2, 2015 are incorporated herein. Econocaribe also supplements its proposed findings of fact by the following, which have been separately produced to the Defendant:

1. The four containers of used tires were opened in China. None of the shipper seals (2300717, 2300718, 2300719 and 2300720) were returned to the U.S. ¶4-16, Declaration of Celeste Perez de Corcho, ECONO REPLY App. 00001-00003.
2. In April 2014, Maersk notified Econocaribe that Chinese Customs had ordered the cargo be returned to the U.S., but in order to initiate the re-exporting process, all accrued detention, demurrage, and storage costs had to be paid. Econocaribe believed that Amoy should be liable for these costs, plus return freight and subsequent destruction costs. Amoy never disputed that it would be liable for the return freight and subsequent destruction costs. ¶7, 8, and 9, Declaration of Bob Goldenberg, ECONO REPLY App. 00019-00020.
3. Econocaribe settled with Maersk to avoid charges from accruing in August 2014. Prior to its settlement with Maersk, Econocaribe, through its counsel, Mr. Neil B. Mooney, asked Amoy, through its then counsel, Ms. Margaret Morrow, whether if Econocaribe paid all detention, demurrage and storage charges in China to Maersk, would Amoy arrange with the carrier of its choice for transportation to its chosen destination. ¶11, Declaration of Bob Goldenberg, ECONO REPLY App. 00020; ¶9-14, Declaration of Neil B. Mooney, ECONO REPLY App. 00024.
4. Amoy never answered the question despite a reminder, leaving Econocaribe no choice but to pay everything and arrange the return and destruction of cargo. ¶12, Declaration of

Bob Goldenberg, ECONO REPLY App. 00020; ¶14, Declaration of Neil B. Mooney, ECONO REPLY App. 00024.

ECONOCARIBE'S OBJECTION TO AMOY'S PROPOSED FINDINGS OF FACT

1. Econocaribe objects to Amoy's proposed findings of fact No.2, ¶4 of Krystal Lee Lazcano's Declaration, and ¶9 of Melissa Chen's Declaration. Krystal Lee made the booking request at 11:46AM, May 20, 2013, ECONOCARIBE'S PFF App. 00045-00046; requested packing list and invoice at 11:53AM, May 20, 2013, ECONOCARIBE'S PFF App. 00050; received booking confirmation from Econocaribe at 11:58 AM, May 20, 2013, ECONOCARIBE'S PFF App. 00045; received packing list and commercial invoice four days *after booking was confirmed* at 10:56AM, May 24, 2013. Although the email string Amoy produced in its Opposition to Econocaribe's Summary Judgment contains a message dated May 17, 2013, in which Krystal Lee asked for photos of auto parts; it is unclear from the email message when the photo attached to the last page of the email string was received by Amoy. *See* AMOY 0124 - 0140, Amoy's Opposition to Motion for Partial Summary Judgment.
2. Econocaribe objects to Amoy's proposed findings of fact No.2, ¶4 of Krystal Lee Lazcano's Declaration, and ¶9 of Melissa Chen's Declaration, for the reasons set forth in paragraph 1.
3. Econocaribe objects to Amoy's proposed findings of fact No.4, ¶4 of Krystal Lee Lazcano's Declaration. The photo purported to be from Kumquat does not reflect that the cargo consisted of auto parts. The picture shows a plain box wrapped in plastic films. The actual content was neither visible nor obvious from the picture.

4. Econocaribe objects to Amoy's proposed findings of fact No. 15 and 16. These statements were not found on only "one" Internet website. ECONO PFF App. 00397 - 00404. Furthermore, the statements speak for themselves.
5. Econocaribe objects to Amoy's proposed findings of fact No. 17. Neither ECONO PFF. App. 00067 nor ECONO PFF. App. 00083 shows that "Amoy informed Econocaribe that re-exporting the cargo was an option that Amoy was looking for" or Amoy's goal was "to re-export the cargo." ECONO PFF. App. 00067 says what it says "in this case, can we request MSK to allow us some extra time at port of destination or abandon the cargo or return to US seller or resell to other ports in China?" ECONO PFF. App. 00083 says what it says "please also advise the return option to U.S. I was told by China office such commodity is prohibited in importing. please let me know our options." Amoy was merely exploring options, rather than informing Econocaribe of any specific option it was pursuing. There was nothing to prevent Amoy from re-exporting the goods at any time.
6. Econocaribe objects to Amoy's proposed findings of fact No. 20, ¶13 of Melissa Chen's Declaration, and ¶8 of Krystal Lee's Declaration. Econocaribe did advise Amoy that Maersk probably would not directly deal with Amoy because Econocaribe was shipper on Maersk's Bill of Lading. However, Econocaribe could not have legally, practically, or otherwise stopped Amoy or its own Chinese offices from directly communicating with Maersk. As a sophisticated shipper and NVOCC with both US and Chinese maritime licenses and offices, Amoy was always in a position to deal with the vessel operator. Analogous would be the purchase of a soda with filth in the can. If the supermarket tells me that because it purchased the drink from Coca Cola I cannot contact the bottler, am I

prevented from doing so? Of course not. Amoy is feigning obstruction where there was none.

7. Econocaribe objects to Amoy's proposed findings of fact No. 21 as misleading. Econocaribe discussed an abandonment letter only upon Amoy's initiative. See the prompting email from Melissa Chen: "if you need me to issue abandonment letter to MSK to push them for faster response please let me know." ECONO PFF App. 00119.
8. Econocaribe objects to Amoy's proposed findings of fact No. 22 as misleading. First, Econocaribe did not suggest the contents of the abandonment letter. Second, as mentioned in (7) above, Amoy initiated it. ECONO PFF App. 00119.
9. Econocaribe objects to Amoy's proposed findings of fact No. 23 and No. 24. John Kamada did not make any representation that the opinion on the usual costs of abandonment or re-export came from Maersk. His statement that "we do have your abandonment letter but we needed to get Maersk's stance on the cargo before we could proceed" implies that he did not have it then. ECONO PFF App. 00120.
10. Econocaribe objects to Amoy's proposed findings of fact No. 27. Econocaribe could only request re-export costs from Maersk, which had been done. ECONO PFF App. 00108-00110, 00107, and 00155.
11. Econocaribe objects to Amoy's proposed findings of fact No. 31 and ¶5 of Melissa Chen's Declaration, AMOY 0155. Econocaribe did give Amoy the substance of Maersk's September 6, 2013 email. Although much of the communication between Econocaribe and Amoy were email, there were also phone calls, which Amoy itself confirms.
12. Econocaribe objects to Amoy's proposed findings of fact No. 32. Econocaribe did not "fail" to communicate with Amoy regarding the status of the cargo from November 1,

2013 to April 14, 2014. The lack of communication was due to the lack of news from Chinese Customs. Additionally, Amoy itself made no inquiries during that time, nor did it provide the export details and documentation previously requested by Econocaribe.

13. Econocaribe objects to Amoy's proposed findings of fact No. 37. The underlying statements that Amoy "had lost contact with the shipper due to the time that had elapsed", and Amoy's quotation to its May 9, 2014 email where Melissa Chen stated "we've tried everything we could in the very beginning when we suspected something wasn't going right from tracing back to trucker to vender and hiring attorney after the shipper, but we weren't able to get any help and we have completely lost contact with shipper" are belied by the facts. Page 15, Amoy's Brief. There is no evidence that Amoy made any effort to contact the shipper or hired an attorney to go after the it. Had Amoy made a genuine effort to go after the shipper, Kumquat would have responded, which it continues to do. *See Evergreen Marine Singapore Pte. Ltd. v. Vante World Transport USA Inc.* filed this year in the Central District of California. 2:15-cv-00593-PA-AS. The only actual evidence is Amoy's admissions that it was trading in this cargo for its own account.
14. Econocaribe objects to Amoy's proposed findings of fact No. 40. Before it seized the cargo, Econocaribe was informed of several disposition options that Chinese Customs could take. *See* the July 17, 2013 email, ECONO PFF App. 00152, and ECONO PFF App. 00148 of September 6, 2013 stating that the best option was to re-export. Econocaribe did not receive any other verbal or written communication from Maersk about the possibility or impossibility of abandonment or re-export. Further, the contents of these two emails were communicated to Amoy. None of these emails use the language "had to be exported." The Maersk May 14, 2014 email cited by Amoy was either an

incomplete statement of the three options provided in the July 17, 2013 email, or an inaccurate restatement of the advice Maersk provided prior to the cargo seizure.

15. Econocaribe objects to Amoy's proposed findings of fact No. 41. Econocaribe in fact provided Amoy with all the information it received from Maersk.
16. Econocaribe objects to Amoy's proposed findings of fact No. 42. Amoy is the root cause that cargo was shipped and seized by Chinese Customs. Amoy is wholly responsible for these costs.
17. Econocaribe objects to Amoy's Statement of Facts that "Econocaribe did not reply" to a June 20, 2013 email asking Econocaribe to confirm all charges for the shipment and all fees including the return to the U.S. Page 4 Amoy's Brief. ECONO PFF App. 00121-00123 shows that Ariel Martinez responded to that email by asking "All charges for the OFR to Xingang? Or the return back to the US?" When Krystal Lee answered that "please include all fees including return to US," Ariel responded by saying "Noted, I've been working on this with carrier. We are waiting for them to confirm all the charges..." ECONO PFF App. 00120.
18. Econocaribe objects to Amoy's Statement that "Econocaribe did not respond" to a follow-up on June 21, 2013 that asked if carrier had updated Econocaribe with the fees. Page 4 Amoy's Brief. Econocaribe did respond to this email and an email Amoy sent just thirteen minutes later, saying "we are still waiting on Maersk ..." ECONO PFF App. 00118.
19. Econocaribe objects to Amoy's Statement of Facts that Econocaribe never replied to Amoy's inquiry that what was the consequence once it submitted the abandonment letter. Page 5, Amoy's Brief. John Kamada remembers distinctly speaking with Melissa Chen

on the phone and telling her that once she submitted the abandonment letter they would have to wait for Chinese Customs' response.

20. Econocaribe objects to Amoy's Statement of Facts alleging that since June 19, 2013 Amoy had been requesting return options. Page 6 of Amoy's Brief. Amoy never request the return of cargo. Amoy only inquired about costs of return. When it was asked to confirm return of the cargo to the U.S., Amoy never responded nor did it ever provide any export destination, consignee, nor documentation to accomplish it. ECONO PFF App. 00092.
21. Econocaribe objects to Amoy's Statement of Facts that "in view of this email, Amoy understood that 'the shipment will need to be destroyed at the port of destination.'" Page 8, Amoy's Brief. Amoy could have sought the cargo's return without going through Chinese Customs' seizure and disposition. Amoy made the public decision to abandon the cargo, while secretly attempting to sell the goods for its own account. ECONO PFF App. 00403.
22. Econocaribe objects to Amoy's Statement of Facts that "Econocaribe never advised Amoy on destruction procedure and there is no evidence that Econocaribe inquired with Maersk about the destruction option following Amoy's inquiry." Page 8, Amoy's Brief. The Maersk correspondence said clearly that when cargo remained more than 90 days without collection by the consignee, it would be considered abandoned and could be disposed of by Chinese Customs on its own. Any destruction procedure would be set by Chinese Customs after the 90 days period passed and it had finished its inspection. There was nothing more for Econocaribe to ask. Further, given that this is a Chinese Customs procedure, it is disingenuous for Amoy, a Chinese MOC-licensed NVOCC with its own

offices in all major cities in China, to pretend that the unlicensed Econocaribe in the USA should deal with Chinese Customs issues best.

23. Econocaribe objects to Amoy's Statement of Fact that "Econocaribe did not respond to Amoy's request to let it know if there was a way to reduce the 90 day waiting time." Page 8, Amoy's Brief. Econocaribe did inquire with Maersk to see if the waiting period could be reduced but received no answer from Maersk. *See* ECONO PFF App. 00151 and ECONO PFF App. 00107.
24. Econocaribe objects to Amoy's Statement of Fact that John Kamada's September 26, 2013 email "confirmed the abandonment of the cargo" as misleading. Page 10, Amoy's Brief. The statement was made based on Econocaribe's understanding and Maersk's representation that after 90 days without pick up by consignee, cargo would be considered abandoned. From that perspective, there is no misrepresentation. That underlying email was not produced by Econocaribe in its submission for proposed findings of fact because Econocaribe did not believe and still does not believe that it is relevant to this case.
25. Econocaribe objects to Amoy's suggestion that "there are indications that there was additional communications between Maersk and Econocaribe, prior to seizure of the cargo by Chinese Customs, warning Econocaribe to re-export the cargo." Page 12, Amoy's Brief. Nothing in Amoy 164, 170, 171 and ECONO PFF App. 00186 actually suggests it. The statement that "at that time we made it known that best option was to find a new consignee or start re-export" in Maersk's May 12, 2014 email refers to the September 6, 2013 email, which is not "additional". ECONO PFF App. 001237. The statement that "the BL consignee ... said on several occasions that this was not their cargo

and that is when we reverted back to Econocaribe to find a new buyer or re-export" in Maersk's June 9, 2014 email refers to the July 9, 2013 email where Maersk said "pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue." ECONO PFF App. 00141-00144. Again, this is not "additional" communication.

26. Econocaribe objects to Amoy's Statement of Fact that "these early warnings from Maersk to Econocaribe to re-export, as referenced in Maersk's May 12 and June 9, 2014 emails, were not produced by Econocaribe in this case and were not forwarded to Amoy." Page 12, Amoy's Brief. As stated above, these emails were the July 9 and September 6 emails, which were both produced in this case and were communicated to Amoy immediately after Econocaribe received them.
27. Econocaribe objects to Amoy's Statement of Fact that "Econocaribe also failed to inform Amoy that abandonment would work and that they would need to find a local agent or CHB [custom house broker] for guidance." Page 12, Amoy's Brief. First, it is impossible for Econocaribe or Maersk to tell Amoy whether abandonment would work because this is entirely up to Chinese Customs. Second, Amoy, with its own offices in China and Chinese maritime license, was better informed as to Chinese procedures than Econocaribe. Third, Econocaribe nonetheless advised Amoy that after a 90 day waiting period, Chinese Customs would consider the cargo abandoned and order its disposition in accordance with one of the three options. The abandonment route was not guaranteed to work and it was a risk Amoy knowingly took with the understanding that it would be responsible for all charges and the costs would be sky high. Sophisticated Amoy had

very recent experience with this same situation with the European carriers Mediterranean Shipping Corporation (MSC) and Zim Lines.

28. Econocaribe objects to Amoy's Statement of Fact "nor did Econocaribe inform Amoy that the abandonment letter was merely a ploy to see if Chinese Customs would decrease the 90 day waiting period." Page 12, Amoy's Brief. The ploy itself was suggested by Melissa Chen. ECONO PFF App. 00067. The waiting period was about to expire, so it was impossible to decrease. ECONO PFF App. 00149.
29. Econocaribe objects to Amoy's Statement of Facts that Melissa "believed that the letter of abandonment, which Econocaribe had requested in September 2013, had been effective in addressing the problem because she hadn't heard from Econocaribe since November 2013, and Mr. Kamada's last substantive email to Ms. Chen, sent on September 26, 2013, had referred to the cargo as abandoned and noted that the containers would be emptied." Page 14, Amoy's Brief. In light of Amoy's very recent experiences with this same situation with MSC and Zim Lines, Ms. Chen is indicating either gross incompetence or disingenuousness. She had the November 1, 2013 email saying "only options now is for Customs to proceed with their process of inspection and disposition ..." and "still a chance they may order cargo back to origin as 'returned goods'(cargo prohibited/restricted import to China)." ECONO PFF App. 00193. It clearly showed the matter was not resolved in September.
30. Econocaribe objects to Amoy's Statement of Fact that "this was the first time that Econocaribe relayed that re-export was the only option and was information that should have been conveyed from the outset" as misleading. The record is clear that this is the first time Econocaribe itself was informed that re-export was the only option. All news

had steadily been relayed to Amoy. ECONO PFF App. 00152. Even on November 1, 2013, Econocaribe was informed by Maersk that auction and destruction were possible. ECONO PFF App. 00193. Econocaribe could not have conveyed that re-export was the "only" option from the outset. If there is somebody can foresee this problem, it could only be Amoy, because it was fully aware from the outset that cargo was "prohibited" *See e.g.*, ECONO PFF App. 00083 and 00116 and it had so much recent experience with similar issues in Europe.

31. Econocaribe objects to Amoy's Statement of Fact that "because Amoy's communication was limited to Econocaribe, it cannot discern where the breakdown occurred, i.e., whether Econocaribe failed to pass on Amoy's request to re-export and for the costs associated therewith or whether Econocaribe passed on Amoy's requests and Maersk failed to reply." Page 15, Amoy's Brief. First, the record is clear that Econocaribe inquired with Maersk many times about the return costs. ECONO PFF App. 00108-00110, 00107, and 00155. Second, Amoy never requested re-export. It is playing a game of semantics by trying to equate a request for costs information with request for re-export. See objection (20) above.
32. Econocaribe objects to Amoy's Statement of Facts that "Amoy was shocked to learn that Maersk had apparently advised Econocaribe early on to re-export the cargo while Econocaribe was advising Amoy that abandonment was the most cost-efficient and expeditious option." Page 16, Amoy's Brief. As stated above, Maersk's advice about re-export was relayed to Amoy as early as July 9, 2013. ECONO PFF App. 00132. Econocaribe never guaranteed that abandonment was the most cost-efficient and expeditious option in this case. It actually advised: "you can return the shipment to US

for an attempt to re-sell here but this is usually a more expensive alternative" . Regardless of Econocaribe's advice, the "final decision" was always Amoy's. ECONO PFF App. 00129-00130.

33. Econocaribe objects to Amoy's Statement of Facts that Econocaribe never pursued Amoy's offer to cooperate. Page 17, Amoy's Brief. This ignores reams of Econocaribe emails and innumerable phone calls during the entire pre-seizure period. If Econocaribe had not sought Amoy's cooperation, it could have dealt with the cargo without going back and forth between Maersk and Amoy.
34. Econocaribe objects to Amoy's Statement of Fact contained in the last paragraph on page 18 of its Brief, saying that Maersk's return Bill of Lading contained several errors such as description of cargo as "auto parts" and same Maersk seal numbers. First, Maersk did the bill of lading itself, not Econocaribe. Second, Maersk's Arrival Notice corrected the description and the seal numbers. Third, there were three seals on each of the four Eastbound containers. There were several used seals laying on the floor inside the returned containers. Econocaribe photographed these used seals. None of the original Maersk seals (2300720, 2300718, 2300719, and 2300717) was found on the returned containers or inside the containers. See ¶4-16, Declaration of Celeste Perez de Corcho. Clearly, the containers were opened in China. As to the explanation Amoy seeks in that paragraph, the cargo could have been returned in June 2013 but Amoy never either gave authorization or made arrangements for this.

ARGUMENT

I. THE CREDITABILITY OF AMOY'S TESTIMONY

Amoy's testimony comes exclusively from two highly biased witnesses - Melissa Chen and Krystal Lee. Ms. Lee was the person who made the "unauthorized booking," (as Ms. Chen described it) and whose misdeclaration set in motion the shipment and subsequent detention and seizure in China. She needs to minimize the appearance of her wrongdoing and potential legal liability, as well as must she consider her employment reference from Amoy. Her knowledge of the cargo's actual nature prior to shipping is disputed. Whether she received any benefit from the shipper has also been disputed.

Melissa Chen is the owner of Amoy with direct a financial interest in the outcome of this matter. Her testimony and that of Amoy has changed repeatedly throughout the course of this proceeding, to wit:

- 1) Amoy stated in its response to Econocaribe's Request for Production that it made no efforts in finding a buyer for the Cargo in China. ECONO PFF App. 00413. When the Internet advertising was discovered by Econocaribe, Amoy changed its story. *See* Melissa Chen Declaration in Opposition to Motion to Compel Discovery.
- 2) After the discovery of the damaging Internet advertisement, Melissa Chen first denied the truth of the statement that " Our business is related to Rubber & Plastics Industry and we specifically deal in tires scrap" so she stated "I do not know who posted the information that is found on the other pages of Exhibit 1 ..." Page 2-3, Melissa Chen Declaration in Opposition to Motion to Compel Discovery. Now Krystal Lee admits that she did it as instructed by Melissa Chen. ¶8, Krystal Lee's Declaration, AMOY 0151. Amoy admits that it was "... trying, in good faith, to find a buyer for the tires at issue." Page 25, Amoy's Brief.

- 3) On August 20, 2013, when Amoy sent Econocaribe a photo it said was "the picture of the tire bales." Now, for the first time, it admits that this not true. The picture was downloaded from a website as "... a representative photo." ¶24, Melissa Chen Declaration, AMOY 0164.
- 4) Ms. Chen at one time said that Mr. Daniel Akhromtsev sent Amoy the picture referenced in (3) above. Page 36, Amoy's Brief. Ms. Chen is not only impeached by her staff and her own testimony, but she is capable of telling two different stories at the same time. She described how she got this photo in two different ways, in the same submission.
- 5) In its response to Econocaribe's Requests for Production, Amoy stated that it "did not file a tariff for this shipment. AES was filed by the shipper." Amoy's Response to Request No. 10, ECONO REPLY App. 00030. In its Opposition Brief, it contradicts itself again by saying "The shipper also emailed Amoy the seal numbers on each of the containers into which it had loaded the cargo and Amoy entered those numbers into the AES ITN." Page 2, Amoy's Brief. So in fact it did make a false AES filing, it now testifies in contradiction to prior testimony.
- 6) At a time when no loss had been identified, Melissa Chen represented to Daniel Akhromtsev that the loss was over \$100,000. She said that she needed the information immediately for an attorney to start working on a fraud case. In fact Amoy never sued the shipper, and Ms. Chen now says that she said what she did so because she wanted to "indicate the severity of the problem to Daniel", rather than to assist an attorney. ¶ 4, Melissa Chen's Declaration, AMOY 1054.

II. THE CREDIBILITY OF JOHN KAMADA'S TESTIMONY

In contrast, John Kamada is an employee of Econocaribe and has nothing to lose in this case. He acted in accordance with the custom of the trade and industry standards in attempting to resolving the detention and seizure issue - communicating Amoy's inquiries to Maersk and providing Maersk's responses back to Amoy and mitigating the storage and demurrage costs with Maersk. Mr. Kamada's testimony has never changed, neither to corroborate with evidence discovered during the course of litigation or otherwise. He has remained true in all cases to his original testimony.

III. AMOY'S VIOLATION OF THE SHIPPING ACT

a. Violation of 46 U.S.C. § 41104 (2)(A) and Section 10(b)(2)(A) of the Shipping Act of 1984, as amended

Section 10(b)(2)(A) of the Shipping Act of 1984 as amended by OSRA, 46 U.S.C. APP. § 1709(b)(2)(A) (1999), prohibits a common carrier from providing service other than in accordance with the rates contained in its published tariff. Amoy provided service to Kumquat of a shipment of used tires with a rate applicable for auto parts, that was not in accordance with its published tariff which under the FMC regulation is required to "list each classification of cargo in use." Thus Amoy has violated 46 U.S.C. § 41104(2)(A) and Section 10(b)(2)(A) of the Shipping Act of 1984, as amended.

Econocaribe does have standing to bring a violation of Section 10(b)(2)(A) complaint against Amoy. 46 U.S.C. APP. § 1710(a) allows *any person* to file a sworn complaint alleging a violation of 46 U.S.C. APP. § 1709(b)(2)(A) with the Commission and to seek reparation for any injury caused to the complainant by that violation. In *Petchem, Inc. v. Canaveral Port Authority*, the Commission found that Section 11(a) of the Shipping Act of 1984, 46 U.S.C. APP. § 1710 permitted *any person* to file a complaint alleging violations of the statute and that the "any

person" means, literally, "any person." *Petchem, Inc. v. Canaveral Port Authority*, 1986 WL 170038 at *20, n.39 (F.M.C.). Further, Econocaribe did suffer in jury in fact by Amoy's violation, that is all the costs arising from the misdeclared shipment.

Econocaribe's citation to *Oceanic Bride Int'l, Inc. Possible Violations of Section 10(A)(1) of the Shipping Act of 1984*, 2014 WL 545231 (FMC 2014) was to support the argument that a finding of willfulness and knowledge is not necessary in a finding of violation of Section 10(b)(2)(A), and that such a finding is only useful in assessing civil penalties. *Oceanic Bride Int'l, Inc.* states that to act knowingly and willfully is an element of a section 10(a)(1) violation because that is on the face of the statute. *Id.* at 17. However, the face of Section 10(b)(2)(A) only prohibits common carrier from providing service in the liner trade that is not in accordance with the rates, classifications, rules, and practices contained in a tariff published or a service contract. Willfulness is not an element. Under Section 13(a) of the Shipping Act of 1984, as amended, 46 U.S.C. APP. § 1712(a), a finding of willfulness and knowledge is a ground for increasing civil penalty for violation of the Shipping Act, including Section 10(b)(2)(A).

b. *Violation of 46 U.S.C. §41102(a) and Section 10(a)(1) of the Shipping Act of 1984, as amended*

- i. Amoy knowingly and willfully obtained a lower ocean transportation rate by means of false declaration

Amoy seeks to attack Econocaribe's claim by saying that Econocaribe failed to identify the lower ocean rate as compared to the purported correct rate. This is wrong. Econocaribe has identified the lower ocean rate as being that which was obtained by Amoy. Econocaribe could not identified the purported correct rate because it would not have shipped prohibited goods unless it was first notified of the nature of the prohibition and exemption, indemnified, and paid a premium commensurate with the risk. 46 U.S.C. § 41102(a) and Section 10(a)(1) only require

the proof that the person "knowingly and willfully ... obtain or attempt to obtain ocean transportation ... at less than the rates or charges that would otherwise apply." The obtained ocean rate was less than what would have otherwise applied.

In response to Amoy's redefinition of "unauthorized booking," Econocaribe believes that Amoy's explanation is illogical, twisted, disingenuous, and out of context. An employee's booking is only authorized by its employer, not by a governmental entity. Chinese Customs can only authorize importation, but not the booking.

The dispute regarding Krystal Lee's knowledge of the cargo will have to be resolved at trial. Econocaribe notes that Melissa Chen's dispute about the conversation she had with John Kamada on May 18, 2014 may well just be another inconsistency in her testimony.

Amoy admits to advertising scrap tires for sale, and did so without any post-export formalities of obtaining legal title from Kumquat. It must have owed the goods to offer them for sale. Econocaribe objects to Amoy's explanation why it advertised itself as used tire dealer. Amoy stated that "it advertised on the internet, after the tires landed in China, in a diligent attempt to sell those tires in the most expeditious manner." Page 28, Amoy's Brief. Was it selling what it did not own? An expeditious manner of finding buyer/consignee for these scrap materials would be nothing like to ask for \$100-400 per ton. Potential buyers would be scared away.

Econocaribe also objects to Amoy's statement that it did not collect the goods from the recycler. Even if Amoy had not arranged for the delivery of the sealed containers to the Maersk terminal in Oakland, California, as a C-TPAT participant¹, Amoy must verify the identity of

¹To join C-TPAT, a company must sign an agreement to work with U.S. Customs and Border Protection ("CBP") to protect the supply chain, identify security gaps, and implement specific security measures and best practices.

every shipper it directly deals with, and must screen that shipper to confirm the validity, financial soundness, the ability of meeting contractual security requirements, and the ability to identify and correct security deficiencies as needed on the part of each shipper/customer. Amoy certainly should have had and checked the trucker's bill of lading showing that the cargo was not auto parts. *See CMA CGM S.A. v. Deckwell Sky (USA) Inc.*, No. 2:14CV135, 2015 WL 1224281, at *9, fn. 5 (E.D. Va. Mar. 16, 2015)(Court inferred from the fact that John Chen specifically identified to the Defendant that one shipping line was not to use that this shipping line would have been more likely to discover the fraud prior to shipment presumably because it had a strict corporate policy in inspecting the original trucking company's bill of lading). Further, as the Court in *CMA CGM S.A.* correctly identified, the burden was on the freight forwarder, Amoy in this case, who directly dealt with the shipper to check the trucker's bill of lading. *Id.*

Amoy whose business is or was in the used rubber and plastic industry would face a high probability that the cargo would be used rubber. Without checking the trucker's bill of lading, it acted with reckless disregard as to the declaration of cargo. That the practice of requesting commercial invoices prior to departure of shipment was found by the Commission as an appropriate practice in *La Torre's Enterprises, et. al v. Natural Freight Ltd./Skytruck, et. al.* has no bearing in this case. The freight forwarder in *La Torre's* was not specialized in a particular industry nor is there any indication that it was a C-TPAT participant. *La Torre's Enterprises, et. al v. Natural Freight Ltd./Skytruck, et. al.*, 2011 WL 7144018, at *8 (F.M.C.).

Additionally, the C-TPAT partner must provide CBP with a security profile outlining the specific security measures the company has in place. It must address a broad range of security topics and present security profiles that list action plans to align security throughout their supply chain.

- ii. Amoy knowingly and willfully obtained a lower ocean transportation rate by means of false declaration.

46 C.F.R. § 545.2 would not change the result of *Capitol Transportation, Inc. v. United States*. A refusal to pay demurrage without good faith legal defense still constitutes an "unjust or unfair device or means" to obtain for property at less than the properly applicable rates. See *Oceanic Bridge International, Inc. - Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, 2014 WL 5454231, at *14("The Commission [in *Capitol Transportation, Inc.*] could properly find on this record that Capitol's refusal to pay had never been based upon a good faith legal defense, but simply reflected a calculated judgment to fight MSC to the end, forcing it to pay in blood, sweat and treasure for every penny eventually collected.").

In this case, Amoy's refusal to pay the undisputed portions of the bills is without good faith. Amoy states that it only paid the freight bill of China. Page 31, Amoy's Brief. However, Amoy neglects that the undisputed portion includes also the return freight and destruction related costs. After Amoy refused to repatriate the cargo from China or pay the entire demurrage costs, but prior to the filing of this Complaint, Econocaribe, through its undersigned counsel, asked if Amoy would at least arrange the return freight and destruction costs. Amoy ignored this request, even after Econocaribe followed up. ¶7-12, Declaration of Bob Goldenberg; ¶9-14, Declaration of Neil B. Mooney. Amoy's refusal to contribute even a penny to the entire damages betrays its pretended good faith reliance on valid legal defense.

Amoy's refusal to pay any demurrage is also bad faith. Amoy blames Econocaribe for failing to re-export the cargo before it was seized. However, it neglects that Amoy itself was the root cause of failure to re-export the cargo. When Econocaribe asked Amoy to confirm if it wanted to re-export the cargo to the U.S., or documents, a consignee, etc. Amoy remained silent. With Amoy's specific instruction to abandon and Maersk's information that abandonment was

possible (after 90 days), Econocaribe reasonably assisted Amoy to abandon the cargo, and Econocaribe ultimately reasonably mitigated the damages in China by approximately 70%.

c. Violation of 46 U.S.C. § 41104(1), Section 10(b)(1) of the Shipping Act of 1984, as amended, or 46 U.S.C. APP. § 1709(b)(1)

Amoy relies on *Sea-Land Service, Inc. – Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984* to show that to establish a violation of 46 U.S.C. § 41104(1), Econocaribe must show that Amoy knew or should have known that there was a false classification of used, baled tires. However, Amoy mischaracterized *Sea-Land Services'* holding regarding Section 10(b)(1). *Sea-Land Services* only said that "referring to *section 16 Second* of the Shipping Act, 1916 ("1916 Act") (46 USC § 815 Second), the predecessor to *section 10(b)(4)*, the Commission ruled that an 'essential element' for proving a violation of *section 16 Second* is 'the unfair device or means' and that such proof requires a showing that 'one did something or attempted to do something which he knew or should have known was unlawful.'" *Sea-Land Service, Inc. – Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984*, 30 SRR 872 at 882 (F.M.C. 2006)(emphasis added). It did not say that same essential element was required for proving a violation of section 10(b)(1). On the contrary, the Commission found that Sea-Land violated section 10(b)(1) by charging a rate other than the rate published in its tariff, without alluding to any "the unfair device or means" or "showing that 'one did something or attempted to do something which he knew or should have known was unlawful.'" *Id.* at *20. Further, the Commission said it had determined not to assess penalties for the section 10(b)(1) violations but focused on the *more egregious violations*: those of section 10(b)(4). *Id.* (emphasis added). Furthermore, under its C-TPAT designation, Amoy

has pledged to the United States that it would perform certain cargo and shipper verifications which it consciously omitted.

Even though willfulness is not required for proving violation of Section 10(b)(1), Econocaribe has proffered enough evidence for the Commission to make such a finding. Amoy had actual knowledge that the cargo was in fact used tires, ¶¶165-167, Proposed Findings of Facts, or b) as a sophisticated shipper - especially of used tires ¶¶170, Proposed Findings of Facts, - Amoy should have known that the cargo was used tires because it was in this business.

d. *Violation of 46 C.F.R. § 515.31(e)*

Amoy violated 46 C.F.R. §515.31 by preparing documents it had reason to believe were false or fraudulent and imparting the false information to Econocaribe, and consequentially to Maersk. Amoy had reasons to believe that the documents it was preparing were false because Krystal Lee actually knew that the cargo was used tires prior to the shipping and/or because Amoy specialized in the used rubber and used tires industry. It filed an AES report to authorize export with the Department of Census, affirming that it had knowledge of the cargo.

e. *Violation of 46 U.S.C. §41102(c)*

As stated in Econocaribe's initial brief, Amoy's violation of 46 U.S.C. §41102(c) is twofold. First, Amoy's tender of misdeclared cargo to Econocaribe, and subsequent refusal to assist in repatriating it back to the U.S. is grossly unjust and unreasonable. Second, given that Amoy admits that Krystal Lee had repeatedly misdeclared cargo tendered to other carriers before, a reasonable and just practice would have been either terminating her employment or removing her from customer contact altogether. Incredibly, she was assigned to solicit more cargo as a salesperson after the Zim and MSC debacles, and the misconduct continued.

Amoy tries hard to show that it had made efforts to repatriate the cargo from China by warning Econocaribe about the consequences of not acting promptly and asking for the amount of return costs. Page 40, Amoy's Brief. However, when it was asked to confirm intent to return the cargo back to U.S., its good intention to solve the problem was nowhere to be found. Econocaribe's June 21, 2013 email was not only to confirm whether Amoy wanted to know the return costs, but also whether Amoy really wanted to re-export the cargo and whether the cargo could be returned. This is shown by the question "there has not been any customs formalities done in China, correct?" ECONO PFF App. 00092. Amoy knew and/or should have known that the cargo could be returned to the original shipper as long as no Customs formalities had been carried out. Amoy points the finger to Econocaribe for Amoy's failure to answer Econocaribe's email by saying "if a response to the questions in the June 21, 2013 were crucial, why wasn't there a follow-up email?" (That is a novel approach to taking responsibility.) The question is to be asked of Amoy: "If re-export was really intended by you, why didn't you bother to answer our questions and provide documents?"

IV. AMOY'S MISDECLARATION WAS THE DIRECT AND PROXIMATE CAUSE OF SEIZURE

Amoy does not and cannot dispute that its misdeclaration of the cargo was the root cause for the detention. *See. e.g.*, ECONO PFF App. 00248. Amoy's dispute centers on whether it would have requested re-export to avoid the seizure had it not been for Econocaribe's role as middleman in communicating between Amoy and Maersk. As set forth in Econocaribe's Proposed Findings of Fact, Econocaribe relayed all communication it received from Maersk to Amoy and from Amoy to Maersk. Amoy could have avoided seizure by instructing Econocaribe

to re-export the cargo, not only on September 6, 2013, but anytime in the entire period between the Cargo's arrival in China and Cargo's seizure. It did not.

V. ECONOCARIBE'S ACTIVITIES WERE NOT SUPERSEDING CAUSE OF THE SEIZURE

It beggars belief to suggest that Econocaribe was the cause of this problem. Within one year's time, Amoy tendered misdescribed cargo to three different carriers, each shipment accruing more than \$100,000 in storage and demurrage, leading to lawsuits and other legal action against Amoy and other companies. Econocaribe is Amoy's victim in this matter, and it is preposterous on its face for the serial perpetrator to blame this victim. Amoy has established a clear pattern and practice of misconduct.

Amoy is an independent NVOCC licensed by both the United States and China with multiple offices in each country. By its own admission it trades in used tires and rubber products. It has no financial or management ties with Econocaribe whatsoever. They do not share facilities or staff. It is and always was absolutely impossible for Econocaribe to prevent Amoy from taking any steps it deemed reasonable in mitigation of the demurrage, storage, and/or other costs and harm arising from Amoy's repeated tendering of misdescribed cargo to another carrier. Whether Econocaribe discouraged Amoy from contacting Maersk directly, discouragement is not the same as prevention. Amoy is a very sophisticated shipper, especially in these matters, and chose its own course. Indeed, Amoy was in a better position to know the ramifications of its misdeeds and the possible corrective steps from its recent history of very similar transactions with Mediterranean Shipping Company and Zim.

Econocaribe disputes that it failed to communicate September 6 warning from Maersk to Amoy. Amoy might still have chosen to abandon the cargo either way. Maersk said that the

"best" option would be re-export. Amoy might have still believed abandonment and subsequent destruction or auction would be preferable. In fact, this was possibly true at that time, because nobody could predict how Chinese Customs would rule.

Amoy claims that the "first step in deciding to re-export is to ask for its cost." Page 41, Amoy's Brief. As of September 6, 2013, Maersk still had not advised the return costs. Therefore, even under Amoy's set of facts, it would still have undertaken the risk of abandonment.

Furthermore, what if Chinese Customs had permitted auction or destruction after seven and a half months, and Maersk asked Amoy to pay all costs before it could effectuate destruction? Presumably the demurrage and storage costs would be the same that was actually demanded by Maersk in this case. Can Amoy dodge paying by claiming that Maersk or Econocaribe failed to mitigate damages? No. Amoy knew full well from the outset that whether Chinese Customs ordered return, auction or destruction, Amoy would be liable for all costs. ECONO PFF App. 00132 and 00129-00130. So the arguments for not having paid storage costs rings completely hollow. None of the different dispositions which could have been ordered by Chinese Customs would change the obligation of Amoy to pay.

VI. ECONOCARIBE REASONABLY MITIGATED THE DAMAGES

A duty to mitigate damages is owed by the wronged party to the tortfeasor or breaching party. This is a fundamental concept of tort law or contract law. So in this case, even though Econocaribe wore two hats, one as carrier to Amoy, and one as shipper to Maersk, its duty to mitigate was only owed to Amoy, the party that wronged Econocaribe.

To Maersk, Econocaribe owed a duty to indemnify under its service contract and Bill of Lading with Maersk. Econocaribe has accepted its responsibility as shipper vis-à-vis Maersk

lines. To that end, Econocaribe has paid Maersk \$70,000 in settlement of demurrage and storage charges, and repatriated Amoy's cargo at great expense. Having mitigated the demurrage and storage charges by some seventy percent in China, it must be agreed that Econocaribe stepped up and directly addressed the issue. Amoy has not contributed *a penny* to the transportation, destruction, storage, demurrage, return freight and Customs clearance, or other expenses involved in the handling of the cargo it illegally tendered under false pretenses for international transport. Yet it suggests that Econocaribe has not properly mitigated the damages.

Econocaribe reasonably mitigated its damages suffered from Amoy's wrong. Contrary to Amoy's baseless imposition of responsibility (Page 52, Amoy's Brief), the relationship between Econocaribe and Maersk did not impose the same responsibility on Econocaribe as on Maersk. As between Econocaribe and Amoy, Econocaribe could not reasonably be expected to effectuate re-exporting while the Cargo still belonged to Amoy. *See CMA CGM S.A. v. Deckwell Sky (USA) Inc.*, 2015 WL 1224281, at *6 (finding that the carrier CMA CGM S.A. cannot reasonably have been expected to destroy the used tires while it still belonged to NVOCC shipper Deckwell). Only after cargo was abandoned (cargo was abandoned by Amoy on September 8, 2013) could Econocaribe lawfully effectuate any domain over it. However, at that time, because abandonment was not ruled out by Maersk or Chinese Customs, Econocaribe was under no obligation to re-export it.

Even if Econocaribe could have effectuated re-export without being instructed by Amoy, Econocaribe was under no obligation to spend its own money prior to its seizure, even if at that time, the costs would have been much lower. This is because, even according to Amoy's calculation, Econocaribe would need to spend about \$64,203 (detention costs prior to seizure plus return freight plus destruction costs), still an extraordinary amount of money.

Econocaribe is a nondefaulting party. This is not changed by Amoy's purported reliance on Econocaribe. Page 48, Amoy's Brief. Amoy's claimed reliance is wholly disingenuous. As a Chinese MOC-licensed NVOCC, it is more experienced with Chinese maritime and Customs regulations than is Miami-based Econocaribe. With its own local offices in China, Amoy was always in a better position to advise Econocaribe on this matter. In fact, it knew from the outset that this commodity was prohibited entry in China. It was illogical for Amoy to ask if it could abandon or not, based on its admitted skill and knowledge. From the outset, it should have firmly told Econocaribe that it wanted to re-export the cargo. Alternatively, if it genuinely wanted to minimize costs, because it had offices in China, it could have asked one of them to dispose of the cargo, and it would possibly not have been seized.

CONCLUSION

Amoy's position is that a sophisticated NVOCC / shipper has no responsibility under the Shipping Act, and the Federal Maritime Commission is powerless to enforce any provision of that Act, when that NVOCC engages in a pattern and practice of misrepresenting the nature of cargo to other marine common carriers. Amoy feels that it is not unjust to refuse to pay the costs arising from that misrepresentation, and it is proper to keep in place personnel and practices which have shown themselves to lead to cargo detention, seizure, demurrage and a whole host of marine nightmares involving many carriers at a time. Econocaribe believes that it is wholly within the authority of the agency to provide relief and order reparations to it from Amoy for the aforementioned conduct, and that the record in this matter as stated above and in Econocaribe's Proposed Statement of Facts provides a sufficient basis.

DATED: May 18, 2015

THE MOONEY LAW FIRM, LLC

/s/ Neil B. Mooney

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Fax. 850-391-4228

Counsel for Complainant

Econocaribe Consolidators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF** was sent to the below-mentioned counsel via email on May 18, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
Email: jmirkovich@rumlaw.com
Attorneys for Respondent
AMOY INTERNATIONAL LLC.

/s/ Neil B. Mooney
Neil B. Mooney, Esq.

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

APPENDIX

COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

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**BEFORE THE
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COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

DECLARATION OF CELESTE PEREZ DE CORCHO

I, Celeste Perez de Corcho, under penalty of perjury, declare as follows:

1. I am the operations manager of Ports International, Inc. and have personal knowledge of the facts at issue in the instant case.
2. Ports International, Inc. is wholly owned by Econocaribe and operates part of Econocaribe's warehousing business.
3. I am over 18 years of age and am competent to make this declaration. If called as a witness, I could and would competently testify to the following of my own personal knowledge in a court of law.
4. I was among the Econocaribe personnel receiving the four containers subject of Maersk's Bill of Lading #595854629. *See* Exhibit A.
5. The seal numbers and values on the Bill of Lading are listed as below:

Container Number		Shipper Seal
MSKU0232720	ML-CN1486201	2300717
MSKU6129259	ML-CN1486204	2300719
PONU1877617	ML-CN1486205	2300718
PONU1750788	ML-CN1486203	2300720

6. The "Shipper Seal" values on the above Bill of Lading are identical to "Shipper Seal" values on the Bill of Lading 560323561. *See Exhibit B.* However, the ML-CN numbers were not on the Bill of Lading 560323561.
7. The Arrival Notice (Exhibit C) issued by Maersk upon cargo's arrival in Miami, Florida listed the following seal numbers:

Container Number	Seal No.	Seal Value
MSKU0232720	ML-CN1486201	2300717
MSKU6129259	ML-CN1486204	2300719
PONU1877617	ML-CN1486205	2300718
PONU1750788	ML-CN1486203	2300720

8. The "Shipper Seal" values on the Notice of Arrival are identical to "Shipper Seal" values on the Bill of Lading 560323561. However, the ML-CN numbers were not on the Bill of Lading 560323561.
9. On February 2, 2015, I was among the Econocaribe employees to open and inspect the returned cargo.
10. I took pictures of the containers and the seals before the seals were cut.
11. Each of the four containers had a set of three intact seals, one light blue, one dark blue and one yellow. It is generally known in the industry that the light blue seals belong to Maersk and the yellow seals belong to China Ocean Shipping Tally Company (COSTACO).
12. I wrote down all the seal numbers of the intact seals. They are compiled in a spreadsheet. Exhibit E. The spreadsheet is also incorporated herein:

<u>CONTAINER NO.</u>	<u>S/N</u>	<u>S/N</u>	<u>S/N</u>
	MLCN	COSTACO	CCICTJ
MRKU023272-0	1486201	022257070729/328112	140519
	MLCN	COSTACO	CCICTJ
MSKU6129259	1486204	02225707079/328111	140530
	MLCN	COSTACO	CCICTJ
PONU1877617			

		1486205	022-25707079/328113	140528
PONU1750788		MLCN	COSTACO	CCICTJ
		1486203	022-2577079	140545
REC. EACH CONTAINER WITH 3 SEALS				

13. The first column of seal numbers in the above spreadsheet shows the numbers of the light blue Maersk seals. These numbers match with the ML_CN numbers listed in Bill of Lading 595854629 and the Notice of Arrival.
14. We opened the containers and found several used/cut seals on the floor of each of the containers. I collected these seals and took a picture of them. Exhibit D.
15. None of the original seals were found in the intact seals or used seals. That is, I did not see seals with seal numbers of 2300717, 2300719, 2300718 or 2300720.
16. I believe that these containers were opened in China because the original seals were missing.
17. The matters set forth in this Declaration are true and correct, and they are based on my personal knowledge and review of my records associated with this case.
18. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

Executed on May 18, 2015.

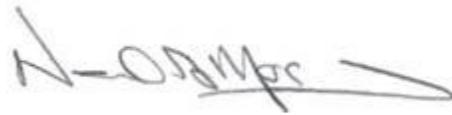


Celeste Perez de Corcho

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF - DECLARATION OF CELESTE PEREZ DE CORCHO** was sent to the below-mentioned counsel via email on May 18, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
Email: jmirkovich@rumlaw.com
Attorneys for Respondent
AMOY INTERNATIONAL LLC.

A handwritten signature in black ink, appearing to read "Neil B. Mooney", is written above a horizontal line.

Neil B. Mooney, Esq.

Exhibit A



BILL OF LADING FOR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT

SCAC MAEU
B/L No. 595854629

Shipper VICTORY MARITIME SERVICES (CHINA JLTD 504 CTOWER CCCITY CENTER CXI KANG ROAD HE PING DISTRICT CTIANJIN CCHINA*		Booking No. 595854629
		Export references ZHTJSE141114277
		Svc Contract 719091
Onward inland routing (Not part of Carriage as defined in clause 1. For account and risk of Merchant)		
Consignee (negotiable only if consigned "to order", "to order of" a named Person or "to order of bearer") ECONOCARIBE CONSOLIDATORS, 637 E.ALBERTONI ST.,SUITE 104, CARSON,CA90746, PHONE 1-310-817-2746		Notify Party (see clause 22) ECONOCARIBE CONSOLIDATORS, 637 E.ALBERTONI ST.,SUITE 104, CARSON,CA90746, PHONE 1-310-817-2746
Vessel (see clause 1 + 19) HAMMONIA VIRGINIA	Voyage No. 1404	Place of Receipt. Applicable only when document used as Multimodal Transport B/L. (see clause 1)
Port of Loading XINGANG	Port of Discharge MIAMI,FL	Place of Delivery. Applicable only when document used as Multimodal Transport B/L. (see clause 1)

PARTICULARS FURNISHED BY SHIPPER

Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No.	Weight	Measurement
SHIPPED ON BOARD HAMMONIA VIRGINIA \ 1404 ON 2014-11-25 AT XINGANG 4 containers said to contain 100 PACKAGES AUTO PARTS *TEL F86-22-23336411/33/55 FAX F86-22-23336400 CTC:MS LIU HUI. N/M PONU1750788 ML-CN1486203 40 DRY 8'6 25 PACKAGES 22000.000 KGS 50.0000 CBM Shipper Seal : 2300720 PONU1877617 ML-CN1486205 40 DRY 8'6 25 PACKAGES 22000.000 KGS 50.0000 CBM Shipper Seal : 2300718 MSKU6129259 ML-CN1486204 40 DRY 8'6 25 PACKAGES 22000.000 KGS 50.0000 CBM Shipper Seal : 2300719 MRKU0232720 ML-CN1486201 40 DRY 8'6 25 PACKAGES 22000.000 KGS 50.0000 CBM Shipper Seal : 2300717 SHIPPER'S LOAD, STOW, WEIGHT AND COUNT FREIGHT COLLECT CY/CY	88000.000 KGS	200.0000 CBM

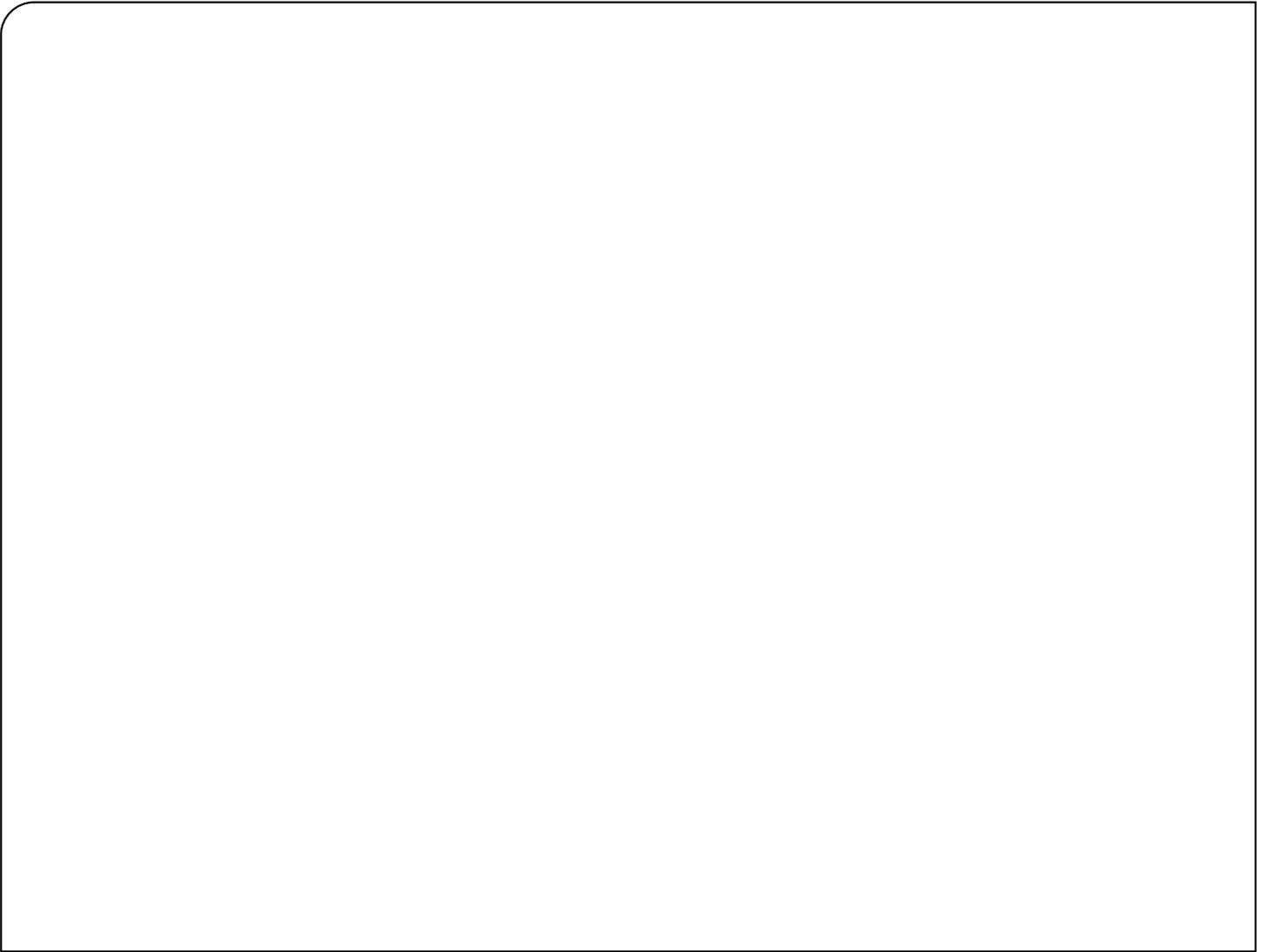
Above particulars as declared by Shipper, but without responsibility of or representation by Carrier (see clause 14)

Freight & Charges	Rate	Unit	Currency	Prepaid	Collect
Basic Ocean Freight	4325.00	Per Container	USD		17300.00
Export Service	100.00	Per Container	CNY	400.00	
Late Gate Service			CNY	2400.00	
Documentation Fee - Origin	450.00	Per Bill of Lading	CNY	450.00	
Terminal Handling Service- Origin	1150.00	Per Container	CNY	4600.00	
Total CNY			CNY	7850.00	

Carrier's Receipt (see clause 1 and 14). Total number of containers or packages received by Carrier. 4 containers	Place of Issue of B/L Miami	<small>SHIPPED, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein, the total number or quantity of Containers or other packages or units indicated in the box entitled "Carrier's Receipt" for carriage from the Port of Loading (or the Place of Receipt, if mentioned above) to the Port of Discharge (or the Place of Delivery, if mentioned above), such carriage being always subject to the terms, rights, defenses, provisions, conditions, exceptions, limitations, and liberties hereof (INCLUDING ALL THOSE TERMS AND CONDITIONS ON THE REVERSE HEREOF NUMBERED 1-26 AND THOSE TERMS AND CONDITIONS CONTAINED IN THE CARRIER'S APPLICABLE TARIFF) and the Merchant's attention is drawn in particular to the Carrier's liberties in respect of on deck stowage (see clause 18) and the carrying vessel (see clause 19). Where the bill of lading is non-negotiable the Carrier may give delivery of the Goods to the named consignee upon reasonable proof of identity and without requiring surrender of an original bill of lading. Where the bill of lading is negotiable, the Merchant is obliged to surrender one original, duly endorsed, in exchange for the Goods. The Carrier accepts a duty of reasonable care to check that any such document which the Merchant surrenders as a bill of lading is genuine and original. If the Carrier complies with this duty, it will be entitled to deliver the Goods against what it reasonably believes to be a genuine and original bill of lading, such delivery discharging the Carrier's delivery obligations. In accepting this bill of lading, any local customs or privileges to the contrary notwithstanding, the Merchant agrees to be bound by all Terms and Conditions stated herein whether written, printed, stamped or incorporated on the face or reverse side hereof, as fully as if they were all signed by the Merchant. IN WITNESS WHEREOF the number of original Bills of Lading stated on this side have been signed and wherever one original Bill of Lading has been surrendered any others shall be void.</small>
Number & Sequence of Original B(s)/L THREE/3	Date of Issue of B/L	
Declared Value (see clause 7.3)	Shipped on Board Date (Local Time) 2014-11-25	

Forwarder TIANJIN ZHENHUA GROUP JINGMEN RD 300000 Tianjin 12	Signed for the Carrier A.P. Møller - Maersk A/S trading as Maersk Line Maersk Agency U.S.A., Inc - Miami CRC As Agent(s) for the Carrier
---	--

This transport document has one or more numbered pages



Freight & Charges	Rate	Unit	Currency	Prepaid	Collect
Total USD			USD		17300.00

Exhibit B

FREIGHT PREPAID
CY/CY

Freight & Charges	Rate	Unit	Currency	Prepaid	Collect

Exhibit C



ARRIVAL NOTICE

B/L No: **MAEU - 595854629**

TPDoc, sea waybill, shipped on board

Notify Party (Complete name and address)
 ECONOCARIBE CONSOLIDATORS INC,
 2401 NW 69TH ST
 Miami, FL 33147
 FL, United States
 Emails: miami-imports@econocaribe.com
 bgoldenberg@econocaribe.com

Vessel
 SEALAND NEW YORK

Voyage No
 1501

Print Date
 2015-01-27 14:40

Your ref.
 595854629

Place of Receipt

Other Numbering identification
 Customs Clearance Loc :MIAMI
 Customs Firms Code: N775

Port of Loading
 XINGANG

Port of Discharge
 MIAMI,FL

Terminal Location:
 Pelabuhan Tanjung Pelepas Terminal
 South Florida Container Term N775

Place of delivery

For IT Date use arrival date below.

Consignee (Complete name and address)
 ECONOCARIBE CONSOLIDATORS, INC, ECONOCARIBE
 E ALBERTONI ST, 637
 STE 208
 Carson, 90746
 CA, United States

Shipper/Exporter (Complete name and address)
 VICTORY MARITIME SERVICES
 (CHINA JLTD
 504 CTOWER CCCITY CENTER CXI
 KANG ROAD HE PING DISTRICT
 CTIANJIN CCHINA*

Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No.	Gross Weight	Measurement
100 PACKAGES	88000.000 KGS	200.0000 CBM
BALED, USED TRUCK TIRES, REFUSED Re-exported in accordance with Chinese Customs order		
N/M		
Shipper Ref: ZHTJSE141114277		
CY/CY		

Container No.	Seal No.	Seal Value	Size/Type/Height	Tare Weight	Pkgs.	Weight	Measurement	Rail Bond /Pick-up No.
PONU1750788	ML-CN1486203	2300720	40 DRY 8'6	3800.000 KGS	25	22000.000 KGS	50.0000 CBM	
PONU1877617	ML-CN1486205	2300718	40 DRY 8'6	3800.000 KGS	25	22000.000 KGS	50.0000 CBM	
MSKU6129259	ML-CN1486204	2300719	40 DRY 8'6	3700.000 KGS	25	22000.000 KGS	50.0000 CBM	
MRKU0232720	ML-CN1486201	2300717	40 DRY 8'6	3640.000 KGS	25	22000.000 KGS	50.0000 CBM	

Freight & Charges	Rate	Curr.	Unit	Prepaid	Collect
Basic Ocean Freight	4325.00	USD	Per Container		17300.00
Export Service	100.00	CNY	Per Container		400.00
Late Gate Service		CNY			2400.00
Documentation Fee - Origin	450.00	CNY	Per Bill of Lading		450.00
Terminal Handling Service- Origin	1150.00	CNY	Per Container		4600.00
Total CNY		CNY			7850.00
Total USD		USD			17300.00

Agent Name
 Maersk Agency U.S.A., Inc - Charlotte CRC

The above mentioned cargo is due to arrive aboard subject vessel On/or About

Date
 2015-01-12

If you have any questions please contact Customer Service at 1-800-321-8807. If your container location is LOS ANGELES P400 and you have questions concerning terminal availability of your cargo, please call 1-310-221-4100. For door deliveries please email delivery orders to DeliveryOrder@maersk.com or fax to 888-769-5942.

In order to ensure store door delivery of cargo within free time, Maersk Line must receive a complete delivery order, freight release and customs clearance by noon TWO business days prior to free time expiration.

For a live up-to-date view of your account with Maersk Line, register at www.maerskline.com to gain access through our online tool - MyFinance. You can view, download and print invoice copies. Save time and costs, with MyFinance.

Arrival notice requests can be sent to: ArrivalNoticeUSA@maersk.com
DRY import cargo requests can be sent to: USAImport@maersk.com
Special Commodities requests can be sent to (eg: refrigerated cargo): USASPC@maersk.com
Diversion requests can be sent to: NAMDIVERSION@maersk.com

For electronic payments, please forward your remittance information via e-mail to NAMFRCSVCACH@maersk.com.

* Bank: Bank of America
Account Information:
Wire Only-ABA:026009593 Account: 4426928403
ACH Only-ABA: 111000012 Account: 4426928403

* If paying by check, please remit payment to:
Maersk Agency U.S.A., Inc.
Attention: Payment Service - 3rd Floor South
9300 Arrowpoint Blvd
Charlotte, NC 28273-8136

Merchant warrants that it has had the opportunity to inquire and verify the applicable over-the-road weight limitations of the local, state and federal governments as well as the weight limitations of the service providers in the transport chain (including ports and rail). Merchant warrants it is aware that failure will result in an administration fee of USD 200 and additional charges including, but not limited to, transload, scale, additional drayage or haulage, scale, demurrage, detention and/or per diem.

Exhibit D



NDCC
200120

GOTO
198483

NDV850
1000000

050753

MAETTSK
M-CN 527118

MAERISK
M-CN 527120

MAERISK
M-CN 0106734

MAERISK
M-CN 0106734

MAERISK
M-CN 130020

MAERISK
M-CN 130021

MAERISK
M-CN 130023

MAERISK
M-CN 130025

MAERISK
M-CN 527117

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04306951

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RJAZ
16931

NDK1
492117

NDK1
492117

NDK1
492117

Exhibit E

TIRES

<u>CONTAINER NO.</u>	<u>S/N</u>	<u>S/N</u>	<u>S/N</u>
MRKU023272-0	MLCN 1486201	COSTACO 022257070729/328112	CCICTJ 140519
MSKU6129259	MLCN 1486204	COSTACO 02225707079/328111	CCICTJ 140530
PONU1877617	MLCN 1486205	COSTACO 022-25707079/328113	CCICTJ 140528
PONU1750788	MLCN 1486203	COSTACO 022-2577079	CCICTJ 140545

REC. EACH CONTAINER WITH 3 SEALS

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

DECLARATION OF BOB GOLDENBERG

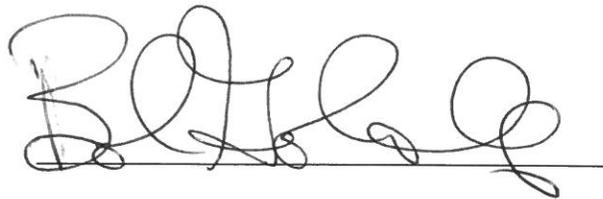
I, Bob Goldenberg, under penalty of perjury, declare as follows:

1. I am the Vice-President of Econocaribe and have personal knowledge of the facts at issue in the instant case.
2. I am over 18 years of age and am competent to make this declaration. If called as a witness, I could and would competently testify to the following of my own personal knowledge in a court of law.
3. In May 2013, Amoy contracted with Econocaribe to ship four containers allegedly containing 100 packages of "Auto Parts (New)" from Oakland, CA to Xingang, China.
4. The Cargo was found to be used tires and subsequently detained by China Customs.
5. It is Econocaribe's practice to communicate everything between its shipper and the carrier. In this case, in the case, I believe all the communications, requests or demands had been communicated from Amoy to Maersk or vice versa.
6. Amoy failed to re-export cargo from China to the U.S. prior to its seizure.
7. In April 2014, Maersk notified Econocaribe that Chinese Customs had ordered the cargo be returned to the U.S., but in order to initiate the re-exporting process, all accrued detention, demurrage, and storage costs had to be paid.

8. Econocaribe believed that Amoy should be liable for these costs, plus return freight and subsequent destruction costs.
9. Amoy never disputed that it would be liable for the return freight and subsequent destruction costs.
10. Econocaribe settled with Maersk to avoid charges from accruing in August 2014.
11. Prior to its settlement with Maersk, Econocaribe, through its counsel, Mr. Neil B. Mooney, asked Amoy, through its then counsel, Ms. Margaret Morrow, whether if Econocaribe paid all detention, demurrage and storage charges in China to Maersk, would Amoy arrange with the carrier of its choice for transportation to its chosen destination.
12. Amoy never answered the question despite a reminder, leaving Econocaribe no choice but to pay everything and arrange the return and destruction of cargo.
13. The matters set forth in this Declaration are true and correct, and they are based on my personal knowledge and review of my records associated with this case.
14. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

Executed on May 18, 2015.

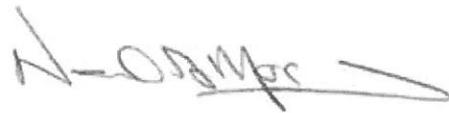
A handwritten signature in black ink, appearing to read "Bob Goldenberg", written over a horizontal line.

Bob Goldenberg

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF - DECLARATION OF BOB GOLDENBERG** was sent to the below-mentioned counsel via email on May 18, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
Email: jmirkovich@rumlaw.com
Attorneys for Respondent
AMOY INTERNATIONAL LLC.

A handwritten signature in black ink, appearing to read "Neil B. Mooney", written over a horizontal line.

Neil B. Mooney, Esq.

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

DECLARATION OF NEIL B. MOONEY

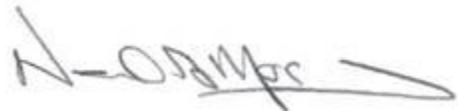
I, Neil B. Mooney, under penalty of perjury, declare as follows:

1. I, Neil B. Mooney, am over the age of 18 and I am fully competent to testify to and have personal knowledge of the matters stated in this Affidavit; every statement of fact herein or incorporated herein by reference is true and correct to the best of my knowledge, belief, and experience.
2. I submit this declaration in support of Complainants' Reply to Respondent's Opposition Brief. I am familiar with the facts and circumstances of the matters referenced in this declaration.
3. I am counsel representing Complainant in this action. I have been involved as counsel throughout this action and prior to the filing of this Complaint.
4. In April 2014, Maersk notified Econocaribe that Chinese Customs had ordered the cargo be returned to the U.S., but in order to initiate the re-exporting process, all accrued detention, demurrage, and storage costs had to be paid.

5. Econocaribe believed that Amoy should be liable for these costs, plus return freight and subsequent destruction costs.
6. Amoy never disputed that it would be liable for the return freight and subsequent destruction costs.
7. Econocaribe settled with Maersk to avoid charges from accruing in August 2014.
8. Prior to its settlement with Maersk, I had been in communication with Amoy's then counsel, Ms. Margaret Morrow, regarding settling the charges at issue.
9. On June 19, 2014, pursuant to Econocaribe's request, I wrote to Ms. Morrow, asking her whether if Econocaribe agreed to pay all detention, demurrage and storage charges in China to Maersk, "will your client arrange with the carrier of its choice for transportation to its chosen destination?" *See Exhibit A.*
10. I sent a follow-up reminder to Ms. Morrow on June 23, 2014. *See Exhibit A.*
11. Ms. Morrow never answered either of my emails regarding the cargo's return.
12. At some point I spoke with her on the phone and posed the same question in (9) above. Ms. Morrow said that she would talk to her client, Amoy, and advise me.
13. I never heard from Ms. Morrow again.
14. Amoy never answered the question, leaving Econocaribe no choice but to pay everything and arrange the return and destruction of cargo.
15. The matters set forth in this Declaration are true and correct, and they are based on my personal knowledge and review of my records associated with this case.
16. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

Executed on May 18, 2015.

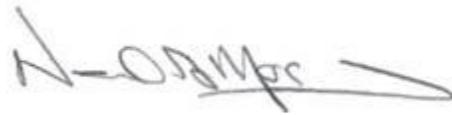


Neil B. Mooney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION BRIEF - DECLARATION OF NEIL B. MOONEY** was sent to the below-mentioned counsel via email on May 18, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
Email: jmirkovich@rumlaw.com
Attorneys for Respondent
AMOY INTERNATIONAL LLC.

A handwritten signature in black ink, appearing to read "Neil B. Mooney", written over a horizontal line.

Neil B. Mooney, Esq.

Exhibit A



THE MOONEY LAW FIRM

Neil Mooney <nmooney@customscourt.com>

For the Attention of Ms. M. Morrow, Esq.

Neil Mooney <nmooney@customscourt.com>

15 May 2015 at 17:24

To: "Karla J. Eckardt" <keckardt@customscourt.com>

----- Forwarded message -----

From: **Neil Mooney** <nmooney@customscourt.com>

Date: 23 June 2014 at 09:54

Subject: Re: For the Attention of Ms. M. Morrow, Esq.

To: counsel@rumlaw.com

Ms. Morrow, I am resending the message below in the event you have not seen it. We have not had a response.

Sincerely,

Neil B. Mooney, Esq.

<http://www.customscourt.com>

The Mooney Law Firm, LLC
1911 Capital Circle N.E.
Tallahassee, FL 32308

PH 850 893 0670

FAX 850 391 4228

CONFIDENTIALITY NOTICE: This transmission may contain information that is confidential, proprietary, attorney work-product or attorney-client privileged. If this information is received by anyone other than the named addressee(s), the recipient should immediately notify the sender by E-MAIL and by telephone (850) 893-0670 and obtain instructions as to the disposal of the transmitted material. In no event shall this material be read, used, copied, reproduced, stored or retained by anyone other than the named addressee(s), except with the express consent of the sender or the named addressee(s). Thank you.

On Thu, Jun 19, 2014 at 12:17 PM, Neil Mooney <nmooney@customscourt.com> wrote:

Dear Ms. Morrow,

We represent Econocaribe Consolidators, and have your letter of the 16th on behalf of Amoy International, addressed to Mr. Kamada. We appreciate the overture, and hope that as a result we can begin the process of resolving this matter.

Assume for the moment that Econocaribe would advance all of the charges now accrued in China to release the subject cargo for export. In that case will your client arrange with the carrier of its choice for transportation to its chosen destination? In that manner at least, we could stop the accrual of further costs and debate liability for what has presently accrued later.

Please let me have your client's reply as soon as possible.

Thank you.

Sincerely,

Neil B. Mooney, Esq.

<http://www.customscourt.com>

The Mooney Law Firm, LLC
1911 Capital Circle N.E.
Tallahassee, FL 32308

PH 850 893 0670
FAX 850 391 4228

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RESPONSE TO REQUEST NO. 7:

See Bates no. AM0014, previously produced

REQUEST NO. 8:

Power of Attorney signed by the shipper of this Cargo.

RESPONSE TO REQUEST NO. 8:

None. Amoy did not file an export declaration.

REQUEST NO. 9:

Invoices issued by Amoy to the shipper of this Cargo, credit application by the shipper of this Cargo, proof of payment by the shipper to Amoy of any amount relating to the transaction subject of this proceeding, or any other.

RESPONSE TO REQUEST NO. 9:

See Bates no. AM0001, previously produced.

REQUEST NO. 10:

Tariff rate filing, if any, and AES filing by Amoy for this Shipment.

RESPONSE TO REQUEST NO. 10:

None. Amoy did not file a tariff for this shipment. AES was filed by the shipper.

REQUEST NO. 11:

All notes of conversation, documents, email or other correspondence between Amoy and the