

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**RESPONDENT AMOY INTERNATIONAL, LLC'S
MOTION TO REQUEST PERMISSION TO REPLY TO
COMPLAINANT ECONOCARIBE CONSOLIDATORS INC'S REPLY BRIEF**

Respondent AMOY INTERNATIONAL, LLC (“Amoy”) moves this Court for permission to file a Rely to ECONOCARIBE CONSOLIDATORS, INC.’s (“Econocaribe”) Reply Brief. The ground for this motion is that Econocaribe has introduced new allegations in its Rely Brief, which are untrue and misleading and, if not corrected, would seriously prejudice Amoy. The newly alleged material is as follows:

1. that Amoy was a C-TPAT participant at the time the sealed containers were delivered to the Maersk terminal in Oakland, California. (Reply Brief, page 20.) Amoy was not a C-TPAT participant at the time.

2. that Ms. Margaret Morrow, attorney for Amoy, never answered either of Neil B Mooney’s emails, dated June 19, 2014 and June 23, 2014. (ECONO REPLY App. 00024). To

the contrary, Ms. Morrow responded to those emails by emails, to which Mr. Mooney confirmed receipt, and, additionally, had several follow-up telephone conferences with Mr. Mooney.

Econocaribe argues, for the first time in its reply, that Amoy made a false AES filing in contradiction to prior testimony (Reply Brief, page 17), and that it filed an AES report to authorize export with the Department of Census, affirming that it had knowledge of the cargo. (Reply Brief page 24.) Those statements are incorrect and are based on an inadvertent drafting error in Amoy’s Opposition Brief and are contrary to the Declaration of Melissa Chen, Amoy’s principal. They also need to be addressed.

46 CFR §502.70(c) states that “the non-moving party may not file any further reply unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.” 46 CFR §502.10 states that “Except to the extent that such waiver would be inconsistent with any statutes, any of the rules of this part, except §502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice . . .” Amoy believes that Econocaribe’s misrepresentations of fact and the need to correct a drafting error constitute extraordinary circumstances and would result

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Exhibit “A”

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**RESPONDENT AMOY INTERNATIONAL, LLC'S REPLY TO
COMPLAINANT ECONOCARIBE CONSOLIDATORS INC.S' REPLY BRIEF**

Respondent AMOY INTERNATIONAL, LLC (“Amoy”) hereby submits its Reply to ECONOCARIBE CONSOLIDATORS, INC. (“Econocaribe”) Reply Brief.

1. INTRODUCTION

Econocaribe has raised two new factual issues that were not previously addressed in its Opening Brief, which are misleading and have no factual support. It has also argued another factual issue, which is based on a drafting error, and is contrary to the Declaration of Melissa Chen, Amoy’s principal, that was filed with Amoy’s Opposition Brief. These statements need to be corrected in the interest of justice and could have a prejudicial effect on the outcome of the matter if they are not addressed at this time.

2. AMOY WAS NOT A PARTICANT IN NOR WAS IT CERTIFIED BY C-TPAT WHEN THE FOUR CONTAINERS OF USED TIRES WERE SHIPPED TO CHINA.

Econocaribe argues, without any foundation, that Amoy was a member of C-TPAT when the seal containers were delivered to the Maersk terminal in Oakland, California. (Reply Brief page 20.) That is not a true statement. Amoy did not become either C-TPAT certified or a participant in C-TPAT until October 17, 2014, more than a year after the sealed containers were delivered to the Maersk terminal. See Declaration of Melissa Chen attached.

3. CONTRARY TO THE DECLARATION OF NEIL B. MOONEY, MARGARET MORROW RESPONDED TO HIS EMAILS OF JUNE 19, 2014 AND JUNE 23, 2014 AND HAD SEVERAL EMAIL AND TELEPHONE COMMUNICATIONS WITH HIM THEREAFTER.

In his declaration, Neil B. Mooney, Econocaribe's counsel, testified that Ms. Morrow, Amoy's counsel, "never answered either of my emails [meaning the emails of June 19, 2014 and June 23, 2014] regarding the cargo's return." (Declaration of Neil B. Mooney, ECONO REPLY App. 00024). The Declaration of Margaret Morrow and the exhibits attached thereto, confirm otherwise. They confirm that she replied to Mr. Mooney's emails of June 19, 2014 and June 23, 2014 and continued to communicate with him either by emails or by telephone at least through July 24, 2014.

4. ECONCARIBE’S ARGUMENT THAT AMOY “IN FACT . . . DID MAKE A FALSE AES FILING [AND] . . . NOW TESTIFIES IN CONTRADICTION TO PRIOR TESTIMONY IS BASED ON A DRAFTING ERROR AND IS DISPUTED TO THE DECLARATON OF MELISSA CHEN THAT WAS FILED IN SUPPPORT OF AMOY’S OPPOSITION BRIEF.

Econocaribe bases its argument, that Amoy made a false AES filing, on the following statement found in Amoy’s Opposition Brief: “The shipper also emailed Amoy the seal numbers on each of the containers in which it had loaded the cargo and Amoy entered those numbers into the AES ITN.” (Reply Brief, page 17.) That sentence was a drafting error. The sentence should have read “The shipper also emailed Amoy the seal numbers on each of the containers in which it had loaded the cargo and **the shipper** entered those numbers into the AES ITN.” See Declaration of Joseph N. Mirkovich. Furthermore, Econocaribe mischaracterizes that statement as testimony. Amoy’s testimony on that issue is found in paragraph 9 the Declaration of Melissa Chen, filed in support of the Opposition Brief. That paragraph states that the shipper prepared his own export declaration and provided Amoy with the AES ITN number. Paragraph 9 is entirely consistent with Amoy’s response to Econocaribe’s Requests for Production, that the shipper filed the AES report.

Later in its Reply Brief, Econocaribe makes a further reference to the AES filing, stating that Amoy “filed an AES report to authorize export with the Department of Census, affirming that I had knowledge of the cargo.” There is no foundation for this statement other than the drafting error. There is no testimony or other credible foundation to support Econocaribe’s statement.

CERTIFICATE OF SERVICE

I hereby certify that the original and appropriate number of copies of the foregoing **RESPONDENT AMOY INTERNATIONAL, LLC'S REPLY TO COMPLAINANT ECONOBARIBE CONSOLIDATORS INC.S' REPLY BRIEF**, were sent by overnight mail to the Commission on June 1, 2015 and that a copy was also emailed to the Commission on that date.

I certify that a true and correct copy of the foregoing **RESPONDENT AMOY INTERNATIONAL, LLC'S REPLY TO COMPLAINANT ECONOBARIBE CONSOLIDATORS INC.S' REPLY BRIEF** was served on the below-mentioned counsel via Email on June 1, 2015.

Neil B. Mooney, Esq.
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Fax: (850) 391-4228
Email: nmooney@customscourt.com

Attorneys for Complainant
ECONOCARIBE
CONSOLIDATORS, INC.

/s/ Joseph N. Mirkovich _____
Joseph N. Mirkovich, Esq.

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I hereby certify that the original and appropriate number of copies of the foregoing **RESPONDENT AMOY INTERNATIONAL, LLC'S MOTION TO REQUEST PERMISSION TO REPLY TO COMPLAINANT ECONOBARIBE CONSOLIDATORS INC'S REPLY BRIEF** were sent by overnight mail to the Commission on June 1, 2015 and that a copy was also emailed to the Commission on that date.

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Attorneys for Complainant
ECONOCARIBE
CONSOLIDATORS, INC.

/s/ Joseph N. Mirkovich

Joseph N. Mirkovich, Esq.

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**RESPONDENT AMOY INTERNATIONAL, LLC'S
SUPPLEMENTAL APPENDIX**

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Inc.'s Reply Brief AMOY 0200

CERTIFICATE OF SERVICE

I hereby certify that the original and appropriate number of copies of the foregoing **RESPONDENT AMOY INTERNATIONAL, LLC'S SUPPLEMENTAL APPENDIX** were sent by overnight mail to the Commission on June 1, 2015, and that a copy was also emailed to the Commission on that date.

I certify that a true and correct copy of the foregoing **RESPONDENT AMOY INTERNATIONAL, LLC'S SUPPLEMENTAL APPENDIX** was served on the below-mentioned counsel via U.S. Mail and Email on June 1, 2015.

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CONSOLIDATORS, INC.

/s/ Joseph N. Mirkovich

Joseph N. Mirkovich, Esq.

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**DECLARATION OF MELISSA CHEN IN REPLY TO
ECONOCARIBE CONSOLIDATORS, INC.'S REPLY BRIEF**

I, Melissa Chen, declare:

1. I am the owner of Amoy International, L.L.C., (“Amoy”) and its Custodian of Records. I am familiar with the practices and procedures of Amoy. I could and would competently testify to the following of my own personal knowledge in a Court of law.

2. Amoy did not become certified for C-TPAT and a C-TPAT participant until after

October 17, 2014, more than a year after the 4 containers of used tires was shipped to China on a Maersk ship. A copy of the email confirming Amoy's C-TPAT Certified Status is attached as Exhibit 1 to my declaration.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct. Executed at the City of Industry, California on June 1, 2015.

Dated: June 1, 2015

/s/ Melissa Chen
Melissa Chen

Exhibit 1

Joe Mirkovich

From: industry.partnership@dhs.gov
Sent: Friday, October 17, 2014 2:31 PM
To: melissa@amoyline.com; lydia@amoyline.com
Subject: C-TPAT Certified Status

Ref: Amoy International LLC has been Certified for C-TPAT

On behalf of U.S. Customs and Border Protection (CBP), I am pleased to welcome your company as a certified partner in the Customs-Trade Partnership Against Terrorism (C-TPAT). By participating with CBP, you are making a vital contribution to help us secure our borders and ensure the continued free flow of international trade.

CERTIFICATE OF SERVICE

I hereby certify that the original and appropriate number of copies of the foregoing **DECLARATION OF MELISSA CHEN IN REPLY TO ECONOCARIBE CONSOLIDATORS, INC.'S REPLY BRIEF** were sent by overnight mail to the Commission on June 1, 2015 and that a copy was also emailed to the Commission on that date.

I certify that a true and correct copy of the foregoing **DECLARATION OF MELISSA CHEN IN REPLY TO ECONOCARIBE CONSOLIDATORS, INC.'S REPLY BRIEF** was served on the below-mentioned counsel via U.S. Mail and Email on June 1, 2015.

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Attorneys for Complainant
ECONOCARIBE
CONSOLIDATORS, INC.

 / s / *Joseph N. Mirkovich*
Joseph N. Mirkovich

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**DECLARATION OF MARGARET E. MORROW IN REPLY TO
ECONOCARIBE CONSOLIDATORS, INC.'S RELY BRIEF**

I, Margaret E. Morrow, declare as follows:

1. I am a partner with the law firm of Russell, Mirkovich & Morrow, attorneys of record for Respondent Amoy International, LLC (“Amoy”). I make the following declaration based on my personal knowledge and could testify thereto in a Court of law.

2. In paragraphs 9 and 10, Mr. Mooney describes 2 emails that he sent to our general

office email box, counsel@rumlaw.com. Those emails were dated Thursday, June 19, 2014, and Monday, June 23, 2014. Mr. Mooney attached those 2 emails as Exhibit "A" to his declaration. In paragraph 11, Mr. Mooney states, under penalty of perjury, "Ms. Morrow never answered either of my emails regarding the cargo's return." That is not a true statement and Mr. Mooney knows that the foregoing is not a true statement because we had an ongoing dialogue by email and by telephone following the above-referenced emails. My responsive emails and his emails responsive to mine were omitted from his declaration.

3. Attached hereto as Exhibit "A" are true and correct copies of emails exchanged between Mr. Mooney and me. On June 23, 2014, approximately 20 minutes after receiving Mr. Mooney's email of the same date, I wrote to Mr. Mooney and stated "Thank you for your email. I have forwarded it to Amoy and am awaiting their instructions. I will let you know no later than tomorrow." As promised, the following day, June 24, 2014, I wrote again to Mr. Mooney, as follows: "Dear Mr. Mooney: Amoy International is trying to find a U.S. buyer for the 4 containers but is having trouble doing so because they do not know what is in the containers. The shipper here in the U.S. is not responsive to Amoy's inquiries. Is there some way for the carrier to photograph the contents from the back of each of the containers?"

4. After sending the above emails, I tried to reach Mr. Mooney but I was advised that he was away from the office. The following week, I received a response from Mr. Mooney that confirmed his absence at the time when I tried to reach him by telephone and stated, in pertinent part: "Ms. Morrow, as you know I have been away and I regret not being able to provide you

with a copy of the attached picture until now.”

5. On July 7, 2014, I wrote an email to Mr. Mooney that stated: “Melissa from Amoy said that she will confirm disposition tomorrow and I will remit the information promptly.” I know that Mr. Mooney received my July 7, 2014, email because he responded to it and a copy of his response is also attached to Exhibit “A.”

6. At the same time as Mr. Mooney and I were communicating, I was also communicating with Melissa Chen of Amoy. Melissa was working to find a buyer in the U.S. for the tires. She had previously asked to have the tires returned to the U.S. and to use the name of the buyer as the shipper. See Melissa’s email, AM-0053, attached hereto as Exhibit “B.” From my email exchange and telephone conversations with Mr. Mooney, he was aware that Amoy would take whatever action was necessary to alleviate the situation but believed that it needed to have a buyer for the cargo in the U.S. based on conversations with Mr. Mooney and Econocaribe.

7. I recall speaking with Mr. Mooney on the telephone and keeping him updated as to Melissa Chen’s efforts to find a buyer for the tires. I recall that sometime after July 24, 2014, either in late July or early August, I spoke with Mr. Mooney by telephone about using the name of the original shipper as the importer of record for the return shipment. I recall calling Mr. Mooney on the telephone after receiving Melissa’s July 24, 2014 email to ask him about Melissa’s inquiry as to whether the original shipper could be the importer for the return. The

next action that I am aware of was the filing of the FMC action by Econocaribe on August 22, 2014. Mr. Mooney's declaration vaguely refers to communications with me in paragraphs 8 and 12. I believe that those references are to the telephone conversations that we had in June and July and possibly August, 2014.

I declare under penalty of perjury of the law of the United States of America that the foregoing is true and correct. Executed on June 1, 2015, at Long Beach, California.

/s/ Margaret E. Morrow
Margaret E. Morrow

Exhibit “A”

Margaret E Morrow

From: Neil Mooney <nmooney@customscourt.com>
Sent: Monday, July 07, 2014 5:24 PM
To: Margaret E Morrow
Subject: Re: Eonocaribe/Amoy International

Thank you, Ms. Morrow. I know you are very well equipped to explain the likely consequences to Amoy.

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 Mon, Jul 7, 2014 at 8:21 PM, <mmorrow@rumlaw.com> wrote:

Melissa from Amoy said that she will confirm disposition tomorrow and I will remit the information promptly.

On Jul 7, 2014 3:05 PM, Neil Mooney <nmooney@customscourt.com> wrote:

Ms. Morrow, we are expecting Maersk to file against Eonocaribe in the near term, for which we will have to seek indemnity as to all damages from Amoy. This seems unavoidable unless Amoy immediately takes responsibility for the cargo in China.

Please let us know your client's posture and readiness to act to avoid litigation.

Sincerely,

Neil B. Mooney, Esq.

<http://www.customscourt.com>

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

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FAX 850 391 4228

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On Mon, Jun 30, 2014 at 1:33 PM, Neil Mooney <nmooney@customscourt.com> wrote:
Ms. Morrow, as you know I have been away and I regret not being able to provide you with a copy of the attached picture until now. Please let us know if Amoy is in a position to begin return of the subject cargo without delay.

Thank you.

Sincerely,

Neil B. Mooney, Esq.

<http://www.customscourt.com>

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1911 Capital Circle N.E.
Tallahassee, FL 32308

PH 850 893 0670
FAX 850 391 4228

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On Wed, Jun 25, 2014 at 6:06 PM, Margaret E Morrow <mmorrow@rumlaw.com> wrote:

From: Margaret E Morrow [<mailto:mmorrow@rumlaw.com>]
Sent: Tuesday, June 24, 2014 2:38 PM

To: 'nmooney@customscourt.com'

Subject: RE: Eonocaribe/Amoy International

Dear Mr. Mooney:

Amoy International is trying to find a U.S. buyer for the 4 containers but is having trouble doing so because they do not know what is in the containers. The shipper here in the U.S. is not responsive to Amoy's inquiries. Is there some way for the carrier to photograph the contents from the back of each of the containers?

Margaret E. Morrow

From: Margaret E Morrow [mailto:mmorrow@rumlaw.com]

Sent: Monday, June 23, 2014 1:18 PM

To: 'nmooney@customscourt.com'

Subject: Eonocaribe/Amoy International

Dear Mr. Mooney:

Thank you for your email. I have forwarded it to Amoy and am awaiting their instructions. I will let you know no later than tomorrow.

Regards,

Margaret E. Morrow

Russell, Mirkovich & Morrow

One World Trade Center, Ste 1660

Long Beach, Ca 90831-1660

(562) 436-9911

"This e-mail message is intended for the named recipient(s) above. It may contain confidential information that is privileged. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of the e-mail and any attachment(s) is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender at (562) 436-9911 or by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you"

Exhibit “B”

Margaret E Morrow

From: Melissa / Amoy Line <melissa@amoyline.com>
Sent: Thursday, July 24, 2014 4:10 PM
To: 'Margaret E Morrow'
Subject: tire bales

Hi Margaret

Here is the information of the person who arranged the container shipping:

Colin Liang
510-887-8473
Bay Area Tire Recycling
2033 American Ave
Hayward CA 94545

Can they be the importer for this return? I don't have their TAX ID, unless I dig in further.

<http://bayareatirerecycling.com/>

thank you!
Melissa Chen

~~~~~  
**Amoy International LLC**

[FMC License No.: 019113N] [FMC Bond No.: 8941895]  
[China MOC License No.: MOC-NVO03586] [US DOT : MC-859087]  
14145 Proctor Ave. Suite 14 City of Industry, CA 91746 (LA Office)  
Ph: (626) 855-3077 Fax: (626) 855-3078 Direct: (626) 616-2008  
649 Morgan Ave, 4F3 Brooklyn NY 11222 (NY Office)  
Ph: (347) 689-9255 Fax: (347) 689-9267  
Website: [www.amoyline.com](http://www.amoyline.com) skype: amoyline  
Please [click here to download our ISF Form](#).

~~~~~  
 **Save a tree. Please don't print this e-mail unless it's really necessary! :)**

"This message has been scanned for viruses and spam".

CERTIFICATE OF SERVICE

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I certify that a true and correct copy of the foregoing **DECLARATION OF MARGARET E. MORROW** was served on the below-mentioned counsel via U.S. Mail and Email on June 1, 2015.

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/s/ Joseph N. Mirkovich
Joseph N. Mirkovich, Esq.

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I, Joseph N. Mirkovich, declare:

1. I am a partner with the law firm of Russell, Mirkovich & Morrow, attorneys of record for Respondent Amoy International, LLC (“Amoy”). I make the following declaration based on my own personal knowledge and if called as a witness, I could and would testify thereto in a Court of law.

2. I was the attorney who drafted Amoy's Opposition Brief. In reviewing Econocaribe's Reply Brief, I read, on page 17 of that Brief, where a sentence from page 2 of Amoy's Opposition Brief was quoted. That quote stated: "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." That statement was a drafting error on my part. It should have read that the shipper, and not Amoy, entered the seal numbers into the AES. The statement, as written in the Opposition, is not consistent with paragraph 9 of the Declaration of Melissa Chen, (see Respondent Amoy International, LLC's Appendix AMOY 0157; Amoy's Reply Brief, p.3) which was contemporaneously prepared in support of the Opposition Brief, where she states that the shipper prepared his own export declaration and provided Amoy with the AES ITN number. It is also not consistent with Amoy's response to Econocaribe's Requests for Production of Documents. Finally, that statement was not testimony; it was a drafting error.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct. Executed at the Long Beach, California on June 1, 2015.

Dated: June 1, 2015

/s/ Joseph N. Mirkovich
Joseph N. Mirkovich

CERTIFICATE OF SERVICE

I hereby certify that the original and appropriate number of copies of the foregoing **DECLARATION OF JOSEPH N MIRKOVICH IN REPLY TO ECONOCARIBE CONSOLIDATORS, INC.'S REPLY BRIEF** were sent by overnight mail to the Commission on June 1, 2015 and that a copy was also emailed to the Commission on that date.

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CONSOLIDATORS, INC.

 / s / *Joseph N. Mirkovich*
Joseph N. Mirkovich