

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**COMPLAINANT'S RESPONSES TO RESPONDENTS' SEPARATE STATEMENT OF
DISPUTED FACTS AND COMPLAINANT'S NEW STATEMENT OF UNDISPUTED
FACTS**

¶1	<p><u>Econocaribe's original statement:</u></p> <p>Econocaribe is a licensed ocean freight forwarder and non-vessel operating common carrier (“NVOCC”), with its principal place of business at 2401 NW 69 Street, Miami, FL 33147. It maintains a branch office at 637 E. Albertoni St., Suite 104, Carson, CA 90746, United States.</p>
	<p><u>Amoy's response:</u> undisputed.</p>
	<p><u>Undisputed facts:</u></p> <p>Econocaribe is a licensed ocean freight forwarder and non-vessel operating common carrier (“NVOCC”), with its principal place of business at 2401 NW 69 Street, Miami, FL 33147. It maintains a branch office at 637 E. Albertoni St., Suite 104, Carson, CA 90746, United States.</p>

¶2	<p><u>Econocaribe's original statement:</u></p> <p>Amoy does business as an Ocean Transportation Intermediary under Federal Maritime Commission license number 019113N, bond number 8941895, with its place of business at 14145 Proctor Avenue Suite 14, City of Industry, CA 91746, United States.</p> <hr/> <p><u>Amoy's response:</u> undisputed.</p> <hr/> <p><u>Undisputed facts:</u></p> <p>Amoy does business as an Ocean Transportation Intermediary under Federal Maritime Commission license number 019113N, bond number 8941895, with its place of business at 14145 Proctor Avenue Suite 14, City of Industry, CA 91746, United States.</p>
¶3	<p><u>Econocaribe's original statement:</u></p> <p>On May 20, 2013 Amoy contracted with Econocaribe for the shipment of 4 containers allegedly containing 100 packages of "Auto Parts (New)" from Oakland, CA to Xingang, China. <i>See</i> Exhibit "A", Amoy Booking Request & Econocaribe Booking Confirmation.</p> <hr/> <p><u>Amoy's response:</u></p> <p>disputed. Exhibit "A" is a series of emails, which includes a booking request. Although that exhibit refers to a confirmation, it was not attached. The contract between Econocaribe and Amoy is the bill of lading, attached as Exhibit "E" to Complainant's motion. It describes the shipment as "Auto Parts."</p> <hr/> <p><u>Econocaribe's response:</u></p> <p>Auto Parts (New) is not a contradictory term to "Auto Parts." The Contract is not a fully integrated writing therefore can be supplemented by "parol" evidence. For the purpose of this Motion for Partial Summary Judgment, the fact that Amoy contracted with</p>

	<p>Econocaribe for the shipment of 4 containers allegedly containing 100 packages of "Auto Parts" from Oakland, CA to Xingang, China, is undisputed.</p>
	<p><u>Undisputed facts:</u></p> <p>On May 20, 2013 Amoy contracted with Econocaribe for the shipment of 4 containers allegedly containing 100 packages of "Auto Parts" from Oakland, CA to Xingang, China. See Exhibit "A", Amoy Booking Request & Econocaribe Booking Confirmation.</p>
¶4	<p><u>Econocaribe's original statement:</u></p> <p>Krystal Lee, Amoy's employee, made the booking with Econocaribe and described the cargo as "auto parts (new)." See Exhibit "A".</p> <p><u>Amoy's response:</u> undisputed.</p> <p><u>Undisputed facts:</u></p> <p>Krystal Lee, Amoy's employee, made the booking with Econocaribe and described the cargo as "auto parts (new)." See Exhibit "A".</p>
¶5	<p><u>Econocaribe's original statement:</u></p> <p>However, the cargo was baled used truck tires. See Exhibit "B." Econocaribe did not know this until the cargo arrived in China and was inspected by Chinese Customs. See John Kamada Affidavit.</p>

	<p><u>Amoy's response:</u></p> <p>Disputed. Exhibit “B” is a photograph, which has no foundation for its admission. Support for this “undisputed” fact appears to be ¶¶5 and 8 of the Affidavit of John Kamada (“Kamada Affidavit”). This is hearsay testimony [F.R.E. §§801; 802]; without foundation or authentication [F.R.E. §§ 602, 901(b)(1)]. Mr. Kamada did not testify that he was present in China or had first hand knowledge when the alleged event occurred. Thus his testimony is hearsay. See Objections to Affidavit of John Kamada, pgs, 4, 5.</p>
	<p><u>Econocaribe's response:</u></p> <p>Exhibit B is a photo sent by Amoy to Econocaribe. Amoy stated that "Attached is the picture of the tire bales." See Amoy's Exhibit 22. This is admissible according to F.R.E. Rule 801(d).</p> <p>John Kamada's affidavit supports the fact that "Econocaribe did not know that the cargo was baled used truck tires until the cargo arrived in China and was inspected by Chinese Customs." John Kamada has first-hand knowledge as to what Econocaribe knows or does not know.</p> <p>At the minimum, the undisputed fact is that the cargo is "recycle[sic] items." See Amoy's Exhibit 8 which is not a hearsay, pursuant to F.R.E. Rule 801(d)(2).</p>
	<p><u>Undisputed Facts:</u></p> <p>However, the cargo was baled used truck tires or recycled auto parts. Econocaribe did not know this until the cargo arrived in China and was inspected by Chinese Customs. See John Kamada Affidavit.</p>
¶6	<p><u>Econocaribe's original statement:</u></p> <p>Krystal Lee knew that the cargo was in fact baled used truck tires when she booked</p>

spaces with Econocaribe and made the misdeclaration. *See* John Kamada Affidavit; Exhibit "C", Melissa Chen email dated April 15, 2014 in which she stated that "Krystal [Lee] is no longer with the company ... but Krystal has caused big problems with other shipments too and we have lost way too much money in past 2 years, law suits, penalties and etc.;" and Exhibit "D," Melissa Chen email dated May 9, 2014 in which she stated that that she "just took care of lawsuits with MSC and Zim due to previous losses with similar problem caused by the same sales [Krystal Lee]."

Amoy's response:

Disputed. Mr. Kamada misstates the telephone conversation with Melissa Chen. She did not state that "Krystal Lee knew the cargo was in fact baled used truck tires when she booked spaces with Econocaribe and made the misdeclaration" or that "this was not the first time that Amoy had shipped used tires by providing false information to another NVOCC" or any of the other representations set forth in ¶9 of Kamada's Affidavit, except for the statement that "Krystal is no longer with the company." See Declaration of Melissa Chen ("Chen Declaration"), ¶¶29, 30, 31.. There were no other incidents, claims or litigation involving Krystal Lee and other NVOCCs or misdeclarations or baled tires. The other incident involved shipments, represented to be wood pulp, with MSC and ZIM and Amoy settled with these carriers. That incident did not involve other NVOCCs or baled tires. See Chen Declaration, ¶29, Exhibit "31".

Econocaribe's response:

The content of the conversation remains disputed. Econocaribe objects to Exhibit 31 as irrelevant because it shows nothing related to Amoy or Krystal Lee.

	<p><u>Undisputed Facts:</u></p> <p>Krystal Lee has caused similar problems [similar to this case that she misdeclared goods] and has caused lawsuits including lawsuits with MSC and Zim, penalties and etc. to Amoy. Amoy had taken care of lawsuits caused by Krystal Lee and had lost way too much money in the past 2 years. Exhibit "C" to Motion for Partial Summary Judgment. Exhibit "D" to Motion for Partial Summary Judgment.</p>
¶7	<p><u>Econocaribe's original statement:</u></p> <p>Amoy knew or should have known that the description was incorrect. <i>See</i> ¶ 9 of Complaint and ¶ 9 of Respondent's Answer to the Complaint.</p>
	<p><u>Amoy's response:</u></p> <p>Disputed. A carrier is not required to open sealed contained or boxes to check on the internal condition of the goods. See Schoenbaum, 1 Admiralty and Maritime Law, §10-12 (5th ed.), fn. 18 and cases cited therein. Although Amoy had no duty to open the containers, it did ask the shipper, Mr. Chen, to provide a photograph of the cargo and received what it believed was a photograph of the cargo. See Chen Declaration, ¶¶4, 5, 31; Exhibits "4", "5", "6", and "32." Furthermore, Econocaribe's fn. 1 comment that Amoy "nevertheless admits that its declaration was in fact a mistake" in its answer is incorrect and a misinterpretation of that answer. Amoy did not admit it made a mistake when it declared the cargo as auto parts, since it did not know that the cargo was baled tires. See ¶9 of Respondent's Answer; Chen Declaration, ¶4.</p>
	<p><u>Econocaribe's response:</u></p> <p>Paragraph 9 of the Complaint reads "Amoy, as a common carrier, willfully, intentionally, and knowingly misdeclared the cargo as new auto parts when in fact it was used baled</p>

	<p>truck tires, said misdeclaration causing it to be detained by Chinese Customs. False manifestation of cargo on a bill of lading and transportation of goods under tariff misclassification is a violation of 46 U.S.C. §41104(2)(A), 46 U.S.C.§41102(c) and 46 C.F.R.§ 515.31(e), and of the Shipping Act of 1984 as amended, sections 10(a)(1), (b)(1), (b)(2)(A)&(B)." Amoy's answer is "In response to Paragraph 9, Respondent admits, on information and belief, that the cargo, which was declared as auto parts, was in fact used tires and that this misdeclaration caused the cargo to be detained by Chinese Customs. Except as admitted, denies that it willfully, intentionally, and knowingly misdeclared the cargo as new auto parts or that it has violated any of the statutes or Code of Federal Regulations alleged in this Paragraph." Clearly, Amoy did admit that it misdeclared the cargo. A misdeclaration is a mistake. Going back to Econocaribe's statement of facts, Amoy's knowledge was imputed by Krystal Lee's personal knowledge. Further, Econocaribe's Reply Exhibit 3 shows that Amoy claims to be a used tire dealer. As a specialized used tire dealer, Amoy surely knew or should have known that the cargo was in fact used tires.</p>
	<p><u>Undisputed Facts:</u></p> <p>Amoy knew or should have known that the description was incorrect. See Econocaribe's Reply Exhibit 3.</p>
¶8	<p><u>Econocaribe's original statement:</u></p> <p>Econocaribe's Terms and Conditions were included into the Bill of Lading. The Bill of Lading states "transportation pursuant to this Bill of Lading is subject to conditions set forth in Econocaribe published tariff." Exhibit "E".</p>
	<p><u>Amoy's response:</u> undisputed.</p>

	<p><u>Undisputed Facts:</u></p> <p>Econocaribe's Terms and Conditions were included into the Bill of Lading. The Bill of Lading states "transportation pursuant to this Bill of Lading is subject to conditions set forth in Econocaribe published tariff." Exhibit "E".</p>
¶9	<p><u>Econocaribe's original statement:</u></p> <p>Paragraph 15 of Econocaribe’s Terms and Conditions of Service provides:</p> <p>15.2 Merchant shall be liable for and shall indemnify the Carrier against all loss, damage, delay, fines, attorney fees and/or expenses arising from any breach of any of the warranties in clause 14.3 or from any other cause whatsoever in connection with the Goods for which the Carrier is not responsible.</p> <p>15.3 The merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses including, without prejudice to the generality of the foregoing Freight for any additional Carriage undertaken, incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient declaration, or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.</p>
	<p><u>Amoy's response:</u> undisputed.</p>
	<p><u>Undisputed Facts:</u></p> <p>Paragraph 15 of Econocaribe’s Terms and Conditions of Service provides:</p> <p>15.2 Merchant shall be liable for and shall indemnify the Carrier against all loss, damage, delay, fines, attorney fees and/or expenses arising from any breach of any of the warranties in clause 14.3 or from any other cause whatsoever in</p>

	<p>connection with the Goods for which the Carrier is not responsible.</p> <p>15.3 The merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses including, without prejudice to the generality of the foregoing Freight for any additional Carriage undertaken, incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient declaration, or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.</p>
¶10	<p><u>Econocaribe's original statement:</u></p> <p>Paragraph 14 of Econocaribe's Bill of Lading and Conditions of Service provides:</p> <p>14.3 The Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the reverse hereof have been checked by the Shipper on receipt of this bill of lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the goods will not cause loss, damage or expense to the Carrier, or to any other cargo during the Carriage</p> <hr/> <p><u>Amoy's response:</u> undisputed.</p> <hr/> <p><u>Undisputed Facts:</u></p> <p>Paragraph 14 of Econocaribe's Bill of Lading and Conditions of Service provides:</p> <p>14.3 The Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the reverse hereof have been checked by the Shipper on</p>

	<p>receipt of this bill of lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the goods will not cause loss, damage or expense to the Carrier, or to any other cargo during the Carriage.</p>
¶11	<p><u>Econocaribe's original statement:</u></p> <p>Econocaribe in turn contracted with Maersk Line ("Maersk") for the shipment via the vessel "CMA CGM VIVALDI," and in accordance with Amoy's instructions made Victory Maritime Service ("Victory China") the consignee at destination. <i>See</i> Exhibit "F", Amoy Instructions. Maersk took possession of the containers along with other related paperwork on or about May 29, 2013 for purposes of shipment to China. <i>See</i> Exhibit "G", Maersk Bill of Lading.</p> <p><u>Amoy's response:</u></p> <p>Undisputed, except for "other paperwork." Exhibit "G" does not describe any "other paperwork" that Maersk took possession.</p> <p><u>Econocaribe's response:</u></p> <p>For the purpose of this Motion for Partial Summary Judgment, Econocaribe agrees to rewrite this statement to read as the following (in the undisputed facts section to this paragraph):</p> <p><u>Undisputed Facts:</u></p> <p>Econocaribe in turn contracted with Maersk Line ("Maersk") for the shipment via the vessel "CMA CGM VIVALDI," and in accordance with Amoy's instructions</p>

	<p>made Victory Maritime Service ("Victory China") the consignee at destination. See Exhibit "F", Amoy Instructions. Maersk took possession of the containers on or about May 29, 2013 for purposes of shipment to China. See Exhibit "G", Maersk Bill of Lading.</p>
¶12	<p><u>Econocaribe's original statement:</u></p> <p>The arrival date was June 17, 2013. On or about that date Chinese Customs opened the containers for inspection, and found that the contents were in fact goods prohibited entry into China, i.e. baled used truck tires. It seized the four containers from Maersk Line, the importing carrier, and Maersk's notification of this fact then went to Econocaribe and Amoy. See Exhibit "B."</p> <hr/> <p><u>Amoy's response:</u></p> <p>Disputed. Exhibit "B" is a photograph of tires and doesn't support any of the "Undisputed Facts" alleged in paragraph 12. If support is based on ¶8 of the Kamada Affidavit, Amoy has objected to that "testimony" based on hearsay and lack of foundation. His personal knowledge was not established. See Objections to Affidavit of John Kamada, pg. 5.</p> <hr/> <p><u>Econocaribe's response:</u></p> <p>The arrival date as of June 17, 2013 was established by email sent by Melissa Chen to Ariel Martinez. Amoy's Exhibit 7. This is not hearsay, F.R.E. Rule 801(d)(2).</p> <p>The photo supports that the Chinese Customs opened the containers and found the contents were used tires.</p> <p>John Kamada has personal knowledge as to what Maersk informed him.</p> <hr/> <p><u>Undisputed Facts:</u></p>

	<p>The arrival date was June 17, 2013. Subsequently, Maersk notified Econocaribe that Chinese Customs opened the containers for inspection, and found that the contents were in fact goods prohibited entry into China, i.e. baled used truck tires, and it seized the four containers from Maersk Line.</p>
¶13	<p><u>Econocaribe's original statement:</u></p> <p>On July 9, 2013 Maersk informed Econocaribe that the consignee Victory China denied interest in the cargo, and that Amoy needed to nominate another shipper for the return bill of lading. Econocaribe immediately forwarded this information to Amoy. <i>See Exhibit "H."</i></p>
	<p><u>Amoy's response:</u></p> <p>Disputed. Exhibit "H" does not state that "Amoy needed to nominate another shipper for the return bill of lading." The closest wording is "Pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue." "Pls make sure shipper as cargo owner be informed the longstanding. They need to push CNEE arrange cargo delivery ASAP." That language, whatever it means, does not support the "Undisputed Fact," that Amoy needed to nominate another shipper for the return bill of lading. If support is based on ¶10 of the Kamada Affidavit, Amoy has objected to that testimony. See Objections to Affidavit of John Kamada, pg.6. Moreover, the "Undisputed Fact" is misleading. From the outset, Amoy preferred to return the cargo and was asking for the re-export cost. See Chen Declaration, ¶¶8, 9, 11, 12; Exhibits "11", "12". However, it was persuaded by John Kamada to tender a letter of abandonment instead. See Chen Declaration, ¶¶10, 13, 14; Exhibits "11", "12".</p>
	<p><u>Econo's response:</u></p>

	<p>See the rewritten undisputed facts.</p>
	<p><u>Undisputed Facts:</u></p> <p>On July 9, 2013 Maersk informed Econocaribe that the consignee Victory China denied interest in the cargo, and that Econocaribe should advise Amoy if Amoy needed to nominate another consignee for the return bill of lading. Econocaribe immediately forwarded this information to Amoy.</p>
<p>¶14</p>	<p><u>Econocaribe's original statement:</u></p> <p>Although Amoy preferred to have the cargo abandoned in China, abandonment is simply not an option under Chinese Customs law. <i>See</i> Exhibit "I," George Amador email dated July 17, 2013 in which he stated that "As the cargo owner [Amoy] absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export." <i>See also</i> Exhibit "J," Section 29 of Chinese Customs Regulation on Import of Solid Waste Management Practices. Section 29 of Chinese Customs Regulation on Import of Solid Waste Management Practices provide that Chinese Customs shall order the importer or the carrier to return the solid waste back to its country of origin within a prescribed period.</p> <p><u>Amoy's response:</u></p> <p>Disputed. Misleading. Amoy did not prefer to have the cargo abandoned in China. It preferred to return the cargo to the U.S., but was persuaded by Econocaribe to abandon the cargo in China as being the least expensive alternative. <i>See</i> Chen Declaration, ¶¶8, 9, 11, 12, 13, 14; Exhibits "11", "12". Amoy told Mr. Kamada that it was seeking the cheapest way to solve the matter, <i>see</i> Chen Declaration ¶12, Exhibit "12". Amoy also told Econocaribe that it was not familiar with abandonment or its costs and was relying</p>

on Econocaribe's advice. See Chen Declaration, ¶12, Exhibit "12". Kamada responded accordingly. He recommended abandonment as less expensive than re- export. See Chen Declaration ¶13, Exhibit "12". In fact, Econocaribe recommended that the cargo be abandoned within the week after its arrival in China. See Chen Declaration¶10, Exhibit "11". This was after Amoy told Econocaribe that the cargo was likely prohibited from entry into China. See Chen Declaration, ¶7. Econocaribe's email to Amoy led it to believe that abandonment was in fact an option. See Chen Declaration, ¶12, Exhibit "12". When Amoy sent that letter to Econocaribe, it didn't tell Amoy that abandonment was not an option. See Chen Declaration, ¶14, 15. Amoy does not dispute that George Amador's email states "As the cargo owner [Amoy] absolutely cannot abandon the containers, now they must find new buyer at destination or arrange re- export." However, when that email was sent to Amoy, it was prefaced with a comment from Mr. Kamada that "Per Maersk, the containers cannot be abandoned until after 90 days of arrival." Amoy understood that comment to mean that after 90 days, it could send a letter of abandonment to solve the cargo problem. See Chen Declaration, ¶17. Mr. Amador's email is also at odds with Econocaribe's later request that Amoy send a letter of abandonment. See Chen Declaration, ¶¶20, 22, Exhibit "19". Amoy was never told that the letter was merely a negotiating ploy. If it was so informed, it would have insisted that the cargo be re- exported to the U.S. See Chen Declaration, ¶14. Section 29 of the Chinese Custom Regulation is irrelevant [F.R.E. §§ 401, 402] because no showing has been made that the cargo was classified as "solid waste."

Econo's response:

1) Melissa Chen's email dated 9:44AM of June 21, 2013 in which she stated that "we

want to keep everything in the good term and to solve this matter instead of dropping it...

We sincerely just want to solve this matter the quickest possible" does not show that Amoy preferred the return of cargo to U.S., as alleged by Amoy in its response. *See* Amoy's Exhibit 11.

2) Amoy understood from the beginning that the abandonment letter was to push the case for a faster response or in Amoy's own words "merely a negotiating ploy". *See* Melissa Chen's email dated 9:44AM of June 21, 2013. *See* Amoy's Exhibit 11.

3) Whether Melissa Chen was persuaded by John Kamada or Econocaribe into abandoning the cargo is not important because that is her subjective belief. The objective statement of facts is that she made the decision to abandon the goods after being presented several options by Econocaribe. What John Kamada was doing was to inform her several options and let her decide. *See* John Kamada's email dated 9:37AM, July 9, 2013, in which he stated "you have the option to return the cargo back to the U.S. or have it sold towards the costs involved (...). Please let me know what you would like to do"; John Kamada's email dated 10:53AM, July 9, 2013, in which he stated "I need you to tell me if it is to be auctioned or returned"; John Kama's email dated 9:59AM, in which he stated "You can abandon the cargo for sale at destination with the understanding that all charges (...) not covered by the sale of goods will be to your account. We do have your abandonment letter but we needed to get Maersk's stance on the cargo before we could proceed. Or you can return the shipment to U.S for an attempt to resell ... Please let me know and thanks." Amoy's Exhibit 12.

4) Amoy's Exhibit 11 does not show that John Kamada "recommended the cargo be abandoned within the week after its arrival in China." It only shows that John Kamada

suggested an abandonment letter be prepared and "ready to go".

5) Amoy's statement that John Kamada suggested it to abandon the cargo would be at odds with John Kamada's later email dated 11:01AM, July 1, 2013 in which he asked "do you think you might find another buyer?" *See* Amoy's Exhibit 11.

6) George Amador's email stating "As the cargo owner [Amoy] absolutely cannot abandon the containers, now they must find new buyer at destination or arrange re-export" was forwarded by Ariel Martinez to Melissa Chen, not by John Kamada. Although it was prefaced with "Per Maersk, the containers cannot be abandoned until after 90 days of arrival," this is a correct restatement of George Amador's email. George Amador's email states "As the cargo owner [Amoy] absolutely cannot abandon the containers, now they must find new buyer at destination or arrange re-export " and "According to China Law, when shipment discharge goes past 90 days without pickup by CNEE, it will be considered as abandon cargo and can be disposed by China Customs." With George Amador's email attached and his statement accurately restated by Ariel Martinez, a reasonable person with ordinary reading skills would not misunderstand what Maersk meant.

7) Amoy was not misled by Econocaribe's relaying of Maersk's email. In Melissa Chen's response to Ariel Martinez's forwarded message, she stated "this is the exact information we needed to hear from MSK since early June when I first contacted your office. It seems the shipment will need to be destroyed at port of destination." She did not conclude abandonment as necessary after seeing Ariel Martinez's email. *See* Amoy's Exhibit 15.

8) In response to Amoy's objection to Section 29 of Chinese Customs Regulation,

	<p>Econocaribe's Reply Exhibit 6 shows that Use Tires is within the prohibited solid waste list. This is admissible according to F.R.E. Rule 803(a) because (1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and(4) admitting it will best serve the purposes of these rules and the interests of justice.</p> <p><u>Undisputed Facts:</u></p> <p>Even though Amoy might prefer abandoning cargo, abandonment is simply not an option under Chinese Customs law.</p>
¶15	<p><u>Econocaribe's original statement:</u></p> <p>Amoy claimed that its abandonment letter released its responsibility for the return and/or disposition of the cargo. See ¶ 7 of Respondent's Answer to the Complaint. <i>See also</i> Exhibit "D," Melissa Chen email dated May 9, 2014 in which she stated that "[w]hen the abandonment letter was signed to Maersk last year, I was no longer expecting to receive emails instructing to taking back these containers. Maersk has these containers since last year, they were aware of the situation ..., and it is up to them for letting the containers sitting at port or solving this problem sooner."</p> <p><u>Amoy's response:</u></p> <p>Disputed. Misleading. ¶7 of Respondent's Answer to the Complaint does not support the contention that "Amoy claimed that its abandonment letter released its responsibility for the return and/or disposition of the cargo." It merely states that respondent provided complainant with a letter of abandonment that it requested. The quotation from Exhibit "D" omitted the phrase "even before containers arrive in port" following "aware of the</p>

situation.” In context, Exhibit “D” shows Amoy’s frustration in attempting to address the situation from the outset. Amoy informed Econocaribe at the outset “the cargo was likely prohibited from entry into China,” see Chen Declaration, ¶7, Exhibit “8”, that “we are running out of time” and the “We sincerely just want to solve the matter the quickest possible.” See Chen Declaration, ¶9. According to Amoy, “This shipment has not choice to either be returned or abandoned, please urgently advise” See Chen Declaration, ¶11. Mr. Kamada’s response was “You can abandon the cargo for sale at destination.” See Chen Declaration, ¶13, Exhibit “12”. From the outset, Mr. Kamada told Amoy repeatedly that it could abandon the cargo and even asked for an abandonment letter. See Chen Declaration, ¶¶10, 13, 17, 22; Exhibits “11”, “12”, “15”, “19”. On September 6, 2013, Econocaribe asked Amoy to send an abandonment letter, which Econocaribe passed on to Maersk on September 10, 2013. See Chen Declaration, ¶22. Except for email exchanges on September 12 and 13, 2013, the next communication that Amoy received on the matter was seven months later, on April 15, 2014. Because of the long delay, Amoy believed that the letter of abandonment had successfully addressed the issue. That belief is seen in an email that Amoy sent to Mr. Kamada: “Once abandonment letter was sign to carrier, they usually don’t come back to ask to take the container back, can you check again?” See Chen Declaration, ¶24; Exhibit “25”. In context, the events that occurred before Amoy sent its May 9, 2014 email explain its frustration and disbelief that is seen in that email.

Econocaribe's response:

1) Paragraph 7 of the Complaint reads "Amoy has never nominated either a shipper or consignee for the return of the cargo, leaving Econocaribe unable to repatriate the cargo."

What this paragraph means is that because Amoy had never nominated either a shipper or a consignee, Econocaribe was not able to repatriate the cargo. Amoy answered "In response to Paragraph 7, Respondent admits that it did not nominate a shipper or a consignee for the return of the cargo. However, Respondent provided Complainant with a letter of abandonment of the cargo that Complainant requested in its June 23, 2013 email to Respondent..." In the context, Amoy's answer means that it was not responsible for the repatriation of cargo because it gave Econocaribe a letter of abandonment.

2) Amoy tries to explain away that the expression "when the abandonment letter was signed to Maersk last year, I was no longer expecting to receive emails instructing to taking back these containers" expressed its frustration rather than disclaiming responsibility for return cargo. The very last paragraph in the same email betrays such explanation. The last paragraph reads "Unfortunately, I'm unable to come up with the money to cover these storages, **nor taking the containers back after all these time.**" *See* Amoy's Exhibit 27. Amoy's refusal to take the cargo back was also expressed in Melissa Chen's email dated May 13, 2014 in which she stated "I will not take the containers back." *See* Amoy's Exhibit 27.

3) The next communication Amoy received was not on April 15, 2014. An email was sent by Ariel Martinez to Melissa Chen with updates on the status of detention on November 1, 2013. *See* Econocaribe Reply Exhibit 5.

	<p><u>Undisputed Facts:</u></p> <p>Amoy claimed that its abandonment letter released its responsibility for the return and/or disposition of the cargo. See ¶ 7 of Respondent's Answer to the Complaint. See also Exhibit "D," Melissa Chen email dated May 9, 2014 in which she stated that "[w]hen the abandonment letter was signed to Maersk last year, I was no longer expecting to receive emails instructing to taking back these containers. Maersk has these containers since last year, they were aware of the situation ..., and it is up to them for letting the containers sitting at port or solving this problem sooner" and "Unfortunately, I'm unable to come up with the money to cover these storages, nor taking the containers back after all these time."</p>
¶16	<p><u>Econocaribe's original statement:</u></p> <p>In fact, abandonment is not an option and it does not release shipper of liability. Maersk requested Amoy abandonment letter only to see if it could pressure Chinese Customs to order disposition. See Exhibit "K," Barbara Surez email dated May 114, 2014. Chinese Customs does not necessarily react to shipper's abandonment letter. <i>Id.</i> and Exhibit "L," Barbara Surez email dated on June 9, 2014 in which she stated "China Customs controls and decides when disposal can be arranged and for that reason."</p>
	<p><u>Amoy's response:</u></p> <p>Disputed. Citation to Exhibits "K" and "L" is misleading and irrelevant. At the outset, Amoy informed Econocaribe that it was not familiar with abandonment procedure and costs. It was looking to Econocaribe for direction. See Chen Declaration, ¶12. The direction from Econocaribe was to recommend abandonment as an option and to later ask Amoy prepare a letter of abandonment. See Chen Declaration, ¶¶10, 13, 17, 22; Exhibits</p>

"11", "12", "15", "19". Amoy was persuaded by Econocaribe to prepare a letter of abandonment in a July 10, 2013 email, instead of returning the cargo as Amoy had preferred. See Chen Declaration, ¶¶12, 15, 27; Exhibit "12". No one told Amoy when it sent its letter of abandonment that it was merely a negotiating ploy. If they did, Amoy would have insisted that the containers be returned to the United States. It believed that a letter of abandonment was an alternative that would solve the problem. See Chen Declaration, ¶14, 17. Moreover, Econocaribe failed to inform Amoy when it requested Amoy's letter of abandonment, that Maersk had informed Econocaribe that the best option was to see about re-export before the cargo was seized. If it had, Amoy would have insisted on re-export. See Chen Declaration, ¶22; Exhibit "20". See also response to "Undisputed Fact" No. 14.

Econocaribe's response:

1) Citation to Exhibits K and L is relevant and not misleading. It shows that Maersk and Econocaribe's request of abandonment letter was to put pressure on Chinese Customs. The effect of it would be very limited because "China Customs controls and decides when disposal can be arranged and for that reason."

2) Amoy's citation to its Exhibits "11", "12", "15", "19" is misleading.

First, although it may be the case that "no one told Amoy when it sent its letter of abandonment that it was merely a negotiating ploy," Amoy understood that the letter was to a negotiating ploy. See Melissa Chen email dated 9:44AM, June 21, 2013, in which she stated "If you need me to issue abandonment letter to MSK to push them for faster response please let me know."

Second, although Amoy issued its abandonment letter on July 10, 2013 after John

	<p>Kamada suggested that return the shipment to U.S. for an attempt to re-sell in U.S. "is usually a more expensive alternative," John Kamada never suggested or pushed Amoy to go through the abandonment route - he kept telling Melissa Chen that "the final decision is yours." See John Kamada email, dated 9:59AM, July 10, 2013. Amoy's Exhibit 12.</p> <p>Third, Amoy's Exhibit 15 does not support Amoy's allegation that "the direction from Econocaribe was to recommend abandonment as an option and to later ask Amoy prepare a letter of abandonment."</p> <p>Although it seems from Amoy's Exhibit 19 that Econocaribe failed on September 6, 2013 to inform Amoy that re-export was the best option, Amoy could not provide consignee's name for re-export, therefore this option was in fact foreclosed by Amoy.</p>
	<p><u>Undisputed Facts:</u></p> <p>In fact, abandonment is not an option and it does not release shipper of liability. Maersk requested Amoy abandonment letter only to see if it could pressure Chinese Customs to order disposition. See Exhibit "K," Barbara Suarez email dated May 114, 2014. Chinese Customs does not necessarily react to shipper's abandonment letter. <i>Id.</i> and Exhibit "L," Barbara Suarez email dated on June 9, 2014 in which she stated "China Customs controls and decides when disposal can be arranged and for that reason."</p>
¶17	<p><u>Econocaribe's original statement:</u></p> <p>Amoy could not find a buyer at the destination, therefore the return to U.S. was the only possible option. See Exhibit "M," Melissa Chen email dated July 1, 2013 in which she responded to John Kamada that she could not find a buyer in China.</p> <p><u>Amoy's response:</u></p>

Undisputed. Exhibit "M" confirms that Econocaribe was informed on July 1, 2013 that Amoy could not find a buyer. Yet Econocaribe continued to recommend that Amoy prepare a letter of abandonment and even asked for a letter. See Chen Declaration, ¶¶13, 17, 22; Exhibits "12", "15", "19". Econocaribe knew that Amoy was not familiar with abandonment procedure, see Chen Declaration, ¶12 . It should have informed Amoy that abandonment was not an option once it found out that Amoy could not find a buyer and even before that when Amoy informed Econocaribe that the cargo was likely prohibited in China. See Chen Declaration, ¶7. Econocaribe knew from the outset that Amoy preferred to return the cargo. See Chen Declaration, ¶¶8, 9, 11, 12; Exhibit "11", "12" ("I still think that returning will be the fastest way"). Moreover, Econocaribe failed to inform Amoy when it requested Amoy's letter of abandonment, that Maersk had informed Econocaribe that the best option was to see about re-export before the cargo was seized. See Chen Declaration, ¶22; Exhibit "20".

Econocaribe's response:

Econocaribe did not recommend that Amoy abandon the shipment. It is the recurring theme in John Kamada's emails that he needed Amoy to tell him specifically either to return or abandon.

In response to Amoy's allegation that Econocaribe should have informed Amoy that abandonment was not an option once it found out that Amoy could not find a buyer and even before that when Amoy informed Econocaribe that the cargo was likely prohibited in China, same logic applies to Amoy, after knowing that it could not find a buyer in China and also the cargo was likely prohibited in China, it should have realize abandonment was not an option.

	<p>Even if Econocaribe failed to inform Amoy when it requested Amoy's letter of abandonment, that Maersk had informed Econocaribe that the best option was to see about re-export before the cargo was seized, such failure in notifying Amoy was harmless because Amoy never provided consignee for return shipment.</p>
	<p><u>Undisputed Facts:</u></p> <p>Amoy could not find a buyer at the destination, therefore the return to U.S. was the only possible option. See Exhibit "M," Melissa Chen email dated July 1, 2013 in which she responded to John Kamada that she could not find a buyer in China.</p>
¶18	<p><u>Econocaribe's original statement:</u></p> <p>On or about April 2, 2014, Chinese Customs issued the order to release the four containers with the condition that they be shipped back to their country of origin. <i>See</i> Exhibit "N," Barbara Suarez email dated April 2, 2014 in which she stated "[j]ust this morning that Customs is ordering these containers to return to origin, as cargo is "cut baled tires," which is a restricted commodity."</p> <p><u>Amoy's response:</u> Undisputed.</p> <p><u>Undisputed Facts:</u></p> <p>On or about April 2, 2014, Chinese Customs issued the order to release the four containers with the condition that they be shipped back to their country of origin. <i>See</i> Exhibit "N," Barbara Suarez email dated April 2, 2014 in which she stated "[j]ust this morning that Customs is ordering these containers to return to origin, as cargo is "cut baled tires," which is a restricted commodity."</p>
¶19	<p><u>Econocaribe's original statement:</u></p> <p>As of June 11, 2014, China Customs had not released cargo. <i>See</i> Exhibit "O," Barbara</p>

	<p>Suarez email dated June 11, 2014.</p> <p><u>Amoy's response:</u> Undisputed.</p> <p><u>Undisputed Facts:</u></p> <p>As of June 11, 2014, China Customs had not released cargo. See Exhibit "O," Barbara Suarez email dated June 11, 2014.</p>
¶20	<p><u>Econocaribe's original statement:</u></p> <p>Amoy has never nominated either a shipper or consignee for the return of the cargo, leaving Econocaribe unable to repatriate the cargo. See ¶ 7 of Answer to the Complaint. See also Exhibit "P," Melissa Chen email dated May 13, 2014 in which she stated "I [would] not take the containers back. Carriers have their solutions for this kind of situation and I suggest you not to agree for taking them back;" and Exhibit "D," Melissa Chen email dated May 9, 2014 in which she stated "[u]nfortunately, I [was] not able to come up with the money to cover these storages, nor taking the containers back after all these time."</p> <p><u>Amoy's response:</u></p> <p>Disputed. Although Amoy did not formally nominate a shipper or consignee, it was in the process of doing do. After almost a year after the cargo arrived in China, Amoy was asked to find a shipper or consignee. Amoy's concern was that Maersk and Econocaribe had waited so long to begin the process that it would have a problem in finding a shipper. Amoy warned Econocaribe from the outset that action had to be taken quickly and that Amoy preferred returning the cargo. See Chen Declaration, ¶9, 11, 12. Beginning in May, 2014, Amoy tried to find a shipper. It contacted seven companies to see if they had an interest in dealing with the cargo. Three asked for photographs of the tires which</p>

	<p>Amoy sent them. The photographs had been sent by Econocaribe’s counsel. The three contacts wanted more information, which Amoy was unable to provide. Amoy was still in the process of finding a shipper, when Econocaribe filed its action with the FMC. See Chen Declaration, ¶25.</p>
	<p><u>Econocaribe's Response:</u></p> <p>Whether Amoy was in the process of finding a shipper or consignee is not important and would not make Econocaribe's statement of facts "Amoy has never nominated either a shipper or consignee for the return of the cargo, leaving Econocaribe unable to repatriate the cargo" subject to dispute.</p>
	<p><u>Undisputed Facts:</u></p> <p>Amoy has never nominated either a shipper or consignee for the return of the cargo, leaving Econocaribe unable to repatriate the cargo. See ¶ 7 of Answer to the Complaint. See also Exhibit "P," Melissa Chen email dated May 13, 2014 in which she stated "I [would] not take the containers back. Carriers have their solutions for this kind of situation and I suggest you not to agree for taking them back;" and Exhibit "D," Melissa Chen email dated May 9, 2014 in which she stated "[u]nfortunately, I [was] not able to come up with the money to cover these storages, nor taking the containers back after all these time."</p>
<p>¶21</p>	<p><u>Econocaribe's original statement:</u></p> <p>Econocaribe entered into agreement with Maersk that Maersk will ship the four containers back to U.S.</p> <hr/> <p><u>Amoy's response:</u> Undisputed.</p> <hr/> <p><u>Undisputed Facts:</u></p>

	Econocaribe entered into agreement with Maersk that Maersk will ship the four containers back to U.S.
¶22	<u>Econocaribe's original statement:</u> The original demurrage charge was \$172,897 and was mitigated to \$70,000 - an amount which has been paid by Econocaribe to Maersk. <i>See Exhibit "Q."</i>
	<u>Amoy's response:</u> Disputed. Hearsay F.R.E. §§801, 802; lack of foundation and authentication. [F.R.E. §602; 901(b)(1)]. Exhibit Q's reference to the amount of the original demurrage charge is hearsay and has no foundation; it has not been shown that the wire transfer is related to the detention of the four containers.
	<u>Econocaribe's Response:</u> The wire transfer is business record. John Kamada is the custodian and can testify to its authenticity. See John Kamada Declaration. If necessary, Econocaribe will ask Maersk to provide an affidavit as to the original demurrage charges.
	<u>Undisputed Facts:</u> The original demurrage charge was \$172,897 and was mitigated to \$70,000 - an amount which has been paid by Econocaribe to Maersk. <i>See Exhibit "Q."</i>
¶23	<u>Econocaribe's original statement:</u> The return freight is estimated to be \$17,300. <i>See Exhibit "R," Maersk Bill of Lading.</i>
	<u>Amoy's response:</u> Disputed. Irrelevant. No showing has been made as to actual cost of the return freight and whether that cost has been paid.
	<u>Econocaribe's Response:</u>

	<p>Relevant as to estimation. No actual payment need to be made in order to estimate the cost.</p> <p><u>Undisputed Facts:</u></p> <p>The return freight is estimated to be \$17,300. See Exhibit "R," Maersk Bill of Lading.</p>
¶24	<p><u>Econocaribe's original statement:</u></p> <p>Customs clearance, dray and cost of destruction are estimated to be \$9,000. After the destruction of returned used tires, Econocaribe will provide an accurate accounting.</p> <p><u>Amoy's response:</u></p> <p>Disputed. Irrelevant. No showing has been made of the actual costs of customs clearance, dray and destruction and whether those costs have been paid.</p> <p><u>Econocaribe's Response:</u></p> <p>Relevant as to estimation. No actual payment need to be made in order to estimate the cost.</p> <p><u>Undisputed Facts:</u></p> <p>Customs clearance, dray and cost of destruction are estimated to be \$9,000. After the destruction of returned used tires, Econocaribe will provide an accurate accounting.</p>
¶25	<p><u>Econocaribe's original statement:</u></p> <p>Amoy admitted liability as to demurrage costs, return freight, customs clearance, dray, and destruction costs. See Exhibit "C," Melissa Chen email dated April 15, 2014 in which she stated "the total cost listed below is really expensive and I can't afford to pay them. I know is not related to you and to the case." The total cost mentioned in the email</p>

	<p>refers to the demurrage costs, return freight, customs clearance, dray and destruction, etc.</p> <p>"You" refers to John Kamada and Econocaribe.</p>
	<p><u>Amoy's response:</u></p> <p>Disputed. Misleading. Amoy did not admit liability for those costs. That email was in response to an earlier email that day where Econocaribe stated "May I suggest you proceed ASAP and accept the charges [meaning almost \$200,000 in charges]. We can still try to mitigate the overall charges but unfortunately, China Customs is not pushing Maersk." Amoy did not believe that it should pay those costs because they could have been prevented if Econocaribe had addressed the cargo issue at the outset. Amoy did not admit liability for those costs. See Chen Declaration, ¶24.</p>
	<p><u>Econocaribe's Response:</u></p> <p>At a minimum, in that email, Amoy admitted that the Econocaribe was not the cause for the charges.</p>
	<p><u>Undisputed Facts:</u></p> <p>Amoy admitted that Econocaribe was not liable for the demurrage costs, return freight, customs clearance, dray, and destruction costs. See Exhibit "C," Melissa Chen email dated April 15, 2014 in which she stated "the total cost listed below is really expensive and I can't afford to pay them. I know is not related to you and to the case." The total cost mentioned in the email refers to the demurrage costs, return freight, customs clearance, dray and destruction, etc. "You" refers to John Kamada and Econocaribe</p>
¶26	<p><u>Econocaribe's original statement:</u></p> <p>Amoy has steadfastly refused to provide payment for the any resulting costs.</p>

	<p><u>Amoy's response:</u></p> <p>Disputed. Misleading. The use of the word steadfast implies that Amoy, from the outset in June, 2013, refused to pay for any resulting costs. That is incorrect. Amoy, from the outset, had asked Econocaribe for the cost of returning the containers and was looking for direction from Econocaribe. See Chen Declaration, ¶¶8, 9. Return costs were provided to Amoy almost a year later, on May 12, 2014. See Chen Declaration ¶8; Exhibit "27". A demand for all costs to be paid PRIOR to the return of the cargo wasn't made until April 22, 2014, although a demand was made on Amoy for costs a week earlier. At that point, costs had grown so large because of Econocaribe's failure to promptly address the issue, that Amoy could not afford to pay them. See Chen Declaration, ¶¶24, 25.</p>
	<p><u>Econocaribe's Response:</u></p> <p>Even if Amoy intended to pay for the resulting cost from the outset, it now refuses to pay the resulting costs which remains its responsibility under Bill of Lading.</p>
	<p><u>Undisputed Facts:</u></p> <p>Amoy refuses to provide payment for the any resulting costs.</p>

In addition to the above undisputed facts, Econocaribe provides the following facts and believe that they are undisputed:

27. Econocaribe's Tariff is filed with the Commission and available on Econocaribe's website.

See Econocaribe's Reply Exhibit 1.

28. Amoy holds a Chinese maritime license with a China MOC License No. MOC-NVO03586.
This shows up in every Amoy signature block. *See e.g. Amoy's Exhibit 1.*
29. Amoy's business is related to rubber and plastics industry and it specifically deals in tires scrap. *See Econocaribe's Reply Exhibit 2.*
30. Amoy is more familiar with Chinese Customs Regulations than Econocaribe. This can be supported by the fact that Amoy holds a Chinese maritime license and the fact that immediately after knowing that the commodities were recycled items, Amoy pointed out that they were likely prohibited from entry into China. *See Amoy's Exhibit 8.* Amoy's claimed reliance on Econocaribe is unfounded.
31. Amoy advertised to sell four containers of used rubber in China. If these four containers were the subject of this proceeding, the fact that Amoy claimed that "we have scrap rubber and used tires in bale available" suggested that Amoy had taken title to the cargo. Or at a minimum, it did not in good faith try to find a buyer in China because it asked for an exorbitant price (\$100-300 per ton). *See Econocaribe's Reply Exhibit 3.*
32. For the shipment that Amoy misdeclared the cargo, Amoy was sued by ZIM American Integrated Shipping Services Company, LLC ("ZIM"). *See Econocaribe's Reply Exhibit 4 and Request for Judicial Notice.*
33. According to ZIM's complaint, Amoy failed to make arrangements for delivery of the goods and caused the charges for storage and demurrage to the amount of \$137,891.00. *See Econocaribe's Reply Exhibit 4.* The case settled and Econocaribe does not know how much Amoy eventually paid. However, such a big amount of demurrage suggested that Amoy had failed to timely rearrange delivery or re-export.

34. Even if Econocaribe did not relay Maersk's September 4, 2013 email to Amoy, cargo could not be re-exported because first, Amoy did not have commercial documents for re-export, second, Chinese Customs would have processed the re-export request as slowly as the abandoned process because Chinese Customs is very sensitive to restricted commodity. *See* Econocaribe Reply Exhibit 5.

DATED: January 26, 2015

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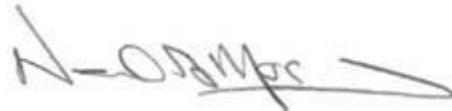
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Counsel for Complainant
Econocaribe, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S RESPONSES TO RESPONDENTS' SEPARATE STATEMENT OF DISPUTED FACTS AND COMPLAINANT'S NEW STATEMENT OF UNDISPUTED FACTS** was sent to the below-mentioned counsel via email on January 26, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
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Attorneys for Respondent
AMOY INTERNATIONAL LLC.

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

Neil B. Mooney, Esq.