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**BEFORE THE
 FEDERAL MARITIME COMMISSION**

 TRANSPORT EXPRESS, INC. and)
 THE INTERMODAL MOTOR CARRIERS)
 CONFERENCE, AMERICAN TRUCKING)
 ASSOCIATIONS)
 Complainants)
 - v -)
 SINOTRANS CONTAINER LINES, CO., LTD.)
 and SINOTRANS SHIPPING AGENCY (NA),)
 INC.)
 Respondents)

OFFICE OF THE SECRETARY
 FEDERAL MARITIME COMM

Docket No. 06- 10



COMPLAINT

**RESPONDENTS' CONSENT TO ADJUDICATION UNDER SUBPART K,
 SHORTENED PROCEDURE, REQUESTED**

I. COMPLAINANTS

A. Complainant Transport Express, Inc, ("Transport Express") is a California Corporation, and a certificated motor carrier under the laws of California and the United States. Its principal place of business is 19801 South Santa Fe Ave., Rancho Dominguez, California, 90221.

B. Complainant Intermodal Motor Carriers Conference ("IMCC") is an affiliated conference of the American Trucking Associations, Inc. ("ATA"). ATA is the non-profit national trade association for the trucking industry established under the laws of the Commonwealth of Virginia as a federation of affiliated state trucking associations, conferences and organizations that includes more than 37,000 motor

carrier members representing every type and class of motor carrier in the country. The IMCC provides educational and training services to the intermodal motor carrier members of the ATA, as well as representing the interests of these members in a broad range of federal, state, local and industry policy forums. Its principal place of business is 2200 Mill Road, Alexandria, Virginia, 22314. Complainant Transport Express is a member of the IMCC.

II. RESPONDENTS

Respondent Sinotrans Container Lines Co., Ltd. is a vessel-owning ocean common carrier designated by the Commission as a “controlled carrier,” as defined in the Shipping Act of 1984. Its headquarters is located at No. 188 Fujian Road, Shanghai 200001, Peoples Republic of China. It does business in the United States, and may be served, through its affiliate, respondent Sinotrans Shipping Agency (NA), Inc., whose headquarters is located at One World Trade Center, Suite 2360, Long Beach, California 90831, Attn: Pat Dinon, President. Email contact is pdinon@sinotranslb.com; phone: 562-590-8000. Respondents collectively may be referred to as “Sinotrans” in this Complaint

III. JURISDICTION AND EFFORTS AT INFORMAL RESOLUTION

This complaint for reparations and other appropriate relief arises from the actions of respondents in violation of Shipping Act of 1984 sections 10(b)(10) (46 U.S.C. section 41104(10))¹, which prohibits an ocean common carrier from

¹ To the extent relevant, all citations to provisions of the Shipping Act shall be construed to be citations to those provisions as recodified into Subtitle IV of U.S. Code Title 46, as enacted into positive law by Public Law 109-304 (October 6, 2006). See Public Law 109-304, section 18(c). The provisions of the Shipping Act remain in

“unreasonably refus[ing] to deal or negotiate,” and 10(d)(1) (46 U.S.C. section 41102(c)), which requires ocean common carriers to “observe .. just and reasonable regulations and practices relating to ... receiving, handling, storing, or delivering property.” The Commission has jurisdiction to hear this complaint under section 11 of the Act (46 U.S.C. section 41301) and to award reparations under section 11(g) (46 U.S.C. section 41305).

On October 21, 2005, Transport Express filed an informal complaint with the Commission’s Office of Consumer Affairs regarding the matters set forth in this complaint.² On November 7, 2005, Ms. Patty Senecal, an officer of Transport Express, had a telephone conversation with a representatives of that Office. Ms. Senecal was advised that the Commission would take no action on the complaint because it was a “commercial dispute” between a motor carrier and an ocean carrier, and that no written statement of non-action would be sent. No further response from the Office of Consumer Affairs or any other Commission representative has been received by Transport Express as of the date of this Complaint.

The complainants believe that the facts justifying relief are established by the accompanying Memorandum of Facts and Arguments and the exhibits attached thereto. Thus, adjudication under Subpart K, Shortened Procedure, is warranted, and the consent of the respondents to use of the Shortened Procedure is requested.

effect for transactions prior to passage of the recodification. See Public Law 109-304, section 19.

² Letter from Patty Senecal, Vice President, Transport Express, Inc., to Mr. Ron Murphy, Director, Office of Consumer Affairs, Federal Maritime Commission, Re: Complaint against Sinotrans Containers Lines (October 21, 2005).

IV. VIOLATIONS ALLEGED

As set out in more detail in the attached Memorandum of Facts and Arguments:

A. The Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”) and related carrier-specific addenda provide a framework for international marine cargo trade and motor carrier interchange. The UIIA is administered by the Intermodal Association of North America (“IANA”). The UIIA currently has over 6,500 motor carriers, 52 water carriers, 7 railroads and 2 leasing companies that participate in the program, representing over ninety percent (90%) of the intermodal freight market. The integrity of the UIIA process is thus essential to the efficient movement of international cargo container traffic.

B. Complainant Transport Express and respondents are participants in the UIIA, and, since at least December 2001, had interchange rights under a Sinotrans/Sinotrans Agency-specific addendum to the UIIA. Using the interchange rights under the UIIA and the addendum, Transport Express drayed containers from Sinotrans’ pierside location to its shipper-customers, including EMPI, Inc.

C. On October 5, 2004, Transport Express returned a Sinotrans container to its representative. The equipment interchange receipt (“EIR”) for the container was “clean” in that no damage was noted; however, the box “subject to inspection at a later time” was checked. On October 19, 2004, respondents sent Transport Express an invoice for \$178.72, reflecting an estimate for claimed damage to the container identified at a post-interchange inspection. Transport Express protested the invoice

within the following 30 days, noting that the interchange receipt was clean. Respondents acknowledged receipt of the protests.

D. Almost a year later, on September 7, 2005, Sinotrans sought payment on the invoice. On September 13, 2005, Transport Express formally wrote to protest Sinotrans' efforts to collect on the invoice. On September 14, 2005, Sinotrans terminated Transport Express's UIIA interchange rights with Sinotrans. On September 15, Transport Express wrote to the UIIA administrator regarding the existence of any UIIA provision that would allow post-interchange inspection. Later that day, Transport Express was advised by the UIIA administrator that no such provision existed, and in turn, Transport Express immediately raised with senior personnel of respondents multiple objections regarding respondents' compliance with UIIA provisions. On September 16, 2005, a vice president of the respondents replied by email that, "we are no longer pursuing reimbursement for cost of this repair ..., dating back to October 19, 2004. We simply do not have the time to devote to this matter, we must get on with our business. However, we do not wish to have Transport Express pull Sinotrans' equipment. Therefore your agreement is terminated." Nevertheless, in response to Transport Express's claim of lack of notice for termination, as required by the UIIA, respondents advised the UIIA administrator on September 16, 2005 to reinstate Transport Express for the purpose of subsequently being terminated on September 19, 2005. The termination of Transport Express's interchange rights with respondents became effective on September 19, 2005, and remain terminated continuing through the date of this Complaint.

E. On September 16, 2005 (a Friday), another Sinotrans official advised Transport Express by email that “We will contact Leader Int’l to advise them that we no longer wish to do business with Transport Express beyond this week.” Leader International is the freight forwarder used by Transport Express’s shipper-customer, EMPI, Inc. This email demonstrates Sinotrans’ direct interference with the business relations between Transport Express and one of its customers, and through immediate termination of Transport Express’s interchange rights, direct interference with the efficient flow of international container traffic between Sinotrans and EMPI, Inc.

F. On September 16, 2005 Transport Express sought a ruling from the Intermodal Industry Executive Committee (“IIEC”), which oversees the UIIA, regarding, among other issues, whether there was any basis for billing Transport Express for damage identified post-interchange, and whether terminating a motor carrier’s interchange agreement for protesting an invalid invoice could constitute “good cause” for termination under the UIIA. Transport Express’s request was circulated to the nine IIEC members, eight of whom responded. Based on their responses, on September 26, the UIIA administrator advised Transport Express that “neither the IIEC nor IANA has the authority to require an equipment provider to reinstate a motor carrier’s interchange privileges. That is a commercial decision of the provider. What we can do and have done is require Sinotrans to discontinue the practice of inspecting equipment after it has been returned to the terminal and an EIR has been executed, as this practice is contrary to the provisions of the UIIA.”

G. Following termination of Transport Express’s interchange arrangements with Sinotrans, Transport Express took steps to protect its shipper-

customers from disruption in the movement of containers for which Sinotrans was the ocean carrier. Initially, it established an arrangement with another motor carrier, C-LA Trucking, in which C-LA would pick up the container at Sinotrans' facilities, while Transport Express would return the container to the port, under a UIIA provision in which a carrier may authorize another carrier to be in possession of an interchanged container, so long as the first carrier retains full financial responsibility.

H. On November 4, 2005, an employee of C-LA Trucking was contacted by an official of respondents who enquired why a container interchanged to C-LA by Sinotrans had been returned by Transport Express. According to the verified statement of the C-LA employee, the Sinotrans official stated "'Transport Express owed Sinotrans lots of money' and that 'Sinotrans does not allow Transport Express to pull their equipment.' He indicated that the UIIA does not allow a motor carrier to authorize another motor carrier to use their interchange and that Sinotrans didn't allow Transport Express to pull their equipment. [He] stated he would terminate CLA's interchange in 30 days if this continued." In response, Transport Express and C-LA decided to avoid any future arrangements under which Transport Express would help C-LA move Sinotrans equipment, so as not to jeopardize C-LA's interchange rights with Sinotrans.

I. The Sinotrans official who stated Sinotrans would terminate C-LA if it continued to interchange Sinotrans containers with Transport Express was the *direct addressee* of the communications from the UIIA administrator in late September 2005 regarding Transport Express's request for a UIIA interpretation. He was thus aware that: (1) Transport Express did not, in fact, owe Sinotrans any money, since

Sinotrans had cancelled the repair invoice at issue; (2) the UIIA administrator had determined that billing Sinotrans for later-discovered damage was not permissible under the UIIA; and (3) there was no basis for terminating Transport Express's interchange rights for non-payment of an invoice, since the invoice at issue was invalid under the UIIA, to which Sinotrans and Transport Express were both parties.

J. The facts recited in paragraphs (A) through (I) demonstrate the Sinotrans termination of Transport Express's UIIA interchange agreement was in response to Transport Express's assertion of its rights under the UIIA. These facts also strongly support an inference that Sinotrans actions were undertaken with the purpose of retaliating for Transport Express's assertion of its rights under the UIIA.

K. The last quarter of the year is in the "busy season" for in-bound Pacific container traffic, and motor carriers are reluctant to begin serving new clients on an immediate basis. Thus, Transport Express had to intervene directly with other motor carriers on its customers' behalf in order to prevent disruption to the movement of those shippers containers. In the case of EMPI, Inc., Transport Express was able to obtain replacement drayage services from Price Transfer, Inc. Prior to that time, Transport Express was EMPI's sole provider of container drayage services and, but for Sinotrans' termination of Transport Express's interchange agreement, EMPI, Inc. would not have sought Transport Express's replacement by Price Transfer.

V. VIOLATIONS OF THE SHIPPING ACT OF 1984

A. Shipping Act section 10(b)(10) prohibits an ocean common carrier from "unreasonably refus[ing] to deal or negotiate." Sinotrans' termination of Transport Express's interchange agreement in response to its assertion of rights under

the UIIA, as set out in paragraphs IV(A) – IV(I), constitutes an unreasonable refusal to deal, reinforced by Sinotrans’ refusal to permit other motor carriers with UIIA interchange rights subsequently to interchange Sinotrans containers with Transport Express. These actions further constitute an unreasonable refusal to deal because they were undertaken with the purpose of retaliating against Transport Express for asserting its rights under the UIIA.

B. Shipping Act section 10(d)(1) requires ocean common carriers to “observe ... just and reasonable regulations and practices relating to ... receiving, handling, storing, or delivering property.” Sinotrans’ termination of Transport Express’s UIIA interchange privileges in response to its assertion of its rights under the UIIA, as set out in paragraphs IV (A) – IV (I), constituted a failure by respondents to observe just and reasonable practices with respect to “receiving, handling, storing, or delivering property” by terminating the interchange privileges of a motor carrier that asserts its contractual rights under the UIIA.

C. As a result of the violations set out in paragraphs V(A) and (B), Complainant Transport Express has been injured and continues to be injured by the loss of business resulting from its inability to interchange cargo containers with Sinotrans. Further, the ability of Transport Express’s shipper-customers to receive reliable delivery of international cargo has been and continues to be injured by their inability to rely on the timely receipt of cargo containers carrier due to the conduct of Sinotrans in terminating or threatening to terminate UIIA interchange agreements with motor carriers. Sinotrans’ conduct has also resulted in loss of ability of Transport Express’s shipper-customers to deal with and rely upon the services of

Transport Express with respect to containers for which Sinotrans provides ocean transport.

D. As a result of the violations set out in paragraphs V(A) and (B), Complainant IMCC, on behalf of its motor-carrier members who participate in the UIIA mechanism and on behalf of the shipper-customers of those member motor carriers, states the actions of Sinotrans in terminating a motor carrier's UIIA agreement have disrupted and undercut the ability of the UIIA mechanism to serve the objective of facilitating the maintenance of an effective and efficient intermodal ocean transportation industry. The disruptive effects of Sinotrans' actions will continue until such time as the Commission asserts jurisdiction over Sinotrans' unlawful conduct and provides appropriate relief directed at respondents for the benefit of all motor carriers that are signatories to the UIIA and wish to interchange containers with Sinotrans.

VI. DAMAGES

Complainant Transport Express has been injured in the following manner: To its damage in the sum of \$ 2,102.00 as of the date of this Complaint, which damages continue to accrue.

VII. RELIEF

Wherefore complainants pray that respondents be required to answer the charges herein; that an order be made with respect to the respondents (and each of them):

- a. Finding that respondents' conduct toward Transport Express, as set out in the Complaint, is in violation of sections 10(b)(10) and 10(d)(1) of the Shipping Act of 1984;

- b. Directing respondents to reinstate Transport Express's interchange rights with respondents under the UIIA;
- c. Prohibiting respondents from terminating its UIIA arrangements with any motor carrier, including Transport Express, in response to an assertion by a motor carrier of any right or defense that the motor carrier may have as a party to the UIIA and carrier-specific addenda thereto;
- d. Awarding reparations in the amount of \$ 2,102.00 damages to complainant Transport Express, plus interest, plus attorney's fees borne by complainants, or such other sum as the Commission may determine to be proper as an award of reparation; and
- e. That such other and further order or orders be made as the Commission determines to be proper.

Dated at Rancho Dominguez, CA, this 16th day of October, 2006.

Patty Senecal

Patty Senecal, Vice President
Transport Express, Inc.
19801 South Santa Fe Avenue
Rancho Dominguez, CA 90221

State of California, County of Los Angeles ss:

Patty Senecal, being first duly sworn on oath deposes and says that she is an officer of the complainant Transport Express, Inc. and is the person who signed the foregoing complaint; that she has read the complaint and that the facts stated therein, upon personal knowledge and information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of California, County of Los Angeles this 16th day of October A.D. 2006.

[Seal]

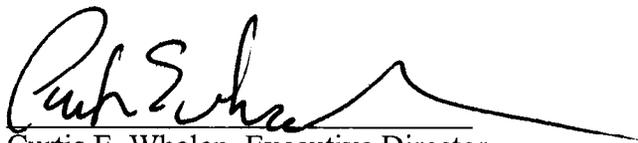
LaToya Scott

Notary Public



My Commission expires: February 9, 2009

Dated at Alexandria, VA, this 18th day of October, 2006.



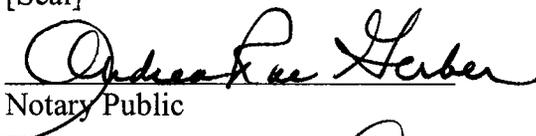
Curtis E. Whalen, Executive Director
Intermodal Motor Carriers Conference
American Trucking Associations
2200 Mill Road
Alexandria, VA 22314

Commonwealth of Virginia, City of Alexandria, ss:

Curtis E. Whalen, being first duly sworn on oath deposes and says that he is an officer of the Complainant Intermodal Motor Carriers Conference, American Trucking Associations and is the person who signed the foregoing complaint; that he has read the complaint and that the facts stated therein, upon personal knowledge and information received from others, affiant believes to be true.

Subscribed and sworn to before me, a Notary Public in and for the Commonwealth of Virginia, City of Alexandria, this 18th day of October A.D. 2006.

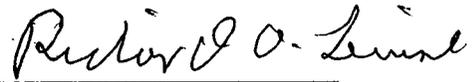
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Notary Public

My Commission expires: April 30, 2009.

Respectfully submitted,



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Counsel for Complainants Transport Express, Inc. and Intermodal Carriers
Conference, American Trucking Associations

October 24, 2006