

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 2367

APPLICATION OF ORIENT OVERSEAS CONTAINER LINE (USA) INC.
FOR THE BENEFIT OF EXPEDITORS INTERNATIONAL OCEAN

Application for permission to waive collection of \$2,788 of the applicable freight charges denied with leave to amend application.¹

DECISION OF C. DOUGLASS MILLER
SPECIAL DOCKETS OFFICER

On behalf of Expeditors International Ocean, Orient Overseas Container Line (USA) Inc. ("OOCL") seeks permission, pursuant to section 8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(e), to waive \$2,788 of the applicable freight charges on a shipment of commercial and household washers and dryers.

OOCL avers that the shipment was booked under tariff commodity code 8509.00.0063 of its Tariff No. FMC 35, "WHITE GOODS, APPLIANCES, SMALL ELECTRIC, HOUSEHOLD, N.E.S., PACKAGED". The applicable rate was \$2350 per 40 foot container, for door-to-door service from Madisonville, KY to Newbury, UK. The shipment was tendered to OOCL at Madisonville, KY on September 1, 1992, for delivery to Charleston, SC, where it was loaded aboard the OOCL

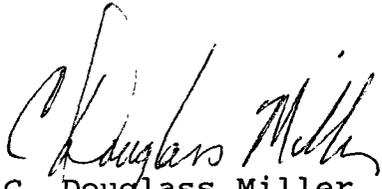
¹ By issuance of this decision, notice is given that this case has been reassigned to me. This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227).

BREEZE for carriage to Felixstowe, UK. The shipment was discharged at Felixstowe and delivered to Newbury, its ultimate destination. On September 10, 1992, three days after the OOCL BREEZE sailed, OOCL discovered that commodity code 8509.00.0063 had expired one day before the shipment was tendered to OOCL due to a notation which OOCL avers was "erroneously tagged" to the rate. On the same day, OOCL filed a revised tariff page reinstating the \$2,350 rate applicable to "COMMERCIAL LAUNDRY EQUIPMENT AND MACHINERY." However, because commodity code 8509.00.0063 had expired when the shipment was tendered to OOCL, the applicable rate item was the "General Cargo, N.E.S.", Commodity Code 9900.00.1601, which specifies a rate of \$357 per cubic meter, subject to a maximum per container of \$6,000. OOCL collected \$3,212 for the shipment² and now seeks to waive \$2,788, the difference between \$3,212 and \$6,000. The inclusion by OOCL in its tariff of the erroneous notation and its failure to file a new rate applicable to "WHITE GOODS, APPLIANCES, SMALL ELECTRIC, HOUSEHOLD, N.E.S., PACKAGED", is the sort of administrative error which section 8(e) was intended to remedy. The application was mailed on December 16, 1992, within 180 days of the shipment, and thus was timely filed. OOCL denies that there are any shipments of other shippers of the same commodity which (i) moved via OOCL on the same voyage during the period of time beginning on August 31, 1992 and ending September 9, 1992, the day before the effective date of the conforming tariff,

² \$2,350 ocean freight, plus a currency adjustment factor of 12% or \$282, a bunker surcharge of \$80, a terminal handling charge (U.S.) of \$500, and a container service charge (Europe) of \$114.

and (ii) moved on the same voyage of the OOCL BREEZE that carried the subject shipment. There is no evidence that a refund would result in discrimination between shippers, ports, or carriers. All of the conditions for waiver have been satisfied except one. Prior to filing an application for a waiver, the carrier must file a new tariff, upon which the requested waiver would be based. See section 8(e)(2). The "corrective" tariff rate filed by OOCL only applies to commercial laundry equipment, not household laundry equipment. The bill of lading for the subject shipment shows that it consisted of both commercial and household laundry equipment. Although the conditions for waiver have been met with respect to the commercial laundry equipment shipped, they have not been met with respect to the household laundry equipment. Unfortunately, the bill of lading does not disclose the amount of commercial laundry equipment in the shipment.

The application will be denied with respect to ocean freight due on household laundry equipment. With respect to ocean freight due on commercial laundry equipment, the application will be denied unless, within thirty (30) days after the date of service of this decision, OOCL files an amended application showing the amount of commercial laundry equipment shipped and the ocean freight due on that portion of the shipment.


C. Douglass Miller
Special Dockets Officer