

Dated: April 21, 1999.

Bryant L. VanBrakle,
Secretary.

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FEDERAL MARITIME COMMISSION

[Docket No. 99-07]

A.P. Moller-Maersk Line, Possible Violations of Sections 10(b)(1), 10(b)(2), and 10(b)(4) of the Shipping Act of 1984; Order of Investigation and Hearing

A.P. Moller-Maersk Line ("Maersk") is a vessel-operating common carrier headquartered in Copenhagen, Denmark. In the United States, Maersk operates through Maersk, Inc., a wholly owned subsidiary. Maersk offers worldwide container services with approximately 70 vessels and offices in approximately 70 countries. As relevant here, Maersk provides regular liner service between the United States and South America and between the United States and points throughout the Far East and Asia.

Based on evidence available to the Commission, it appears that during the period from 1996 to 1998, Maersk was involved in malpractice activities both in the South American as well as the Pacific Trades. In particular, it appears that in the South American Trades, Maersk paid rebates and made other freight concessions to several persons, including Non-Vessel-Operating Common Carriers ("NVOCCs"). It appears that Maersk engaged in such malpractices on hundreds of shipments over a significant period of time. In the Pacific Trades, it appears that Maersk collaborated with persons, including NVOCCs, in arrangements involving commodity and measurement misdescriptions thereby allowing those entities to obtain very substantial freight savings to which they were not entitled, in many instances, by misuse of rules and practices relating to equipment substitution.

Section 10(b)(1) of the 1984 Act, 46 U.S.C. app. 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariffs or service contracts. Section 10(b)(2) of the 1984 Act, 46 U.S.C. app. 1709(b)(2), provides that no common carrier may rebate, refund or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts. Section 10(b)(4) of the 1984 Act, 46 U.S.C. app. 1709(b)(4),

prohibits any common carrier from allowing any person by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

Under section 13 of 1984 Act, 46 U.S.C. app. 1712, a person is subject to a civil penalty of not more than \$25,000 for each violation knowingly and willfully committed, and not more than \$5,000 for other violations.¹ Section 13 further provides that a common carrier's tariffs may be suspended for violations of sections 10(b)(1), 10(b)(2) or 10(b)(4) for a period not to exceed one year.

Now therefore, it is Ordered, That pursuant to sections 10, 11 and 13 of the 1984 Act, 46 U.S.C. app 1709, 1710, and 1712, an investigation is instituted to determine:

(1) Whether Maersk violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its tariffs or service contracts;

(2) Whether Maersk violated section 10(b)(2) of the 1984 Act by rebating, refunding or remitting a portion of its tariff or service contract rates;

(3) Whether Maersk violated section 10(b)(4) of the 1984 Act by allowing persons to obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

(4) Whether, in the event violations of sections 10(b)(1), 10(b)(2) or 10(b)(4) of the 1984 Act are found, civil penalties should be assessed against Maersk and, if so, the amount of penalties to be assessed;

(5) Whether, in the event violations of sections 10(b)(1), 10(b)(2) or 10(b)(4) of the 1984 Act are found, the tariff(s) of Maersk should be suspended;

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and

Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is Further Ordered, That A.P. Moller-Maersk Line is designated Respondent in this proceeding;

It is Further Ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is Further Ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is Further Ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is Further Ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is Further Ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 or the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is Further Ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by April 20, 2000, and the final decision of the Commission shall be issued by August 18, 2000.

By the Commission.

Bryant L. VanBrakle,
Secretary.

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¹These penalties are increased 10 percent for any violations occurring after November 7, 1996. See, *Inflation Adjustment of Civil Penalties*, 61 Fed. Reg. 52704 (October 8, 1996).