

Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 22-05



March 18, 2022

FOREIGN TIRE SALES, INC. v. EVERGREEN SHIPPING AGENCY (AMERICA) CORP;
AS AGENT FOR EVERGREEN LINE, EVERGREEN GROUP D/B/A EVERGREEN LINE

1. Complainant, Foreign Tire Sales, Inc. (“FTS”) with its principal place of business located at 2444 Morris Avenue, Suite 206, Union, New Jersey 07083 by its undersigned counsel brings this Verified Complaint against Respondents Evergreen Shipping Agency (America) Corp. as Agent for Evergreen Line and Evergreen Group d/b/a Evergreen Line and its constituent parts¹ (“Evergreen”) pursuant to 46 U.S.C. sec.41301 seeking reparations for injuries to FTS caused by Evergreen’s violations of the Shipping Act of 1984, as amended, 46 U.S.C. sec. 40101 *et. seq.* (the “Shipping Act”).
2. FTS is an importer of tires from Asia including Thailand and China and is a shipper of goods which relies on ocean carriers including Evergreen to ship goods to the United States.
3. Since the onset of the Covid 19 pandemic, global ocean freight carriers including Evergreen have upon information and belief unjustly and unreasonably exploited customers such as FTS by substantially increasing their profits at the expense of shippers such as FTS and the U.S. consuming public which has been forced to absorb higher product prices due to the improper increased freight costs.

¹Evergreen Group includes container shipping companies comprised of Evergreen Marine Corp (Taiwan) Ltd, Italia Maritime S.p.A., Evergreen Marine (UK) Ltd., Evergreen Marine (Hong Kong) Ltd., Evergreen Marine (Singapore) Pte. Ltd. and Evergreen Marine (Asia) Pte. Ltd.

4. FTS has traditionally secured shipping from ocean freight carriers including Evergreen pursuant to written contracts, negotiated in advance at agreed upon rates. Evergreen and FTS entered into Service Contract SC 84697 (Ex A). While a “spot market” for ocean freight shipping also exists, it has been used primarily by smaller shippers making small or one-time shipments or for unexpected situations including but not limited to one-time shipments, seasonal increases for shipping needs or unexpected product availability.
5. With the onset of the pandemic, Evergreen and other global ocean carriers began taking steps to artificially create a scarcity of space thereby manipulating the market by increasing pricing and their profits. Evergreen and others employed “blank sailings” among other tactics to deprive shippers such as FTS of capacity.
6. Additionally, Evergreen advised FTS and its vendors that there was no space in ships bound for the USA and then turned around and gave the space that should have been given to FTS to Non-Vessel Operators (“NVOs”) at much higher rates than the rates promised in the contract between FTS and Evergreen.
7. This resulted in FTS being forced to spend significantly more money on shipping as upon information and belief, Evergreen charged the NVOs higher shipping rates and the NVO’s added their profit to the transactions.
8. This resulted in significant increases in shipping costs which resulted in significant increases in the costs of tires to FTS’ customers and ultimately, the US consumer.
9. As demand for foreign produced goods hence, for shipping, Evergreen and other global ocean freight carriers did not return to pre-pandemic practices including but not limited to honoring the shipping rates agreed to between the parties as outlined in the Service Contract.

10. Evergreen among other carriers continued to create the appearance of a lack of space in their ships, continued to deny shippers such as FTS promised space on their ships, continued to give the space to NVOs at inflated prices or forcing shippers such as FTS to obtain shipping in the spot market. A 40 foot high cube container (“HQ”) which in 2019 cost \$2800.00 to ship from Thailand to New York now costs \$20,000.00. More importantly, the difference between the rates that Evergreen agreed to are up to \$15,000.00 per container less than rates charged by NVOs.²
11. Per the service contract between Evergreen and FTS (Ex A) the former promised minimum quantity commitments (“MQC”) to the latter space for 100 40 HQ containers. As of the end of January 2022, Evergreen provided space for 17 containers while it should have provided space for approximately 76-77 containers ie. less than 20% of the agreement numbers. As Evergreen has promised space for 100 40 foot HQ under the contract, it owes FTS space for 83 containers.
12. Per 46 U.S.C. sec 400102(21) and 46 U.S.C. 40501(c)(7) the service contract between Evergreen and FTS provides “service commitments” as essential terms of the contract. See also, 46 C.F.R. sec 530.3(q), and 46 C.F.R. sec 530.8(c).
13. By definition, the service contract between Evergreen and FTS requires the former to commit to the rate for each container and provide a “defined service level such as assured space, transit time, port rotation or similar service features” *id.*
14. Per said service contract, Evergreen agreed to provide space for 89 containers through the end of the contract term ie. April 2022.

²FTS strives to utilize “reasonable” priced NVOs. Using more expensive NVO’s would result in a greater disparity between Evergreen’s promised rates and what FTS has been forced to pay.

15. While FTS and its vendors have continuously requested space from Evergreen, Evergreen has refused and failed to provide sufficient space.
16. As of the date of this filing Evergreen has only provided space to FTS for 19 containers.³
17. As a result of Evergreen's blatant breach of its obligations under the contract and the above-cited statutes, FTS is forced to pay excessive and unreasonable shipping costs on the spot market (ie through NVOs) while Evergreen reaps higher profits by giving the space that should have been allocated to FTS to NVOs at higher rates than Evergreen agreed to charge FTS.
18. Upon information and belief, Evergreen and other international ocean freight carriers have engaged in similar outrageous business practices with respect to other shippers.
19. As a result of Evergreen's (and other ocean freight carriers) outrageous and improper business practices, Evergreen and others have destabilized what had been an orderly and well-established structure of the global ocean freight industry. This has blocked FTS and like shippers from securing reasonable, reliable service contracts in advance of procuring shipping space. This has forced FTS to resort to the exorbitant costs and fees imposed by the spot market and NVOs.
20. Evergreen and other international ocean freight carriers have organized themselves into collusive alliances at the expense of shippers such as FTS. Evergreen is currently a member of the Ocean Alliance.⁴ These alliances control the vast majority of all transpacific trade.
21. These collusive alliances provide ocean freight carriers such as Evergreen the opportunity to coordinate efforts with their alliance partners to the clear detriment of shippers such as FTS.

³ Evergreen has indicated that space for an additional two containers is being made available however, it will not be confirmed until the actual booking occurs.

⁴The other alliances are called the 2M Alliance and THE Alliance.

This includes forcing shippers such as FTS to seek services on the over-priced spot market thereby driving up the costs of goods to the American consumer.

22. Upon information and belief, Evergreen was recently sanctioned by the Fair-Trade Commission of South Korea for price fixing and assessed a fine of \$2.8 million.

II. THE COMPLAINT

23. FTS repeats and incorporates the allegations and factual contentions contained in paragraphs 1-22 as if each were set forth herein.
24. FTS is a corporation existing under the laws of the State of New Jersey with its principal place of business located at 2444 Morris Ave. Suite 206, Union, New Jersey 07083.
25. As noted above, FTS and Evergreen entered into Service Contract SC84697 from May 1, 2021 through April 30, 2022.
26. FTS is a shipper as that term is defined by 46 U.S.C. sec 40102(23).
27. Evergreen Shipping Agency (America) Corp. as Agent for Evergreen Line is upon information and belief a corporation existing under the laws of the State of New Jersey with its principal place of business located at 1 Evertrust Plaza, Suite 600 Jersey City, New Jersey 07302. Evergreen Group d/b/a Evergreen Line is a trade name for various entities as noted above.
28. At all times relevant hereto, Evergreen Shipping Agency (America) Corp is a disclosed agent for the Evergreen Group and its constituent corporations.
29. Evergreen is a vessel-operating "ocean common carrier" as that term is used in 46 U.S.C. sec 40102(9).

IV. JURISDICTION AND AUTHORITY

30. The Federal Maritime Commission (“FMC”) has subject matter jurisdiction over the claims made in this Verified Complaint pursuant to 46 U.S.C. secs 41301-41309.
31. The FMC has in-personam jurisdiction over Evergreen as “ocean common carriers” as set forth in 46 U.S.C. se 40102(18) as Evergreen has entered into service contracts as set forth above.
32. Evergreen’s actions and conduct aforesaid violates 46 U.S.C. 41102(c) and constitutes breaches of contract, and a failure to establish and enforce reasonable practices regarding receiving, handling, storing, shipping and delivering the property of FTS and other shippers.
33. Evergreen’s conduct and actions violate 46 U.S.C. sec 41104(a)(2) in that same constitutes the provision of serviced in the liner trade that are not in accordance with the practices and promises contained in the service contract between the parties.
34. Evergreen’s conduct and actions have given unreasonable advantage to Non-Vessel Owners to the detriment of FTS and constitute discriminatory practices against FTS regarding the availability of space on Evergreen vessels and the ports for which FTS contracted with Evergreen which violates 46 U.S.C. sec 41104(a)(9).
35. Evergreen’s conduct and actions in the course of allegedly providing service to FTS pursuant to the aforesaid Service Contracts are unreasonable refusals to deal or negotiate with FTS and are in violation of 46 U.S.C. sec 41104(a)(10).

V. CAUSES OF ACTION

36. FTS repeats and incorporates the allegations and factual contentions contained in paragraphs 1-35 as if each were set forth herein.

37. Evergreen's conduct and actions and continued refusal to provide space on its vessels for FTS' goods forcing FTS to obtain shipping of its goods at extremely elevated costs from NVOs who in turn place FTS' goods on Evergreen's vessels a breach of contract and breach of Evergreen's duty of good faith and fair dealing.
38. Evergreen's conduct and actions and continued refusal to provide space on its vessels for FTS' goods violates the Shipping Act of 1984 including 46 U.S.C. secs 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), 41104(a)(10).
39. As a result of the conduct and actions of Evergreen aforesaid, FTS has suffered economic injury by being forced to make alternative shipping arrangements at rates well above the agreed upon rates with Evergreen as set forth herein.
40. FTS has been damaged in that it has incurred added expense of over \$1,000,000.00 to ship its goods on the spot market. This amount is growing as Evergreen has not provided any significant space for the month of February 2022.

WHEREFORE, FTS respectfully requests that the FMC require Evergreen to respond to the charges made in this Verified Complaint and seeks relief as follows:

1. An investigation by the FMC of the allegations contained in this Verified Complaint pursuant to 46 U.S.C. sec 41301(c);
2. An Order after said investigation pursuant to 46 U.S.C. secs 41301 and 41303 and a hearing pursuant to 46 U.S.C. sec 41204 finding that Evergreen has violated the provisions of the Act as outlined herein and enumerated in paragraph 37 above;
3. An Order compelling Evergreen to cease and desist from the violations of the Shipping Act as outlined herein and requiring Evergreen to put in place practices to preclude

Evergreen from refusing to provide FTS with its allotted space at the rates agreed upon under the Service Contract;

4. An Order requiring Evergreen to pay FTS damages for the injury caused by Evergreen's illegal conduct in an amount to be proven pursuant to 46 U.S.C. sec 41305 with interest as permitted by 46 U.S.C. sec 4100305(a), FTS' reasonable attorneys fees and any other damages that the FMC determines to be proper; and

5. Any other such remedies that the FMC deems just and proper.

VI. REQUEST FOR ORAL HEARING

FTS requests an oral hearing in Washington, D.C.

Respectfully submitted,

LAWRENCE N. LAVIGNE, ESQ. LLC
2444 Morris Avenue, Ste 206
Union, New Jersey 07083
908-687-7750

By 
LAWRENCE N. LAVIGNE, ESQ.
larry@lnlavignelaw.com

Feb 16, 2022

VERIFICATION

I, Jason Kessler, am Vice President of Complainant Foreign Tire Sales, Inc. located at 2444 Morris Ave. Ste 206, Union, New Jersey 07083 (jason@foreigntire.com). I have read the foregoing Verified Complaint and believe to the best of my knowledge, information and belief, including information received from others, that the facts stated herein are true and correct. I declare under the penalty of perjury that the foregoing is true and correct.



Jason Kessler

Dated: February /6 2022

EXHIBIT A

Service Contract No.: Amendment No.:

Service Contract Essential Terms Publication No.:

(Tariffs of General Applicability No.):

Carrier Name: Evergreen Line
 A Joint Service Agreement (FMC# 011982)
 consisting of
 1) Evergreen Marine Corp. (Taiwan) Ltd.
 2) Evergreen Marine (UK) Limited
 3) Italia Marittima SpA
 4) Evergreen Marine (Hong Kong) Ltd.
 5) Evergreen Marine (Singapore) Pte. Ltd.

Merchant Name: Foreign Tire Sales

Further, MERCHANT party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es)):

NVOCC	<input type="checkbox"/>	<input type="text" value="Bond No.:"/> <input type="text" value="Org.No."/>
MERCHANTS' ASSOCIATION	<input type="checkbox"/>	<input type="text"/>
OWNER OF CARGO	<input checked="" type="checkbox"/>	<input type="text"/>
OTHER (Please Specify)	<input type="checkbox"/>	<input type="text"/>

 Date
 Vincent Huang
 Chief Executive Vice President
 Evergreen Shipping Agency (America) Corp.
 As Agent for Evergreen Line

 Date
 Richard Kuskin
 President
 Foreign Tire Sales

Carrier Name: Evergreen Line

Account Name: Foreign Tire Sales

SC Number: SC84697

MQC(TEUs): 200

Amendment:

Appendix	Affiliates
Appendix	Commodities
Appendix	Duration (Including Amendments)
Appendix	Scope : Origins, Destinations
Appendix	Rates - Asia to USA
Appendix	Notes - Asia to USA
Appendix	Origins Outport Add-On Tables
Appendix	Demurrage/Detention
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Affiliates/Subsidiaries/Association Members

No.	COMPANY NAME	COMPANY ADDRESS	AMD
1	Overseas Tire Sales Ltd.		

Commodities

Rate 1: Tires & Tubes

Duration of Service Contract

Original Duration: May 1, 2021 through April 30, 2022

Amendment # Effective Date

Scope

Origins	Group Code	Countries	Ports	Codes	AMD
	AS1	Taiwan	Kaohsiung	TWKSG	
		Hong Kong	Hong Kong	HKHKG	
		Korea	Pusan	KRPUS	
		China	Yantian	CNYT	
			Shanghai	CNSHG	
			Ningbo	CNNBO	
			Qingdao	CNQND	
		Thailand	Laem Chabang	THLCH	
	TH1		Lat Krabang	THLKR	
			Siam Container Terminal	THSCT	

Other Origins

Please refer to Appendix " Rates " and " Outport "

Destinations	Group Code	Countries	Ports	Codes	AMD
	USWC	U.S.W.C.	Los Angeles, CA	USLAX	
		Calling Port	Oakland, CA	USOKL	
			Long Beach, CA	USLGB	
			Tacoma, WA	USTCM	
	USEC (For Dry Cargo)	U.S.E.C.	New York, NY	USNYC	
		Calling Port	Baltimore, MD	USBAL	
			Charleston, SC	USCHS	
			Norfolk, VA	USNFK	
			Savannah, GA	USSVN	
			Elizabeth, NJ	USEZB	
			Newark, NJ	USNWK	
	USGP (For Dry Cargo)	U.S.G.P.	Houston, TX	USHUS	
		Calling Port	Miami, FL	USMIA	
			Mobile, AL	USMBL	
			New Orleans, LA	USNOL	
			Tampa, FL	USTPA	

Other Inland Points

Please refer to Appendix " Rates "

Rates - Asia to USA

- 1 Except otherwise specified, the rates detailed hereunder are subject to the Notes which appears in Appendix "Notes"
- 2 Unless otherwise specified, the rate formula other than 40' standard container are set as Note 2 in Appendix "Notes".
- 45' HQ should be subject to service and equipment available.

RATE 1

Asia to USWC & G4 Destinations			USD			Service Mode	Remark	AMD
Origins	POD	Destinations	20'	40'	40'HQ			
AS1	USWC	USWC	2720	3400	3400	O/O		
AS1	USLAX	Corona, CA	3690	4100	4100	O/D		
AS1	USTCM	Pasco, WA	4500	5000	5000	O/D		
AS1	USTCM	Portland, OR	3690	4100	4100	O/D		

Asia to IPI Destinations			USD			Service Mode	Remark	AMD
Origins	POD	Destinations	20'	40'	40'HQ			
AS1	USTCM	Chicago, IL	5040	5800	5800	O/R		
AS1	USTCM	Cincinnati, OH	5715	6350	6350	O/R		
AS1	USTCM	Columbus, OH	5715	6350	6350	O/R		
AS1	USLAX	Dallas, TX	5130	5700	5700	O/R		
AS1	USTCM	Denver, CO	5895	6550	6550	O/R		
AS1	USTCM	Detroit, MI	5850	6500	6500	O/R		
AS1	USLAX	Houston, TX	4995	5550	5550	O/R		
AS1	USWC	Memphis, TN	5220	5800	5800	O/R		
AS1	USTCM	Minneapolis, MN	5400	6000	6000	O/R		
AS1	USTCM	Omaha, NE	6120	6800	6800	O/R		
AS1	USLAX	St. Louis, MO	5760	6400	6400	O/R		
AS1	USOKL	Salt Lake City, UT	5490	6100	6100	O/R		
AS1	USLAX	San Antonio, TX	5850	6500	6500	O/R		
AS1	USLAX	Arlington, TX	5400	6000	6000	O/D		
AS1	USLAX	Fulton, KY	5895	6550	6550	O/D		
AS1	USTCM	Hammond, IN	5825	6250	6250	O/D		
AS1	USTCM	Kalamazoo, MI	5985	6650	6650	O/D		
AS1	USLAX	Las Cruces, NM	6210	6900	6900	O/D		
AS1	USTCM	Monmouth, IL	5805	6450	6450	O/D		
AS1	USWC	Rock Falls, IL	5805	6450	6450	O/D		
AS1	USLAX	Salem, IL	6210	6900	6900	O/D		
AS1	USTCM	Troy, MI	6120	6800	6800	O/D		
AS1	USLAX	Waco, TX	5715	6350	6350	O/D		
AS1	USLAX	Westwego, LA	6390	7100	7100	O/D		

Asia to USEC & RIPI Destinations			USD			Service Mode	Remark	AMD
Origins	POD	Destinations	20'	40'	40'HQ			
AS1	USEC	USEC	3520	4400	4400	O/O		
AS1	USMIA	Miami, FL	3520	4400	4400	O/O		
AS1	USHUS	Houston, TX	3520	4400	4400	O/O		
AS1	USSVN	Atlanta, GA	4590	5100	5100	O/R		
AS1	USNYC	Cincinnati, OH	5580	6200	6200	O/R		
AS1	USCHS	Charlotte, NC	4590	5100	5100	O/R		
AS1	USNYC	Detroit, MI	5535	6150	6150	O/R		
AS1	USCHS	Charlotte, NC	4815	5350	5350	O/D		
AS1	USCHS	Goldboro, NC	4140	4600	4600	O/D		
AS1	USNFK	Greenville, NC	4880	5200	5200	O/D		
AS1	USCHS	Hickory, NC	5085	5650	5650	O/D		
AS1	USNYC	Troy, MI	5760	6400	6400	O/D		
AS1	USCHS	Sparta, NC	5040	5600	5600	O/D		
AS1	USSVN	Louisville, KY	5535	6150	6150	O/R		

Notes - Asia to USA

AMD

Note 1: Except otherwise specified, all rates in this contract are subject to the addition of all charges as published in governing tariff at time of shipment, including but not limited to following charges:

ACC	Alameda Corridor Charge
AGC	Aden Gulf Surcharge
BAC	Bunker Charge
CSF	Carrier Security Fee
CAF/L	Currency Adjustment Factor of Japan, Singapore
FCL/RC	CY Origin Receiving Charges
C.S/D	Congestion Surcharge at Port of Discharging
CUC/D	Chassis Charge at Destination
DM	Demurrage Charges
DT	Equipment Detention Charges
DGRAIL	Hazardous Cargo Rail Charge
EDIF	EDI Fee
EIS	Extra Insurance Surcharge
ERC	Emergency Risk Surcharge
IDS/D	Intermodal Door Delivery Surcharge at Destination
ISOCC	IMO SOx Compliance Charge
LSS	Low Sulphur Surcharge
PCFW	Panama Canal Fresh Water Surcharge
PCTF	Panama Canal Transit Fee
PSS	Peak Season Surcharge
SC/D	Terminal Security Charge for POD
SCMC	Security Compliance Management Charge
STF	Suez Transit Fee
VAT	Value Added Tax
WH	Wharfage Charge in USA
WRC	War Risk Charter/Insurance Premium

Note 1A: Aden Gulf Surcharge (AGC) is included.

Note 1B: Panama Canal Transit Fee (PCTF) is included.

Note 1C: Suez Canal Transit Fee (STF) is included.

Note 1D: FCL Delivery Charge (FCL/DC) is included

Note 1E: Currency Adjustment Factor of Japan, Singapore (CAF/L) is included.

Note 1F: Intermodal Door Delivery Surcharge (IDS/D) is included.

Note 1G: Bunker Charge (BAC) is included in all rates in the contract.

Note 1H: Peak Season Surcharge (PSS) is subject to Mutual Agreement between Merchant and Carrier.

Note 1I: All rates include General Rate Increase (GRI).

Note 1J: Notwithstanding anything to the contrary contained in this service contract, the Chassis Usage Charge (CUC/D) shall at all time be applicable to any bills of lading issued pursuant to this service contract.

Note 1K: IMO SOx Compliance Charge (ISOCC) are included in all rates in this contract.

Note 2: Unless otherwise specified, rate formula for other size containers are as follows:
 20' rate for all destinations = 0.90 X 40' standard all-in rate, rounded to the nearest dollar.
 40'HQ rate = 1.125 X 40'SD all-in rate(O.F.+FCL/DC), rounded to the nearest dollar.
 45'HQ rate = 1.266 X 40'SD all-in rate(O.F.+FCL/DC), rounded to the nearest dollar.

Note 3: As per mutually agreed, an otherwise defined Demurrage and/or Detention freetime (Per Diem) will be applied as follows: (Please see Appendix "DM,DT")

Note 4: Sea Waybills -

At the Merchant's request, sea waybills will be issued instead of bills of lading. Sea waybills are issued solely at the request, and for the convenience of, the Merchant, but are nevertheless subject to all of the definitions, terms, defenses and conditions of the Carrier's long form bill of lading used in Carrier's global services, copies of which are available on request for inspection at any of the Carrier's offices or at the offices of its agents. The terms and conditions of such long form bill of lading are also available at Carrier's website: www.evergreen-line.com. The Carrier shall not be liable for any loss of, or damage, or delay to, or in connection with the Goods, or any consequential or indirect damage to the Merchant arising unintentionally from erroneous input into the computer system or from wrongful date of transmission, unless it is proved by the Merchant, that the loss, damage or delay resulted from the Carrier's willful misconduct.

Origins Output Add-On Tables

Unless otherwise specified, rates for 20' standard, 40'HQ and 45'HQ are allowed to be assessed 40' standard add-on charge before formulated from 40' standard rates.

Example:

20'SD rate = (40' standard all-in rate + 40' standard add-on) X 20'SD formula)

40'HQ rate = (40' standard all-in rate + 40' standard add-on) X 1.125)

45'HQ rate = (40' standard all-in rate + 40' standard add-on) X 1.266)

Unless otherwise specified for other origin ports, and additional arbitrary charge on top of the Kaohsiung/Hong Kong/Yantian/Pusan/Shanghai/Ningbo/Qingdao rates will be assessed as follows:

Thailand						
Origins	Port Code	20'	40'	40'HQ	Service Mode	AMD
Laem Chabang	THLCH	270	300	300	PORT	
Laem Chabang (For PE1 WC Service Only)	THLCH	0	0	0	PORT	
Lat Krabang	THLKR	360	400	400	RAMP	
Siam Container Terminal	THSCT	405	450	450	RAMP	

Demurrage / Detention

As per mutually agreed, an otherwise defined Demurrage and/or Detention free time will be applied as follows:

DT = Detention ; DM = Demurrage ; BT = Detention and Demurrage combined

Container									
Work Sheet	Rate #	Origin or Destination	Container Type : Dry, Reefer or Special	Term DT or DM or BT	Free Time (Days) Calendar (C) or Working (W)	EXTRA	TOTAL	Remark	AMD
Appendix "Rates"	Rate 1	All Destinations	Dry	DT	10 C		V		

****By Carrier's 10 days prior written notice, the additional free time, however, will be terminated whenever terminal congestion, chassis shortage or any force majeure circumstance tak place. Unless otherwise specified, the reefer container or any special equipment will not be applicable.****

****Extra DT free time offered in this service contract will apply to container only. Chassis will be subject to Evergreen UIIA Addendum Governing chassis DT free time unless otherwise specified.****

USA Inland Clause

Due to unpredictable fluctuations and increases in inland trucking costs, all door delivery rates for cargo shipped pursuant to this contract shall be subject to quarterly review and adjustment. If, after such quarterly review, Carrier determines that a rate adjustment is necessary due to increased inland trucking costs, Carrier shall notify the Merchant that a rate adjustment is necessary and request Merchant's agreement to same. If, after consultation with Carrier, Merchant refuses to agree to the rate adjustment within 10 chronological days of Carrier's request, Carrier can delete the affected door rates from this service contract effective immediately on receipt of Shippers refusal or the expiration of the aforesaid 10 days from Carrier's request, whichever is shorter.

Signature

AMD

ELECTRONIC SIGNATURE

The Parties are authorized to sign this agreement and any subsequent amendments via electronic mail format (e-mail). In the event the Parties hereto agree to sign this agreement or enter into any amendment of this agreement via email, the Parties hereto agree that this agreement or any such amendment or modification can be signed by use of an electronic signature and once signed electronically the agreement shall be fully binding on the Parties. For purposes of this agreement the term "electronic signature" means an e-mail approval attached to, or logically associated with, this Agreement and the Merchant hereby designates the following individuals with authority to electronically sign the agreement or any amendments or modifications hereto:

Name: Richard Kuskin
Company: Foreign Tire Sales
Title: President

Name: Maureen Gardner
E-mail Address: maureen@foreigntire.com

The Merchant hereby agrees that the Carrier is not obligated to investigate or verify the origins, authority, or authenticity of any email signature it receives which on its face appears to have been sent by one or more of the above designated individuals. Carrier assumes no liability for loss or delay in transmission, unauthorized transmission, hacking, spoofing or the like and liability for same shall be upon the Merchant except to the extent that it is caused by Carrier personnel or by a failure of Carriers hardware or software.