FEDERAL MARITIME COMMISSION

Office of Administrative Law Judges

ROGER WATERLOO DBA ECOBAMBOO, *Complainant* v. SHIP4WD, INC., *Respondent.*	**DOCKET NO. 25-26**

Served: December 8, 2025

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge*.

INITIAL DECISION GRANTING MOTION TO DISMISS AND ORDER DENYING MOTION FOR DEFAULT DETERMINATION[1]

I. Introduction and Procedural History

On September 9, 2025, the Commission issued a Notice of Filing of Complaint and Assignment. Prior to the receipt and docketing of the complaint by the Federal Maritime Commission ("FMC"), Complainant Roger Waterloo DBA EcoBamboo ("EcoBamboo") served a copy of the complaint on Respondent Ship4WD, Inc. ("Ship4WD"), by email, on August 30, 2025. The complaint alleges that Ship4wd is "operated under FMC OTI License No. 029468 through Marine Shipp Fast Ltd." which it alleges has a principal place of business in Haifa, Israel. Complaint at 6.

On September 26, 2025, EcoBamboo filed a motion for default alleging that Ship4FWD failed to file an answer to the complaint by the date it was due, a second motion for default (dated October 7, 2025, during the 44-day government shutdown that began on October 1, 2025), a third motion that "seeks judicial intervention to restore procedural integrity…" (Third Motion for Relief and Procedural Clarification at 1 dated October 11, 2025), and two independent exhibits, including one entitled "Exhibit CX-13 – Ship4wd's Escalation Despite Available Resolution and Multiverse Coverage" (dated November 4, 2025). Immediately after the reopening of the government on November 13, 2025, EcoBamboo filed a Memorandum in Support of Default Enforcement dated November 14, 2025. 46 C.F.R. § 502.70(c).

On October 6, 2025, Ship4WD filed a response to the motion for default and a cross-motion to dismiss dated October 6, 2025. As an initial matter, Ship4WD asserts that it is a trade

[1] This order will become the order of the Commission in the absence of review by the Commission. Any party may file exceptions to this order within twenty-two days of the date of service. 46 C.F.R. § 502.227.

name, not a legal entity. Marine Shipp Fast Ltd. is an ocean transportation intermediary that uses the trade name Ship4WD. Memorandum in Reply to Complainant's Motion for Default Determination and in Support of Respondent's Cross-Motion to Dismiss ("Default Opp and Cross MTD") at 1, n. 1. Respondent will be referred to by its trade name in this decision. The response to the motion to default asserts that the Hague Convention procedures should have been followed for serving the complaint on Ship4WD, thus, service was not perfected as alleged by EcoBamboo. Both the complaint and the response assert that Ship4WD is domiciled in Israel. Alternatively, Ship4WD argues that the complaint was served by the Secretary of the Federal Maritime Commission on September 9, 2025, and accordingly, it was not in default when it responded by filing the cross-motion to dismiss on October 6, 2025, the first business day 25 days after September 9, 2025. In the cross-motion to dismiss the complaint, Ship4WD asserts that the complaint fails to state a claim on which relief can be granted. It argues that the complaint does not allege "that the acts or omissions of the regulated entity occurred on a normal, customary, and continuous basis" as required to establish a violation under § 41102(c). Default Opp and Cross MTD at 3; 46 C.F.R. § 545.4.

On October 14, 2025, Ship4WD filed a response to the second motion for default styled as Respondent's Reply to Complainant's Response to Respondent's Cross-Motion to Dismiss ("Reply"), asserting both that the repetitious second motion should not be entertained under 46 C.F.R. § 502.69(d), and that it should be treated, instead, as a response to Ship4WD's cross-motion to dismiss the complaint. In its Reply, Ship4WD addresses in more detail that its filings have been timely filed and reiterates that the complaint is deficient and should be dismissed for failure to plead a necessary element of a § 41102(c) Shipping Act violation.

On November 19, 2025, I conducted a status conference to elicit further information about the dispute, especially from the *pro se* Complainant's perspective.

For the reasons set forth below, Complainant's motion for default is **DENIED**, and Respondent's motion to dismiss is **GRANTED**.

II. Background

A. Facts Alleged by EcoBamboo

In a motion to dismiss, the facts as alleged by complainant must be taken as true in assessing whether the complaint states a claim under the Shipping Act. Here, EcoBamboo asserts the following:

1. EcoBamboo imports bamboo sheets and poles for fencing and construction from Indonesia to the United States. Complaint at 7.

2. Ship4WD operates under Marine Shipp Fast Ltd.'s FMC license as an ocean transportation intermediary, specifically as a non-vessel-operating common carrier ("NVOCC"). Complaint at 7.

3. Mr. Waterloo, on behalf of his company, EcoBamboo, purchased bamboo in Indonesia and booked Ship4WD to arrange the shipment of one 20-foot container of bamboo mats and poles from Indonesia to his residence in Coffeyville, Oklahoma. The container is identified as DFSU1191760, and the services provided included fumigation of the bamboo and a phytosanitary certification issued in Indonesia. Exhibits EV-A,[2] EV-C through EV-E, EV-K.

4. A non-negotiable bill of lading No. KJTLAX54007X lists the shipper/exporter as PT. Sinar Samudra Global and the consignee and notify party as Roger Waterloo. The second notify party listed is Marine Shipp Fast LTD. The description of goods lists bamboo matting, poles, and a polywood sheet in a 40-foot container, not the 20-foot container Mr. Waterloo and Ship4WD representatives had discussed. EV-K.

5. A series of emails between Mr. Waterloo and several Ship4WD customer service representatives between March 21, 2025, and April 22, 2025, discuss the container size in which the bamboo products were shipped and status of the phytosanitary certification and the bill of lading. *Id*.

6. The signed fumigation certificate is dated April 8, 2025, and states that it was performed "in accordance with the Australian Methyl Bromide Standard." EV-M.

7. By email dated June 12, 2025, Nikki Fludd of U.S. Customs and Border Protection stated that the "shipment is infested with actionable pests" and the cargo had to be fumigated by a USDA compliant fumigator. The notice further states "the shipment could not be fumigated due to spacing requirements" and it had to be reexported. EV-N.

8. A June 16, 2025, email exchange between Mr. Waterloo and two Ship4WD customer service representatives discussed the cost of fumigating the cargo in the U.S. (approximately $3020.18) and stated "We provided all the documents pertaining to the shipment and have adhered to all the requirements. We informed you would require Lacey certificate and APHIS permit in order to import bamboo. Also when it comes to bamboo CBP may hold imports from Indonesia, depending if its raw bamboo the import is prohibited, whereas bamboo which is raw but dried, manufactured or canned bamboo shoots can be imported upon inspection." (grammar and punctuation as in original). EV-O. Mr. Waterloo responded that "It is clearly obvious that CBP does not follow the Australian standard or that they didn't receive the fumigation certificate. You probably did everything as supposed to, but your 3rd party agents didn't. As I don't know your 3rd party agents and didn't book any services of them, you are responsible for the services executed by those parties." *Id.*.

9. By email dated June 19, 2025, Mr. Waterloo demanded from Shay Miletsky "immediate resolution regarding my shipment…." He requested that he either receive delivery of the

[2] Complainant cited to exhibits ("EX") that were annotations of the evidence ("EV") on which he relied and to which he also cited and linked within the complaint. The facts above cite to the complaint and to hyperlinked evidence rather than to Mr. Waterloo's annotations.

shipment after corrective measures, or reimbursement for "all financial losses incurred." He stated that "[f]ailure to meet this deadline will leave me no choice but it initiate **legal action** against Ship4WD for breach of contract, negligence, and failure to fulfill your declared obligations as freight forwarder." (emphasis in original). EV-P.

10. An email dated June 23, 2025, from the economic section of the Consulate General of The Republic of Indonesia states that the phytosanitary "certificate is valid and was issued by the appropriate authorities." EV-Q.

11. An email dated June 23, 2025 from Mr. Miletsky to Roger Waterloo, provides a response to Mr. Waterloo regarding the authenticity and validity of the phytosanitary certificate, the timeline in which Indonesian fumigation and issuance of the certificate occurred, that it was in compliance with ISPM 15 USDA standards, noting: "Our role, as a freight forwarder, is to handle your shipment door to door terms, while **ensuring compliance with the applicable regulations, which we fulfilled**." (emphasis in original). EV-AD. He further states: "Unfortunately, the findings of CBP's independent inspection, were unforeseeable and could not be influenced by us or anyone on our behalf. Unless discovered otherwise, we believe this can be seen as 'force majeure.' In the interest of maintaining a positive partnership and resolving this matter in the most efficient way, we are open to share the fumigation costs, will you consider splitting the fumigation cost between us?" (grammar and punctuation as in original). *Id.*

12. By email dated June 23, 2025, Mr. Waterloo responded to Mr. Miletsky stating: "As noted in my former email, CBP…has determined that the shipment is denied entry into the U.S. This was reconfirmed directly by phone with Ms. Hickerson earlier today (6/23/25, 10.40am), who stated that fumigation will not release the container. Therefore, your offer to share post-denial fumigation costs is both procedurally irrelevant and functionally meaningless. The shipment cannot be remediated for entry at this stage." EV-AD.

13. An email dated June 25, 2025, from Mr. Miletsky to Mr. Waterloo, stated that regardless of whether the documentation did not meet USDA/APHIS standards, "it did not lead to the infestation of the cargo shipped. Like priorly noted in our emails – this unfortunate outcome occurred with no fault of any of the parties involved, and as CBP's representative said to our brokerage agent speaking with her – there is no one to blame for this situation." EV-U. Mr. Miletsky stated that refumigation was offered to Mr. Waterloo but he declined and "if you had accepted the option to refumigate at the time, all this matter would have been resolved and the extra costs and losses spared." (grammar and punctuation as in original). *Id.*

14. An email chain dated June 27, 2025, from Kenneth Western, chief agricultural specialist with U.S. Customs and Border Protection to Mr. Waterloo states that the "overarching issue with this shipment is that your shipment does not meet the requirements for entry due to the lack of having a USDA Import Permit" and must be re-exported immediately. "Bamboo importations as per USDA-APHIS_ PPQ require fumigation upon arrival in the U.S., not beforehand in the country origin or export." Mr. Western further stated, "[a]ll

bamboo importations are held prior to arrival in the U.S. due to the requirement for fumigation in the U.S. prior to release. Your broker needs to provide reasons to you why the required import permit was not uploaded into the Digital Imaging System (DIS), which is part of the system of record for cargo importations required by CBP." Mr. Western also notes that the cargo cannot be destroyed with "actionable insects" and must be re-exported. EV-S.

15. A June 30, 2025 email from Mr. Waterloo to Mr. Miletsky attached a "formal demand letter regarding denial of Entry…resulting from Clearit and Ship4WD's failure to secure the required USDA/APHIS import permit prior to shipment arrival." EV-U.

16. A June 30, 2025 response from Mr. Miletsky to Mr. Waterloo states that they have concentrated their efforts on finding a solution "that will rest and resolve this matter at minimum time and costs. This requires receiving final quotes and formal confirmation from CBP regarding abandonment costs, as well as cost details from our origin agent related to potential re-export." EV-U.

17. A July 3, 2025, email from Mr. Miletsky to Mr. Waterloo states that the only viable resolution is to reexport the container. EV-U.

18. By email dated August 5, 2025, a representative of Multiverse Exim Pvt Ltd, a subcontractor of Ship4WD stated that "Multiverse assumes full financial responsibility for both accrued and re-export freight costs. No portion of these costs will be invoiced to or charged back against Mr. Roger Waterloo, the cargo owner, either now or at any future stage, irrespective of any third-party billing arrangements or carrier-related terms." EV-AB, EX-AC, Complaint at 8.

B. Arguments of the Parties

EcoBamboo asserts that Ship4WD is a non-vessel operating common carrier that agreed to ship bamboo products Roger Waterloo d/b/a EcoBamboo purchased from Indonesia to Mr. Waterloo's home in Oklahoma. EcoBamboo alternately refers to Ship4WD as a freight forwarder, and it is unclear from the email exchanges attached to the complaint in what capacity Ship4WD was functioning. In the cover letter accompanying the complaint, Mr. Waterloo states that "[t]he central issue in this Complaint is Respondent's handling of Complainant's shipment of bamboo products (Container No. DFSU1191760, Entry 8PY-20160957), which was rejected by U.S. Customs and Border Protection upon arrival and ordered re-export (sic) due to live insect infestation and fumigation/documentation irregularities…)." Complaint Cover Letter at 1.

Mr. Waterloo alleges that Ship4WD arranged with Multiverse Exim Pvt Ltd, a subcontractor, to have the bamboo fumigated in Indonesia before it was shipped to the United States. A phytosanitary certificate issued in Indonesia states that the fumigation was done in accordance with the Australian Methyl Bromide standard, which Ship4WD representative Shay Miletsky maintains is in accordance with USDA requirements. Despite that fumigation, the bamboo arrived with what a U.S. Customs and Border Protection inspector found to be "actionable pests." Mr. Waterloo maintains that the certificate does not meet U.S. import

requirements because the fumigation was supposed to occur before the phytosanitary inspection. Mr. Miletsky responded to Mr. Waterloo that the infestation and CPB inspection were unforeseeable, no party was responsible, and Ship4WD would split the cost with him of refumigation in the United States. After Mr. Waterloo made further inquiry to the CPB, chief agricultural inspector Kenneth Western informed Mr. Waterloo that all bamboo imports are held due to the requirement that they be fumigated in the United States pursuant to USDA standards. He further told Mr. Waterloo that the shipment lacked a USDA import permit and had to be re-exported. It does not appear that the parties could agree on refumigation, or that absent an import permit it could be refumigated, and the bamboo products were shipped back to Indonesia after a CBP hold.

Among the arguments raised by Mr. Waterloo on behalf of EcoBamboo at the status conference was that he had been told by customs when it rejected the shipment that he should contact the FMC. Mr. Waterloo contacted the FMC Office of Consumer Affairs and Dispute Resolution Services ("CADRS"), who he asserts tried, but was unable, to reach anyone at Ship4WD to mediate the dispute, and then CADRS referred him to the Commission's Bureau of Enforcement, Investigations, and Compliance ("BEIC"), who he contends suggested he file a formal complaint. He believes based on both conversations with FMC branches that he was told that he had a Shipping Act violation. While I can appreciate the frustration Mr. Waterloo expressed based on his understanding of the conversations with other divisions of the FMC, I must review the claim by applying the facts before me to the law. To limit such confusion going forward, it is urged that other divisions within the FMC be especially mindful of how they explain the statute and procedures to non-attorney parties.

During the status conference, Ship4WD could not affirm in what capacity it was engaged on behalf of EcoBamboo in the import of the one container of bamboo products from Indonesia. Instead, Ship4WD argues that EcoBamboo fails to allege that Ship4WD was engaged in an unjust or unreasonable practice that was occurring on a normal, customary, and continuous basis, essential elements of a § 41102(c) violation. While it stated in response to the motion for default determination that it was not properly served pursuant to the Hague Convention, it did not pursue that argument and instead focused on the argument that service of the complaint was not effective until September 9, 2025, when the Secretary docketed and served the complaint. Ship4WD's sole argument in its motion to dismiss is that EcoBamboo's complaint fails to state a claim under the Shipping Act.

C. Motion on Default

The Commission's Rules set forth the procedure for filing private party complaints. 46 C.F.R. § 502.62 ("Rule 62"). Rule 62(a)(7) states that "[a] complaint is deemed filed on the date it is received by the Commission." § 502.62(a)(7).

Similarly, Rule 62(b)(1) sets forth the time for filing an answer to the complaint:

> *Time for filing*. A respondent must file with the Commission an answer to the complaint and must serve the answer on complainant as provided in subpart H of this part within 25 days after the date of service of the complaint…or **unless motion is filed to withdraw or dismiss the complaint**, in which latter

> case, answer must be filed within 10 days after service of an order denying such motion.

Id. at § 502.62(b)(1) (emphasis added).

D. Motion to Dismiss Standard

The Commission's Rules do not explicitly provide for motions to dismiss, but Commission Rule 12 states that the Federal Rule of Civil Procedure will be followed in instances that are not covered by the Rules, if consistent with sound administrative practice. 46 C.F.R. § 502.12. The "Commission looks to Federal Rule of Civil Procedure 12(b)(1) when considering dismissals based on lack of subject matter jurisdiction, and to Rule 12(b)(6) when considering dismissals based on failure to state a claim." *MAVL Capital v. Marine Transport Logistics,* 2 F.M.C. 2d 198, 2020 WL 13512925 at *4 (FMC 2020). Here, the Rule 12(b)(6) standard applies.

"Under Fed. R. Civ. P. 12(b)(6), the facts alleged are taken as true and all reasonable inferences are drawn in the complainant's favor." *Id.* at *5 (citing *Maher Terminals, LLC v. The Port Authority of New York and New Jersey*, 34 S.R.R. 35, 54, 2015 WL 9426189 (FMC 2015)). To survive motions to dismiss for failure to state a claim under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 663 (2009) (citing *Twombly*, 550 U.S. at 556).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. The focus at this stage is not with whether a complainant can prevail on its claim, but whether it has adequately pled the claim. *Negron v. USAA Casualty Ins. Co.,* 2014 WL 4411676 at *2 (M.D. Tenn. 2014).

Rule 62(a)(3) sets forth the content of the complaint including:

> (iii) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of **the acts or practices** alleged to be violation of the law, and a statement showing that the complainant is entitled to relief; ….

Id. at § 502.62(a)(3)(iii) (emphasis added).

EcoBamboo attached what it identified as over 30 exhibits to the complaint.

> [O]n a motion to dismiss, a court may consider 'documents attached to the complaint as an exhibit or incorporated in it by reference,…matters of which judicial notice may be taken, or…documents either in plaintiffs' possession or which plaintiffs had knowledge and relied on in bringing suit.' Because this

> standard has been misinterpreted on occasion, we reiterate here that a plaintiff's *reliance* on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion; mere notice or possession is not enough.

Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC Docket No. 14-04, 2014 WL 5824274 at *6 (ALJ Nov. 6, 2014), admin. Final Dec. 8, 2014 (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002)) (emphasis and ellipses in original) (footnote omitted); *also see Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47-48 (2d Cir. 1991)*. EcoBamboo not only cited to these exhibits and stated that it relied on them in formulating the complaint, but also sought to supplement them with subsequent filings.[3] Accordingly, I conclude that the exhibits attached to the complaint are integral to it and may be considered in this motion to dismiss without converting it to a motion for summary judgment. *Id.*

III. Discussion

A. Motion for Default Determination

EcoBamboo filed a motion for default determination on September 26, 2025, asserting that it served the complaint on Ship4WD on August 30, 2025, and default was warranted under 46 C.F.R. § 502.62(b) and § 502.64(a)[4] because more than 25 days had passed since EcoBamboo served the complaint on Ship4WD, and Respondent had not filed an answer. As stated above, the Commission issued the notice of filing of the complaint on September 9, 2025, initiating the proceeding and setting the one-year period in which an initial decision must issue as September 9, 2026. The service of the complaint by EcoBamboo on Ship4WD did not start the 25-day period to respond because no proceeding existed before the Commission at that time. Moreover, when the filing date of a response falls on a date when the Commission is not accessible, such as a Saturday, Sunday, or federal holiday, the response is due on the next business day. Due to the governmental shutdown, that date was extended to November 13, 2025. Under normal circumstances, response to the complaint in this case would have been due on October 6, 2025, and that is the date on which Ship4WD responded to the motion for default determination and filed a cross-motion to dismiss the complaint.

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[3] As recently as November 24, 2025, EcoBamboo filed a document entitled Supplemental Submission Clarifying Responsibility Chain (Exh CX-14 to CX-16), contrary to my instructions at the status conference that no more filings should be made pending this decision, purporting to further demonstrate the identity and responsibilities of entities referenced in the complaint. I am not considering this or other late-filed documents in this motion to dismiss as they are not integral to the complaint. *See* November 17, 2025, Order Setting Status Conference, Rejecting Certain Complainant's Filings, and Setting a Temporary Moratorium on Filings.

[4] Rule 64 refers to mandatory dispute resolution with CADRS within 15 days of the filing of the answer. For the same reasons as stated above, contacting CADRS is not required at this stage of the proceeding, prior to the filing of an answer and while dispositive motions are pending.

EcoBamboo's argument in its subsequent motions for default and "clarification" that Ship4WD's response to the motion for default and cross-motion to dismiss is not an *answer* to the complaint, fails. A *response* to the complaint is due 25-days after the filing of the complaint, and an answer, a motion to withdraw, or a motion to dismiss is responsive. As the Commission's Rules state, once a motion to dismiss is filed, an answer to the complaint is not due until 10 days after an order *denying* the motion to dismiss (in whole or in part). 46 C.F.R. § 502.62(b)(1). Accordingly, Ship4WD is not in default because an answer to the complaint is not due until after the dispositive motions are decided. When an order *grants* the motion to dismiss, as here, no answer is due, and the case is dismissed.

B. Motion to Dismiss

Section 41102(c) states that a "common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." 46 U.S.C. § 41102(c).

The elements that must be established to prove a Section 41102(c) claim are specified by the Commission in the Rules:

> 46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:
>
> (a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
>
> (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;
>
> (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
>
> (d) The practice or regulation is unjust or unreasonable; and
>
> (e) The practice or regulation is the proximate cause of the claimed loss.

46 C.F.R. § 545.4. After determining that there is "a practice relating to and connected with the receiving, handling, storing, or delivering of property," it may be assessed whether the practice is "unjust and unreasonable." *California Stevedore & Ballast Co. v. Stockton Port Dist.*, Docket No. 898, 7 F.M.C. 75 (FMC Jan. 25, 1962).

Ship4WD asserts that EcoBamboo fails to state a claim under the Shipping Act and the complaint should be dismissed because it does not allege that any acts or omissions by it "occurred on a normal, customary, and continuous basis." 46 C.F.R. § 545.4. EcoBamboo did not allege all the above elements in its complaint, and specifically, it did not allege that Ship4WD engaged in a practice that is occurring on "a normal, customary, and continuous basis." 46 U.S.C. 41102(c); 46 C.F.R. § 545.4. When asked at the status conference what practice it believes violates the Shipping Act, Mr. Waterloo was unable to identify one. Even

accepting EcoBamboo's facts as true, at most the complaint raises a disagreement about the terms to which EcoBamboo and Ship4WD agreed to import one container of bamboo, namely, which party would be responsible for costs associated with an unanticipated CBP inspection and refumigation. That disagreement in the context of importing one container does not rise to the level of a practice that is occurring on a normal, customary, or continuous basis, and it cannot be rephrased as one as a matter of law:

> Commission precedent has made clear that a single shipment or isolated act or omission does not show a pattern or practice. An "occasional transaction" or isolated act is not a "practice." Two or three incidents over a short time period are not enough to show that the conduct in question is an entity's normal and customary practice. Even six instances of "unreasonable conduct" carried out over a period of several months involving the same entities have been ruled insufficient to prove that conduct was "uniform or continuous."

Crocus Investments, LLC v. Marine Transport Logistics, Inc., Docket No. 15-04, 2021 WL 3732849 at *8 (FMC Aug. 18, 2021) (internal citations omitted).

Moreover, relying on the facts asserted in the complaint and the attached exhibits, no claim that is cognizable under the Shipping Act is or can be made because no pattern or practice can be established based on this one shipment.

C. Conclusion

It is appropriate to consider whether an amendment would cure the defect identified above. The complaint is detailed, includes many exhibits, and provides adequate information regarding the claims. The issue is not a lack of factual detail, but rather whether the underlying dispute states a Shipping Act claim. Dismissal of a complaint for failure to state a claim does not require that leave to amend the complaint be allowed. *Edaf Antillas, Inc.* at *9. I find that based on the allegations in the Complaint and the supporting documents, amendment of the complaint would be futile. *See Logfret, Inc. v. Kirsha, B.V.*, 2019 WL 4689188, at *17 (ALJ Sept. 17, 2019), admin final Oct. 21, 2019. Therefore, the complaint is dismissed with prejudice.

IV. Order

Accordingly, upon consideration of the record herein, the arguments of the parties, and the conclusions and findings set forth above it is hereby

ORDERED that the Motion for Default Determination be **DENIED**. It

FURTHER ORDERED that Respondent's motion to dismiss be **GRANTED**. The complaint is hereby **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that any other pending motions or requests be **DISMISSED AS MOOT**. It is

FURTHER ORDERED that this proceeding be **DISCONTINUED**.

Linda S. Harris Crovella
Administrative Law Judge