

# FEDERAL MARITIME COMMISSION

PETITION OF COSCO CONTAINER  
LINES COMPANY LIMITED FOR  
AN EXEMPTION FROM 46 C.F.R.  
§ 530.10

Petition No. P1-16

Served: February 29, 2016

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**BY THE COMMISSION:** Mario CORDERO, *Chairman*; Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A. KHOURI, and William P. DOYLE, *Commissioners*.

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## Order Granting Petition

### **I. Background**

On January 15, 2016, COSCO Container Lines Company Limited (COSCON) filed with the Federal Maritime Commission (Commission) the above-captioned petition for exemption (Petition) from the provisions of 46 C.F.R. § 530.10 requiring individual service contract amendments to be filed with the Commission. COSCON states that it is a Chinese corporation and an ocean common carrier under the Shipping Act of 1984 (Shipping Act), and that, on or about March 1, 2016, it will acquire by time charter the containerships and certain other assets of China Shipping Container Lines Co. (China Shipping), another Chinese ocean common carrier. Pet. at 1. COSCON indicates that the transferred assets will include

China Shipping's service contracts with its customers, which will be assigned to COSCON in accordance with their terms and applicable law. *Id.* The Petition notes that there are approximately 700 such service contracts. *Id.*

In addition to the assignment of the service contracts, COSCON plans to take over China Shipping's tariffs and renumber and republish them under COSCON's Organization Number. Pet. at 2. COSCON notes that following this renumbering, the tariff numbers identified in the existing China Shipping service contracts as governing tariffs will not match the new tariff numbers. *Id.*

COSCON asserts that the assignment of the China Shipping service contracts to COSCON and the republishing and renumbering of the China Shipping tariffs would require filing an amendment to each contract with the Commission, which, according to COSCON, would unduly burden both it and the shipper parties to the contracts. Pet. at 1-2.

Accordingly, COSCON requests an exemption from the provisions in 46 C.F.R. § 530.10 requiring that amendments to each individual service contract be filed with the Commission. Instead of filing individual amendments, COSCON requests that it be permitted to: (1) send a notice electronically to each shipper counter party regarding the assignment of the contract to COSCON, in addition to any universal notice the Commission may require to be filed in SERVCON;<sup>1</sup> and (2) insert notices in the existing China Shipping tariffs and new COSCON tariffs alerting shipper counter parties that the China Shipping tariff referenced in their service contracts has been replaced and succeeded by the republished and renumbered COSCON tariff. Pet. at 2-3.

COSCON argues that the requested exemption will not result in a substantial reduction in competition or be detrimental to commerce because the amendments at issue are purely

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<sup>1</sup> SERVCON is the Commission's service contract filing system.

administrative, and because a large number of China Shipping's service contracts will expire by April 30, 2016. Pet. at 3–4. COSCON further asserts that the proposed notices will fully inform and protect all shipper counter parties, as well as the Commission. *Id.* at 4.

On January 27, 2016, the Commission published a notice in the Federal Register requesting comment on the Petition. 81 Fed. Reg. 4,627. The Commission received no comments.

## II. Discussion

The Commission's regulations governing service contracts provide that "[s]ervice contracts may be amended by mutual agreement of the parties to the contract." 46 C.F.R. § 530.10(b). Amendments to service contracts must be filed with the Commission in the manner set forth in 46 C.F.R. § 530.8 and appendix A to 46 C.F.R. part 530.

Although COSCON only requested an exemption from 46 C.F.R. § 530.10, the Commission has determined that COSCON's proposal to republish and renumber China Shipping's tariffs as its own, separate tariffs would require an exemption from 46 C.F.R. § 520.7(a)(4), which requires that published tariffs "[n]ot duplicate or conflict with any other tariff publication." The new COSCON tariffs would likely be duplicative of or conflict with COSCON's existing tariffs applicable to service contracts.<sup>2</sup>

Exemptions from the requirements of Part 520 and 530 are governed by 46 U.S.C. § 40103 (section 16 of the Shipping Act of 1984) and the Commission's Rules of Practice and Procedure. 46

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<sup>2</sup> The Commission notes that COSCON's proposed action differs from that proposed by Crowley in a similar, recently granted petition for exemption. *Petition of Crowley Caribbean Servs., LLC*, No. P4-15 (FMC Jan. 12, 2016). In that case, Crowley planned to obtain a new organization number under which the new tariffs would be published. In this case, COSCON plans to use its own organization number.

C.F.R. §§ 520.13(a); 530.13(b). Section 40103 permits the Commission to grant an exemption if it “will not result in substantial reduction in competition or be detrimental to commerce.” The Commission may also attach conditions to an exemption. 46 U.S.C. § 40103(a).

The Commission has generally granted requests for exemption from the requirements in 46 C.F.R. § 530.10 in similar situations. *See Petition of Crowley Caribbean Servs., LLC*, No. P4-15 (FMC Jan. 12, 2016); *Petition of Compañía Sud Americana de Vapores S.A.*, 33 S.R.R. 934 (FMC 2015); *Petition of Hanjin Shipping Co., Ltd.*, 31 S.R.R. 1080 (FMC 2009). The Commission similarly concludes that an exemption from §§ 520.7(a)(4) and 530.10(b) in this case will reduce the filing burdens on both COSCON and the shipper parties and will not result in a substantial reduction in competition or be detrimental to commerce.<sup>3</sup>

The Commission finds that the potential for negative competitive or commercial effects resulting from the exemption is limited given COSCON’s assurances that shipper parties will receive the same terms and service they received from China Shipping, and the expiration of most of the China Shipping service contracts within two months of the assignment. Moreover, the Commission believes that COSCON’s proposed measures, in conjunction with the conditions prescribed by the Commission below, offer adequate protection against any potential harm to competition or commerce. As described in COSCON’s proposed notice to the shipper parties regarding the assignment, formal consents and individual amendments will be prepared if a shipper party so requests, and the notices in the tariffs of COSCON and China Shipping will alert shipper parties to the republished and

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<sup>3</sup> The Commission notes that the competitive and commercial effects under consideration in this matter are limited to those resulting from the exemption (i.e., the effects of COSCON issuing the proposed notices rather than filing individual amendments for all 700 service contracts with the Commission) and not the competitive and commercial effects of COSCON’s acquisition of China Shipping’s assets generally.

renumbered tariffs. In addition, republishing China Shipping's tariffs will ensure that the relevant service contract terms are not affected by the change in carrier.

The Commission is placing additional conditions on the exemptions as follows. First, COSCON must file a universal notice in SERVCON enumerating all affected service contracts. The Commission has required similar notices in past cases to ensure that the Commission has accurate information regarding the current terms of those contracts.

Second, the Commission notes that the text of COSCON's proposed notice regarding the assignment requests that shipper parties notify COSCON by February 19, 2016, if a formal consent or individual amendment is required, and that if the shipper party does not reply by that date or continues to tender cargo after March 1, 2016, COSCON will assume that the shipper party agreed to the assignment and does not require a formal consent or amendment. It is unclear when COSCON anticipated distributing this notice, but, assuming it was not distributed sometime before February 19, 2016, these dates must be updated to allow shipper parties a reasonable amount of time to consider their options in light of the assignment. Specifically, the Commission believes that COSCON should provide at least seven days from the date of its notice for shipper parties to request a formal consent or individual amendment.

Finally, the new COSCON tariffs may remain in effect only until June 1, 2016. As noted above, most of the relevant service contracts will expire on or before April 30, 2016, rendering the new COSCON tariffs unnecessary after that date. To the extent that an exemption is needed beyond June 1, the Commission will consider extending the exemption in response to a timely petition from COSCON. Any further petition should describe the continuing need for the exemption and a new proposed termination date for the tariffs.

**III. Conclusion**

For the reasons discussed above, the Commission is granting COSCON's Petition, subject to certain conditions.

THEREFORE, IT IS ORDERED, that COSCON's Petition is GRANTED, provided that:

1. COSCON notifies, in the form and manner set forth in the Petition, all affected shippers of the change in carrier parties to the service contracts, and provides at least seven (7) calendar days for shipper parties to request a formal consent or individual amendment to a service contract;
2. COSCON files, not later than April 1, 2016, a Universal Notice with the Commission through SERVCON, enumerating all affected service contracts;
3. COSCON inserts notices, in the form and manner set forth in the Petition, in the existing China Shipping tariffs and in the new COSCON tariffs, respectively, explaining the updated governing tariff numbers;
4. The new COSCON tariffs will terminate on or before June 1, 2016; and
5. If any affected shipper opts to file an individual amendment, such amendment shall be promptly filed pursuant to 46 C.F.R. § 530.10(b).

IT IS FURTHER ORDERED, that this proceeding is discontinued.

By the Commission.

Karen V. Gregory  
Secretary