

# FEDERAL MARITIME COMMISSION

PETITION OF COSCO CONTAINER  
LINES EUROPE GmbH  
FOR AN EXEMPTION FROM  
46 U.S.C. § 40703

Petition No. P3-15

Served: November 9, 2015

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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

By petition filed May 4, 2015, COSCO Container Lines Europe GmbH (COSCON Europe or Petitioner), a controlled carrier,<sup>1</sup> requested that the Federal Maritime Commission (FMC or

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<sup>1</sup> A controlled carrier is defined under 46 U.S.C. § 40102(8) as follows: “The term ‘controlled carrier’ means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if – (A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.”

Commission) exempt it from the requirements of 46 U.S.C. § 40703, pursuant to Section 16 of the Shipping Act of 1984 (the Shipping Act or the Act),<sup>2</sup> 46 U.S.C. § 40103, and 46 C.F.R. § 502.76 of the Commission's Rules of Practice and Procedure. Section 40703 provides that "a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication." 46 U.S.C. § 40703.

Notice of the filing was served on May 8, 2015, and published in the Federal Register on May 14, 2015. 80 Fed. Reg. 27,685. Comments were due by May 29, 2015. On May 4, 2015, Shipco Transport, Inc. and North Atlantic Alliance Association, Inc. filed comments in support of COSCON Europe's petition. No other comments were filed.

For the following reasons, the Commission has determined to grant the Petition and exempt COSCON Europe from the requirements of 46 U.S.C. § 40703.

### **BACKGROUND**

Petitioner is an ocean common carrier currently providing container service for the Europe - U.S. trade. Petitioner is 100 percent owned by COSCO Container Lines Co., Ltd. (COSCON) and is therefore a controlled carrier within the meaning of 46 U.S.C. § 40102(8) and 46 C.F.R. § 565.2(a), and became subject to the requirements set out in 46 U.S.C. §§ 40701 – 40706.

COSCON Europe was formed as a wholly owned company of COSCON as part of an internal corporate restructuring that

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<sup>2</sup> On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill's purpose was to "reorganize[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law." H.R. Rep. No. 109-170, at 2 (2005). The Commission continues to cite provisions of the Act by their former section references, and that practice will be followed in this Order.

involved the transfer of COSCON's container service for the Europe – U.S. trade. COSCON Europe is based in Hamburg, Germany and has scheduled to begin service for the Europe – U.S. trade on or about June 1, 2015. Petition at 2.

COSCON Europe's parent COSCON has previously sought exemptions from the requirements of § 40703. In Petition No. P1-98, filed January 7, 1998, China Ocean Shipping (Group) Company (now COSCON), the parent company of COSCON Europe, was granted a limited exemption from Section 9(c) of the Act (now codified at 46 U.S.C. § 40703) permitting it to lower tariff rates on one day's notice in response to competition. *See Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984*, 28 S.R.R. 144 (FMC 1998). Subsequently, in Petition No. P3-99, China Ocean Shipping (Group) Company, was granted an exemption from the first sentence of § 9(c) of the Act to permit it to reduce its tariff rates, charges, classifications, rules or regulations effective upon publication. The Commission declined to grant the requested permanent exemption. *See Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act*, 30 S.R.R. 187 (FMC 2004).

In the current Petition, COSCON Europe seeks an exemption from 46 U.S.C. § 40703, so that it may lawfully reduce its tariff rates, charges, classifications, rules, or regulations effective upon publication. Petitioner contends that granting the exemption will permit COSCON Europe “to compete more effectively for time-sensitive cargo” and “would shield shippers from real or perceived commercial uncertainty.” Petition at 3.

In their comments, Shipco Transport, Inc. and North Atlantic Alliance Association, Inc. assert that denying COSCON Europe's petition would result in very unfavorable conditions for customers of COSCON Europe, and would make it difficult for companies to continue to work with COSCON Europe. Shipco Comment at 1; North Atlantic Comment at 1.

### **AUTHORITY**

Under 46 U.S.C. § 40103(a), the Commission may grant administrative exemptions from the Act “if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.” In addition, the Commission “may attach conditions to an exemption and may, by order, revoke an exemption.” *Id.*

The Commission has previously granted exemptions from § 40703. See *Petition of United Arab Shipping Company (S.A.G.) for an Exemption from 46 U.S.C. § 40703*, (Petition No. P1-14, Order Granting Petition, July 16, 2015); *Petition of Hainan PO Shipping Co., Ltd. for an Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984*, 31 S.R.R. 1659 (FMC 2010); *Petition of China Shipping (Hong Kong) Container Lines Co., Ltd. for an Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984*, 30 S.R.R. 645 (FMC 2005); *Petition of American President Lines, Ltd. and APL Co. Pte. Ltd. for a Full Exemption From the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended*, 30 S.R.R. 517 (FMC 2004); *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act*, 30 S.R.R. 187 (FMC 2004).

With regard to the first finding required in § 40103(a), Petitioner argues that granting the requested exemption would not result in any substantial reduction in competition, but rather would increase competition because it would allow COSCON Europe to “reduce tariff rates in a timely fashion ... a necessity for a carrier.” Petition at 4.

The second criterion required by § 40103(a) is whether granting an exemption would be detrimental to commerce. The Petitioner alleges that granting the exemption sought in its Petition “would have the effect of promoting commerce, rather than being

detrimental to commerce, as it provides shippers the opportunity to have a larger pool of carriers competing for their business.” *Id.*

### **DISCUSSION**

As a general matter, the Commission enjoys discretion in considering requests for exemption from the requirements of the Shipping Act pursuant to § 40103. As stated in *Petition for Exemption from the NVOCC Tariff Filing Requirements under the Shipping Act of 1984*, 26 S.R.R. 240, 245 (FMC 1992), the Commission “has complete discretion to deny any request for an exemption.” The statute itself provides that the Commission “may,” rather than shall, grant an exemption if certain criteria are met. *See Petition of China Ocean Shipping (Group) Company for a Limited Exemption From Section 9(c) of the Shipping Act of 1984*, 28 S.R.R. 144, 147 (FMC 1998) (discussing Commission’s discretion).

As noted above, § 40103 provides that if the Commission finds that an exemption will not result in substantial reduction in competition or be detrimental to commerce, the relief may be granted. Based on the information submitted in connection with the current Petition, granting the exemption is unlikely to result in a substantial reduction in competition. By allowing COSCON Europe to reduce tariff rates on publication rather than requiring a 30-day waiting period, COSCON Europe will be able to react to market conditions more quickly and be better able to compete. With regard to detriment to commerce, based on COSCON Europe’s relatively small market share of the Europe – U.S. trade, we conclude that it appears unlikely that granting the exemption would be detrimental to commerce.

### **CONCLUSION**

We find that COSCON Europe’s Petition for exemption from the requirements in 46 U.S.C. § 40703 meets the two-part test of 46 U.S.C. § 40103(a) and will not result in a substantial reduction in competition or be detrimental to commerce. Therefore, the

request for exemption from the requirements of 46 U.S.C. § 40703 is granted without a time limit or provision for expiration. COSCON Europe will remain subject to all other applicable provisions of the Shipping Act and the Commission's regulations. The Commission retains full authority to revoke the instant exemption.

THEREFORE, IT IS ORDERED, that COSCO Container Lines Europe GmbH is granted an exemption from the requirement of 46 U.S.C. § 40703 that tariff rates of a controlled carrier may not become effective until the 30th day after publication; and

IT IS FURTHER ORDERED, that this proceeding is discontinued.

By the Commission.

Rachel E. Dickon  
Assistant Secretary