

Before the  
FEDERAL MARITIME COMMISSION  
Washington, D.C. 20573  
Docket No. 22-08



ACHIM IMPORTING COMPANY INC. v.  
YANG MING MARINE TRANSPORT CORPORATION

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**VERIFIED COMPLAINT**

**I. INTRODUCTION**

1. Complainant Achim Importing Company Inc. ("Achim" or "Complainant"), by its undersigned counsel, brings this Verified Complaint against Respondent Yang Ming Marine Transport Corporation ("Yang Ming Marine" or "Respondent") pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Respondent's violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the "Shipping Act"), alleged herein.
2. Respondent Yang Ming Marine is one of the top ten largest shipping container companies in the world. Along with Hapag-Lloyd AG, HMM Co., Ltd., and Ocean Network Express Holdings, Ltd. (itself a joint venture among three ocean lines), Yang Ming Marine is a member of "THE Alliance". Most of the top global container lines have organized themselves to form three major ocean "alliances", which collectively control the vast majority of ocean container shipping. As a result, global carrier alliances wield enormous power over the global shipping industry.

3. As alleged herein, Respondent has, upon information and belief, taken advantage of price inflation in container shipping during the COVID-19 pandemic and unjustly and unreasonably exploited customers, vastly increasing its profitability at the expense of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation.
4. As part of its business, Complainant secures ocean freight via service contracts with Respondent and other ocean carriers. Such contracts specify a minimum quantity commitment (“MQC”) for cargo to be shipped between certain groups of ports, and set forth pricing for port-to-port lanes subject to the service commitment. Entering into service contracts in advance enables shippers to ensure they will have sufficient freight service and to mitigate exposure to fluctuations in market price.
5. In 2020 and 2021, Respondent engaged in unjust and unreasonable practices with respect to Complainant’s cargo. Instead of honoring the pricing and MQC commitments in its service contract with Complainant, Respondent began a practice of systematically favoring other shippers, including spot market purchasers willing to pay high rates, over Complainant. As a result, Complainant had to obtain space on the spot market at enormous expense.
6. Respondent’s unjust and unreasonable practices coincided with an unprecedented increase in spot market pricing for ocean freight. On information and belief, Respondent deliberately constrained capacity to manipulate pricing, sought to take advantage of unprecedented high pricing by forcing shippers with service contracts, like Complainant, to resort to spot market purchases to secure freight carriage, and benefited from being able

to sell previously contracted capacity on the spot market, or to shippers willing to pay a premium, rather than honoring its service contract commitments.

7. On information and belief, Respondent's unjust and unreasonable practices were knowing and deliberate.
8. On information and belief, Respondent has profited greatly from the conduct alleged herein.
9. Profiteering by container lines injures not only shippers, but also the entire consumer public in the form of inflation. Inflation in the United States has risen to crisis levels, while global ocean carriers, including Respondent, report windfall profits.
10. Respondent's conduct alleged herein with respect to the receipt, handling, storage, and/or delivery of the property of Complainant and, upon information and belief, of other shippers has occurred on a normal, customary, and continuous basis.

## **II. THE COMPLAINANT**

11. Complainant Achim is a corporation existing under the laws of New York with its principal place of business located at 1600 Livingston Avenue, North Brunswick, New Jersey 08902, telephone (718) 369-2200, email care of MAG@achimonline.com and via its undersigned counsel's telephone numbers and email addresses listed below. For purposes of its service contract with Respondent, Complainant Achim is a "shipper" as that term is defined by 46 U.S.C. Section 40102(23).

## **III. THE RESPONDENT**

12. Upon information and belief, Respondent Yang Ming Marine is a company existing under the laws of Taiwan with its principal place of business located at 271 Ming-Teh 1st Road, Chitu District, Keelung, Taiwan. Yang Ming Marine is a vessel-operating "ocean common

carrier” as that term is defined by 46 U.S.C. Section 40102(18) with organization number 000138.

#### **IV. JURISDICTION AND LEGAL AUTHORITY**

13. The Federal Maritime Commission (“FMC”) has subject-matter jurisdiction over this Verified Complaint pursuant to the Shipping Act and, in particular, 46 U.S.C. Sections 41301 through 41309.
14. The FMC has personal jurisdiction over Respondent as an “ocean common carrier”, as that term is defined by 46 U.S.C. Section 40102(18), that has entered into a “service contract”, as that term is defined by 46 U.S.C. Section 40102(21), with Complainant.
15. Respondent’s actions alleged herein constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant and, upon information and belief, other shippers, in violation of 46 U.S.C. Section 41102(c).
16. Respondent’s actions alleged herein constitute the provision of service in the liner trade that is not in accordance with the rules and practices contained in its service contract with Complainant, in violation of 46 U.S.C. Section 41104(a)(2).
17. Respondent’s actions alleged herein, done in connection with its provision of service pursuant to its service contract with Complainant, individually and collectively constitute unfair and unduly discriminatory practices against Complainant in the matter of rates or charges with respect to the ports for which Complainant contracted with Respondent, in violation of 46 U.S.C. Section 41104(a)(5).
18. Respondent’s actions alleged herein with respect to its service contract with Complainant individually and collectively also have given undue and unreasonable preference and

advantage to shippers other than Complainant and imposed undue and unreasonable prejudice and disadvantage on Complainant with respect to the ports for which Complainant contracted with Respondent, in violation of 46 U.S.C. Section 41104(a)(9).

19. Respondent's actions alleged herein in the course of providing service to Complainant pursuant to its service contract with Complainant constitute unreasonable refusals to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).
20. Respondent's actions alleged upon information and belief herein to engage in parallel, contemporaneous actions with others, such as other ocean carriers, to regulate the volume or character of cargo to be carried, or to control, regulate, or prevent competition, constitute operation pursuant to an unfiled ocean carrier agreement, in violation of 46 U.S.C. Section 41102(b).

## **V. THE MATTERS COMPLAINED OF (ALLEGED FACTS)**

### **The Service Contract**

21. Complainant and Respondent entered into an Ocean Service Contract effective as of May 1, 2020 (the "Service Contract") and covering the time period from May 1, 2020 through April 30, 2021 (the "Service Contract Term"). The Service Contract set Complainant's MQC at 200 twenty-foot equivalent container units ("TEUs").
22. However, during the course of the entire Service Contract Term, Respondent only carried a total of 31 TEUs of Complainant's cargo pursuant to the Service Contract.
23. As a result of Respondent's 169-TEU shortfall, Complainant had to seek carriage from other sources at higher rates, or else forgo shipments entirely. Complainant had to spend at least \$1,325,962 more than the contracted prices to ship 169 TEUs on the spot market to make up for Respondent's 169-TEU shortfall.

## **Respondent's Unlawful Profiteering and Manipulation of Prices and Demand**

24. Large ocean alliances collectively control the vast majority of ocean container freight. Respondent's 2020 Annual Report acknowledged that the three largest ocean carrier alliances—THE Alliance, the OCEAN Alliance and the 2M Alliance—“accounted for ***97.8% of the main east-west routes***” (emphasis added).
25. Respondent's 2020 Annual Report also states that the fact that “[t]he container shipping market has been experiencing a series of mergers and acquisitions in recent years” is a “Favorable Factor” positively impacting Respondent's business. In 2020, for example, the addition of another top-10 container line (Hyundai Merchant Marine) to THE Alliance operated, in Respondent's assessment, “to strengthen cooperation within [the] alliance and stabilize the shipping market as well.”
26. At the beginning of the global COVID-19 pandemic, global container lines, including Respondent, deliberately adjusted their capacity to manage supply and demand. Respondent's 2020 Annual Report admits that during “the COVID-19 pandemic, ***carriers proactively made capacity adjustment plans*** to cope with the drastic fluctuations in market demand” (emphasis added).
27. In addition, as alleged herein, Respondent engaged in a practice of refusing to honor its service contracts, forcing shippers to seek space on the spot market and further artificially boosting spot market demand and prices.
28. On numerous occasions during the Service Contract Term Respondent declined to provide Complainant with its contracted space under the Service Contract on certain lanes, but third-party ocean transportation intermediaries were able to offer Complainant space ***on Respondent's own vessels on the very same lanes***, at exorbitant prices.

29. Respondent's efforts to constrain supply and manipulate demand resulted in windfall profits to Respondent. Again according to Respondent's 2020 Annual Report, "[t]he rebound in average freight rate" during the pandemic "offset the impact of reduced operating volume". Respondent's publicly reported net profits exploded during this period, swinging from a net *loss* of NT\$4.31 billion in 2019 to a massive *profit* of NT\$11.977 billion in 2020, an enormous swing of *NT\$16.287 billion*.
30. Respondent's constraint of supply and practice of pushing contracted shippers into the spot market were unjust and unreasonable, enabling Respondent to engage in profiteering.
31. In addition, Respondent's 2020 Annual Report refers to other unnamed "carriers" who also purportedly engaged in the same manipulation of supply as Respondent. To the extent any such manipulation occurred pursuant to an agreement between carriers, such activity would constitute an agreement that would have to be filed with the FMC pursuant to 46 U.S.C. Section 40302.

#### **Respondent's Unjust and Unreasonable Practices Concerning Allocation of Cargo Space**

32. During the Service Contract Term, Respondent refused to carry cargo for Complainant under the Service Contract.
33. Respondent refused to provide carriage to Complainant because Respondent engaged in a practice of deliberately favoring other shippers and reserving capacity for highly lucrative spot market sales instead of for its contractual obligations.
34. Complainant diligently sought to book space under its Service Contract with Respondent on numerous port pairs (or "lanes"), including Shanghai, China to New York.
35. In an email dated October 23, 2020, in response to a request for carriage on the Shanghai-New York lane, Respondent's employee Mr. Bill Ly explained Respondent's practices as

follows: “I have asked time and time again, but right now, *our booking offices are really limiting bookings to shprs who have had consistent wkly bookings since April/May.*

Those shprs are getting priority *and then they are giving some spare space for spot shprs to fill*’ (emphasis added).

36. Respondent’s refusal to provide Complainant bookings on its contracted port pairs in favor of other shippers who purportedly had booked consistently since April 2020 constitutes an unreasonable refusal to deal or negotiate with Complainant, as well as undue and unreasonable preference or advantage to other shippers and undue and unreasonable prejudice and disadvantage to Complainant with respect to those ports. Notably, April 2020 was *before* the start of the Service Contract Term.
37. Respondent’s practice of denying service contract customers such as Complainant contracted space in order to reserve space to sell to other shippers at spot market prices constitutes an unjust, unreasonable, unfair, and unjustly discriminatory practice, including in the matter of rates or charges with respect to the port pairs contemplated by the Service Contract.
38. Mr. Ly’s email suggests that Respondent’s unlawful practices occurred on a normal, customary, and continuous basis with respect to Complainant and other similarly situated shippers.
39. On October 28, 2020, following up on Respondent’s refused booking, Complainant’s employee Mr. Moshe Grossman wrote an email to Respondent stating in relevant part:  
  
*“We have been trying to book since April.*  
  
*Our bookings were not accepted.*  
  
*We signed for 200 TEUs and right now were given 28 since April.*



***UNACCEPTABLE!***

***We are willing to send a forecast for next 4-6 weeks.***

***Please advise a supervisor's contact at YM so we may clear this up ASAP."***

40. Respondent's employee Mr. Ly responded that Respondent's "origin booking office" controlled the space and "they have been the ones who has [sic] been turning down our requests."
41. Respondent's unlawful practices alleged herein continued unabated throughout the Service Contract Term.
42. On January 18, 2021, Complainant's employee Mr. Moshe Grossman wrote an email to Respondent stating in relevant part:

*"We have been attempting to book with Yang Ming for 9 months now to no avail. We signed a contract for **200 TEU** and as of now YM has only honored **31**. This has been extremely detrimental to our business. We are completely OOS on many items in our warehouse.*

*We reached out numerous times and the answer (if we received one) was always the same; 'Due to current shipping shortages we are focusing on customers who ship consistently larger quantities'."*
43. On January 19, 2021, Respondent's employee Mr. Ly replied, refusing to comply with Respondent's obligations to Complainant and stating, "I am not sure if anything can be done and I do not believe the balance of the MQC will be achieved by the end of the S/C."
44. Respondent failed to provide any additional TEUs for the remainder of the Service Contract. In total, Respondent carried only 31 of the 200 contracted TEUs of Complainant's cargo.

### **Respondent's Refusal to Deal and Discrimination**

45. Complainant repeatedly advised Respondent directly of its needs concerning cargo to be shipped to and from the ports identified in the Service Contract.
46. Respondent refused to address Complainant's complaints and requests for the service that Complainant had contracted for, instead informing Complainant that it was reserving its space for other shippers and for lucrative spot market opportunities.
47. Respondent's conduct with respect to Complainant as alleged herein constitutes an unreasonable refusal to deal or negotiate with Complainant.
48. Respondent's preference for higher-priced cargo also constitutes an unfair and unjustly discriminatory practice in the matter of rates or charges with respect to the ports contemplated by the Service Contract.

### **Respondent's Undue and Unreasonable Prejudice and Disadvantage with Respect to Ports**

49. During the first three months of the Service Contract Term, Respondent provided Complainant only limited space originating from the ports of Qingdao, Wuhan, and Zhangjiagang, China, while failing to provide space from other origins contemplated by the Service Contract. After July 2020, Respondent completely stopped accepting Complainant's cargo pursuant to the Service Contract, except for a single 2-TEU shipment from Shanghai in November 2020.
50. During the entire Service Contract Term, Respondent failed to provide any space whatsoever to Complainant originating from the ports of Ningbo, Nanjing, and Yantian, China and Cochin, India.

51. During the entire Service Contract Term, except for a single 2-TEU shipment in November 2020, Respondent failed to provide any space whatsoever to Complainant originating from the port of Shanghai.
52. Respondent's conduct in connection with Complainant's shipments originating from the ports of Shanghai, Ningbo, Nanjing, Yantian, and Cochin constitutes undue and unreasonable preference and advantage to shippers other than Complainant, as well as undue and unreasonable prejudice and disadvantage to Complainant, with respect to those ports.

### **Respondent's Unjust and Unreasonable Practices**

53. Respondent has engaged in several unjust and unreasonable practices relating to receiving, handling, storing and/or delivering Complainant's cargo.
54. As alleged herein, Respondent engaged in a deliberate practice of constraining its capacity, boosting freight prices and enabling profiteering by using the artificially constrained supply environment to charge exorbitant prices for ocean freight.
55. As also alleged herein, throughout the Service Contract Term, Respondent followed a practice of systematically failing to perform under the Service Contract, forcing Respondent to obtain space on the spot market at exorbitant prices. On information and belief, Respondent has benefited from this practice by carrying cargo at higher rates, including as a result of increases in spot market prices.
56. On information and belief, Respondent's unjust and unreasonable practices, including manipulating the supply of ocean freight, thereby enabling price increases and profiteering, and refusing space to contracted shippers in favor of spot market and other shippers, occurred on a normal, customary, and continuous basis. The financial incentives for

Respondent's conduct alleged herein apply to Respondent's conduct with respect to all shippers that are situated similarly to Complainant. Indeed, Respondent's 2020 Annual Report reflects that Respondent was extremely profitable in the 2020 contract year, suggesting that Respondent successfully employed the unlawful practices alleged herein in its dealings with many shippers other than Complainant.

57. Abusive, unjust, and unreasonable practices such as those alleged herein employed by a large container line, which is also a member of one of the three alliances that collectively control the vast majority of global ocean freight, are likely to wield outsized influence over general practices in the industry. If not corrected, Respondent's unlawful practices alleged herein may become industry standard, sending a message to all global container lines that it is acceptable to ignore service contracts in favor of spot market profiteering, engage in manipulation of supply to boost pricing and engage in profiteering, and refuse to honor carrier obligations under service contracts and the Shipping Act.

## **VI. CAUSES OF ACTION**

### **COUNT I: VIOLATION OF 46 U.S.C. § 41102(c)**

58. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
59. The foregoing customary, continuous conduct by Respondent, in connection with its receipt, handling, storage, and delivery of the property of Complainant and, upon information and belief, of other shippers, constitutes failure by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant and other shippers, in violation of 46 U.S.C. Section 41102(c).

**COUNT II: VIOLATION OF 46 U.S.C. § 41104(a)(2)**

60. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
61. The foregoing conduct by Respondent constitutes provision of service in the liner trade that is not in accordance with the rules and practices contained in Respondent's Service Contract with Complainant, for which no exception or exemption applies and that has not been suspended or prohibited by the FMC, in violation of 46 U.S.C. Section 41104(a)(2).

**COUNT III: VIOLATION OF 46 U.S.C. § 41104(a)(5)**

62. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
63. The foregoing conduct by Respondent in the course of providing service to Complainant pursuant to Respondent's Service Contract with Complainant, which was continuous and ongoing throughout the Service Contract Term, constituted an unfair and unjustly discriminatory practice against Complainant in the matter of rates or charges with respect to the ports identified in the Service Contract, in violation of 46 U.S.C. Section 41104(a)(5).

**COUNT IV: VIOLATION OF 46 U.S.C. § 41104(a)(9)**

64. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
65. The foregoing conduct by Respondent in the course of providing service to Complainant pursuant to Respondent's Service Contract with Complainant, which was continuous and ongoing throughout the Service Contract Term, gave undue and unreasonable preference and advantage to shippers other than Complainant and imposed an undue and unreasonable

prejudice and disadvantage to Complainant with respect to the ports identified in the Service Contract, in violation of 46 U.S.C. Section 41104(a)(9).

**COUNT V: VIOLATION OF 46 U.S.C. § 41104(a)(10)**

66. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
67. The foregoing conduct by Respondent in the course of providing service pursuant to Respondent's Service Contract with Complainant constitutes unreasonable refusal to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).

**COUNT VI: VIOLATION OF 46 U.S.C. § 41102(b)**

68. Complainant repeats and realleges each and every allegation above as if fully set forth herein.
69. On information and belief, to the extent Respondent engaged in parallel, contemporaneous actions with others, such as other ocean carriers, to regulate the volume or character of cargo to be carried, or to control, regulate, or prevent competition, such actions would constitute operating pursuant to an ocean carrier agreement that would have to be filed with the FMC under 46 U.S.C. Section 40302.
70. On information and belief, Respondent failed to file any such agreements with the FMC.
71. On information and belief, any operation by Respondent under an unfiled agreement would constitute a violation of 46 U.S.C. Section 41102(b).

**VII. CAUSATION**

72. The foregoing alleged illegal acts of Respondent have directly and proximately injured Complainant by forcing Complainant to make alternate transportation arrangements for

cargo to be shipped between the port pairs contemplated by the Service Contract at substantially higher spot market prices, or else forgo shipping such cargo altogether.

### **VIII. COMPLAINANT'S DAMAGES**

73. Respondent's alleged misconduct has injured Complainant in several ways.
74. During the Service Contract Term, Respondent's misconduct alleged herein caused Respondent to carry only 31 of the 200 contracted TEUs. Consequently, Complainant had to spend at least \$1,325,962 more than the contracted prices to ship 169 TEUs not carried by Respondent between the port pairs contemplated by the Service Contract via the spot market or other carriers.
75. In addition to the direct cost of making up for Respondent's shortfalls at higher rates, Respondent's misconduct has caused Complainant to incur other injuries, including delays, reduced inventory, unnecessary expenses, and lost profits, as well as attorneys' fees and expenses relating to litigation.

### **IX. PRAYER FOR RELIEF**

**WHEREFORE**, Complainant respectfully requests that the FMC require Respondent to answer the charges made in this Verified Complaint and prays for relief from the FMC as follows:

1. An investigation by the FMC of the allegations in this Verified Complaint pursuant to 46 U.S.C. Section 41301(c);
2. An Order, after due investigation pursuant to 46 U.S.C. Sections 41302 and 41303 and a hearing pursuant to 46 U.S.C. Section 41304, finding that Respondent has violated 46 U.S.C. Section 41102(b) by operating under an unfiled agreement, that Respondent has violated 46 U.S.C. Section 41102(c) in connection with its receipt, handling, storage, and delivery of the property of Complainant, that Respondent has violated 46 U.S.C. Sections

- 41104(a)(2), 41104(a)(5), and 41104(a)(9) in connection with its Service Contract with Complainant, and that Respondent has violated 46 U.S.C. Section 41104(a)(10) by unreasonably refusing to deal or negotiate with Complainant;
3. An Order compelling Respondent to cease and desist from violation of the Shipping Act and to put in place lawful and reasonable practices to preclude Respondent from failing to provide shippers with their contracted space at the prices agreed under their service contracts with Respondent;
  4. An Order requiring Respondent to pay Complainant reparations for the unlawful conduct alleged herein in an amount to be proven pursuant to 46 U.S.C. Section 41305, with interest pursuant to 46 U.S.C. Section 41305(a), Complainant's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), double reparations under 46 U.S.C. Section 41305(c) for Respondent's alleged violation of 46 U.S.C. Section 41102(b), and any other sum the FMC determines to be proper; and
  5. Such other and further orders or relief as the FMC deems just and proper.

#### **X. REQUEST FOR ORAL HEARING**

Complainant requests an oral hearing in Washington, DC.

Dated: March 18, 2022

Respectfully submitted,

HUTH REYNOLDS LLP

  
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### VERIFICATION

I, Moshe Grossman, am Vice President, Import Division at Complainant Achim Importing Company Inc., 1600 Livingston Avenue, North Brunswick, New Jersey 08902, telephone (718) 369-2200, email MAG@achionline.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 therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct. Executed on March 17, 2022.



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