

Before the  
FEDERAL MARITIME COMMISSION  
Washington, DC 20573  
Docket No. 24-01



Visual Comfort & Co. v. COSCO Shipping Lines (North America) Inc.

**VERIFIED COMPLAINT**

**I. INTRODUCTION**

1. Complainant Visual Comfort & Co. (“VCC”), by its undersigned counsel, brings this Verified Complaint against Respondent COSCO Shipping Lines (North America) Inc. (“COSCO”), pursuant to 46 U.S.C. Section 41301 to seek compensation for injuries to VCC caused by Respondent’s violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the “Shipping Act”).

2. In the years since the COVID-19 pandemic, global ocean carriers, including COSCO unjustly and unreasonably exploited customers, vastly increasing their profitability at the expense of shippers, increasing the cost of freight and goods sold to the American public in general.

3. During this same time ocean carriers, including COSCO, charged astronomical demurrage, detention, per diem, and yard storage charges (the “Charges”) to VCC citing inability to pick up containers at the ports, or return empty containers promptly, was significantly constrained due to circumstances outside VCC’s control, such as congestion at ports and shortage of equipment.

4. The COSCO family of companies has profited greatly from the conduct alleged herein. For example, in 2021 COSCO Shipping International reported more than \$769 million in gross profit, a year over year revenue increase of 32%, and a year-on-year operating profit surge

of 109%. As COSCO Shipping International pointed out in its 2021 Annual Report, the shipping market “demonstrated strong resilience” as a direct result of “persistent port congestion,” especially in the US and EU, during this 2021. See COSCO Shipping International Annual Report at 14. As predicted by COSCO, that congestion persisted into 2022. *Id.* at 42.

5. COSCO’s conduct related to the receipt, handling, storage, and/or delivery of the VCC containers and property occurred on a normal and customary basis.

## **II. THE COMPLAINANT**

6. Complainant VCC is a corporation organized under the laws of Texas with its principal place of business located at 22400 Northwest Lake Drive, Houston, TX 77095. VCC can be contacted by the FMC through its Chief Operating Officer Gary Hirschel, 847-410-4514, [ghirschel@visualcomfort.com](mailto:ghirschel@visualcomfort.com). VCC is a “shipper” pursuant to 46 U.S.C. 40102(23). Since its formation in 1987, VCC has been a leader in lighting products such as designer lighting, lamps, and ceiling fixtures.

## **III. THE RESPONDENT**

7. Upon information and belief, Respondent COSCO was established in 2016, and is a Chinese global ocean carrier located at No. 378 Dong Da Ming Road, Shanghai, 200080, People’s Republic of China and its U.S. office is located at 100 Lighting Way, Secaucus, NJ 07094 that offers container transportation in 105 counties and serves multiple ports in the United States. Upon information and belief COSCO is a wholly owned subsidiary of COSCO SHIPPING Lines Co., Ltd., a subsidiary of COSCO SHIPPING Corporation Limited which is a wholly-owned subsidiary of COSCO SHIPPING Holdings Co., Ltd. COSCO is a vessel-operating ocean common carrier as that term is defined by 46 U.S.C. § 40102(18) with organization number 015614.

COSCO's North American general agent, COSCO (North America) Inc., is located at 100 Lighting Way, Secaucus, NJ 07094.

8. COSCO is a leading global container liner shipping company. Based upon shipping capacity, COSCO is believed to be the third-largest carrier in the world. COSCO is a member of the OCEAN Alliance, the second-largest global shipping alliance representing 16% of global capacity.

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

9. The Federal Maritime Commission ("FMC") has jurisdiction over this Verified Complaint pursuant to 26 U.S.C. §§ 41301 through 41309.

10. The FMC has personal jurisdiction over Respondent as an ocean common carrier, as that term is defined by 46 CFR § 520.2.

11. 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 VCC, in violation of 46 U.S.C. Section 41102(c) and the FMC's Interpretive Rule on Demurrage and Detention under the Shipping Act, 85 Fed. Reg. 29,638 (May 18, 2020 (partially codified at 46 C.F.R. Section 545.5) (the "Interpretive Rule"), and in particular the Incentive Principle articulated in the Interpretive Rule.

12. Respondent's assessment of the Charges, or a substantial majority thereof, and the alleged acts and omissions of COSCO that led to the assessment of such Charges also constitute violations of 46 U.S. Section 41104, including 46 U.S.C. Section 41104(a)(10)'s prohibition on unreasonable refusals to deal or negotiate.

## V. ALLEGED FACTS

13. For the period of January of 2021 through December of 2022, VCC shipped thousands of unique containers using COSCO, and COSCO assessed VCC with detention, and demurrage, and storage charges on hundreds of those containers. The total demurrage, detention, per diem, and yard storage charges total more than \$1.219 million.

14. As Commissioner Rebecca F. Dye emphasized in her Final Report from the FMC's Fact Finding Investigation 29, "the Interpretive Rule on Detention and Demurrage promulgated by the Commission pursuant to Fact Finding 28 provides the shipping public with an enforceable principle that the Commission employs to assess the reasonableness of demurrage and detention practices and regulations under the Shipping Act of 1984, as amended."

15. As set forth in the FMC's Interpretive Rule, "the purpose of demurrage and detention are to incentivize cargo movement," and therefore the FMC "will consider in the reasonableness analysis under section 41102(c) the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity."

16. COSCO's assessment of the Charges, or a substantial majority thereof, and COSCO's acts and omissions that led to the assessment of the Charges, were incapable of incentivizing cargo movement and therefore unreasonable.

17. To maximize container use and port storage space, carriers charge a daily fee to shippers who fail to pick up containers promptly or after the number of free days has expired. Similarly, an importer faces detention charges if it fails to unload a container and return the empty container to the port within the free period.

18. COSCO refused to act reasonably by increasing the number of free days available to VCC even though COSCO created delays beyond VCC's control.

19. In 2021 and 2022, the volume of shipments coming into certain ports had surged, compared to 2020. Census Data from 2018 through 2022 indicates that volume at certain ports often dropped in the same month that volume at other ports drastically increased. Yet even though the volume increased at certain ports, COSCO refused to divert shipments to less crowded ports and also failed to extend the number of free days before it assessed the Charges.

20. The Charges assessed by COSCO and paid by Complainant were assessed during periods of time in which such Charges were not just or reasonable because of circumstances outside the control of VCC and its agents and services providers, such as congestion at ports and shortage of equipment.

21. For example, by mid-2022 COSCO knew that the lack of return locations for empty containers had reached crisis level proportions at the Port Authority of NY and NJ (PANYNJ). Marine Terminals in NY & NJ did not have sufficient storage capacity to take back all of the empty containers because carriers like COSCO were not loading back the boxes in sufficient quantities. As such, the financial and operational burdens for storing these containers were unfairly and inappropriately forced upon shippers, among other parties not at fault. During this period there were daily reports from motor carriers who are unable to pick up imports or make deliveries because of an excessive number of empty containers they are being forced to hold due to no return location without any compensation from the ocean carriers.

22. The large number of empty containers tying up chassis equipment was and is directly responsible for increased dwell times on import containers, and the exorbitant Charges that followed. Appointments for empty container returns were regularly shut out for days or even weeks at a time. When return locations were offered, they were often accepted at only one location,

or at an appointment-mandatory facility that only offers a fraction of the slots needed to meet actual demand, or with restrictions such as a “double moves only” requirement.

23. Because carriers such as COSCO did not act with sufficient urgency to clear empty containers and redirect traffic to less congested ports, terminals that accepted empty containers without restrictions became flooded with truckers desperate to return the boxes, often leading to unsafe gridlock conditions, making it impossible to access the terminal. However, the PANYNJ terminals were nonetheless still designated as “open for returns” and the free time was still ticking.

24. Drivers who could not access the terminals to drop an empty and pick up an import had no way to prove how many times they had attempted to pick up the container unsuccessfully. At other times, the terminal itself terminated empty container returns midday, with little to no notice, due to having reached capacity. Ultimately, despite these conditions, which were caused by ocean carriers including COSCO and beyond the shippers’ control, shippers including VCC ended up paying the bill when free time expired. Although the allotment of free time was grossly insufficient to address these conditions, ocean carriers including COSCO failed to allot additional free time or prioritize the evacuation of empties.

25. Upon information and belief, despite conditions that made it impossible to return containers, COSCO’s records still showed that a return location was available that day, and any boxes on Last Free Day became subject to Charges, despite lack of sufficient return capacity and/or restricted access to the terminal.

26. In one poll of drivers at the PANYNJ in August of 2022, **100% of respondents** stated that (a) when an empty return location opened, they still could not get an appointment to return it, (b) they cannot get enough appointments at terminals that require them, and (C) they have

been forced to hold empty containers because of insufficient capacity at the terminals and depots to accept them.

27. Approximately 94% of respondents stated that they had to send drivers home early because they did not have enough chassis available because they were tied up with empties, approximately 83% reported that traffic and congestion hindered their ability to return empties when a location opened for receiving, and more than 77% said that their customers had received pre diem bills for days when there were not empty return locations available, and approximately 83% stated they had been asked to provide proof of no return location when disputing bills.<sup>1</sup>

28. In its annual reports COSCO openly recognized that congestion interfered with the ordinary movement of containers at ports in the U.S. such as the PANYNJ. Yet COSCO failed to provide adequate practices and facilities to handle and store COSCO's empty containers and also failed to provide to provide adequate facilities for its customers, including VCC, to return empty containers at those ports.

29. Despite knowing that there was insufficient space in certain ports, COSCO continued to accept VCC's goods for ocean common carriage and for receipt, handling, storage, and/or delivery through those ports.

30. COSCO failed to provide reasonable free time for VCC for containers COSCO transported into the ports during the time COSCO failed to clear its container backlog.

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<sup>1</sup> As a result, pursuing waiver or mitigation of the Charges through COSCO's Demurrage and Detention (per diem) Disputes, Mitigates and Waivers Procedure would be futile, since Respondent requires screenshots showing lack of availability for such disputes.

31. The Charges did not serve, and could not have served, as a financial incentive to promote freight fluidity, but instead operated only as a punitive penalty on VCC for circumstances over which VCC and its agents and service providers had little to no control.

32. COSCO also failed to provide sufficient detail on its invoices to allow VCC to understand the reasons for the Charges and to be able to contest the Charges. Prior to the FMC's mandate to provide backup data to substantiate these Charges in the Ocean Shipping Reform Act of 2022 ("OSRA"), effective June 16, 2022, COSCO's invoices for the Charges did not include the start or end date of any free time allocated for these containers, the applicable detention or demurrage rule on which the Charges were based, the rates applied, any representation that COSCO's performance did not contribute to the underlying Charge, or a statement that the Charges were consistent with the FMC rules.

33. If not remedied, COSCO's unlawful practices will continue to contribute to a troubling industry standard under which all global container lines can impose improper detention and demurrage charges upon shippers because of delays and conditions that are of their own doing outside of shippers' control. As respondents to the motor carrier poll at PANYNJ aptly stated:

- *"The [steam ship line] places the burden of proof on us well knowing that most of the info they are asking for is either nonexistent or after the fact."*
- *"...FMC need[s] to strongly encourage or mandate Ocean Carriers to evacuate empty containers ... immediately."*
- *"It's nonsense. How are they allowed to operate like this."*

## VI. CAUSES OF ACTION

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

34. Complainant repeats and realleges the allegations above as if fully set forth herein.



35. COSCO's assessment of the Charges, and the alleged acts or omissions of COSCO that led to the assessment of such Charges, constitutes failures by COSCO to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering VCC's property in violation of 46 U.S.C. Section 41102(c), 46 C.F.R. Section 545.5, and the FMC's Interpretive Rule.

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

48. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

49. COSCO's assessment of the Charges, and the alleged acts or omissions of COSCO that led to the assessment of such Charges, constitutes unreasonable refusal to deal or negotiate with VCC, in violation of 46 U.S.C. Section 41104(a)(10).

**VII. CAUSATION**

50. The foregoing alleged illegal acts of Respondent have directly and proximately injured VCC by forcing VCC to make alternate transportation arrangements for cargo that was supposed to be shipped by Respondent pursuant to the terms of their respective Service Contracts at substantially higher spot market prices or forgo shipping such cargo altogether.

**VIII. COMPLAINANT'S DAMAGES**

51. VCC has been, and continues to be, actually and materially injured by each Respondent's continuous conduct in violation of the Shipping Act alleged herein.

52. Respondent's violations alleged herein are causing direct, proximate, and ongoing financial damages to VCC in an amount already believed to exceed \$1,000,000 and approach \$2,000,000, are currently accruing, and will be further demonstrated in this proceeding.

## IX. PRAYER FOR RELIEF

WHEREFORE, VCC 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:

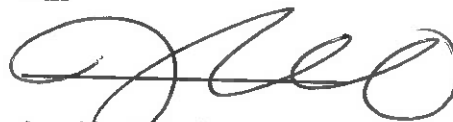
1. An investigation by the FMC of the allegations in this Verified Complaint pursuant to 46 U.S.C. Section 41301(c);
2. An Order, after due investigation pursuant to 46 U.S.C. Sections 41302 and 41303 and a hearing pursuant to 46 U.S.C. Section 41304, finding that Respondent has violated 46 U.S.C. Section 41102(c) in connection with its respective receipt, handling, storage, and delivery of the property of VCC;
3. An Order requiring Respondent to compensate VCC 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), VCC's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), and any other sum the FMC determines to be proper; and
4. 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.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY  
LLP



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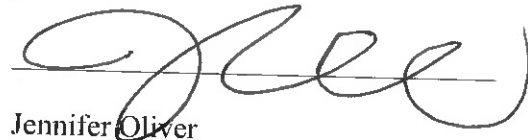
**CERTIFICATE OF SERVICE**

I, Jennifer Oliver, do hereby certify that I am over 18 years of age and caused the foregoing Verified Complaint to be served via overnight mail on December 15, 2023 to the following Service List:

COSCO Shipping Lines (North America) Inc.  
Corporation Service Company  
1201 Hays Street  
Tallahassee, FL 32301

James Houghtalin  
COSCO Shipping Lines (North America) Inc.  
100 Lighting Way  
Secaucus, NJ 07094  
(also served via email to [jhoughta@cosco-usa.com](mailto:jhoughta@cosco-usa.com))


Office of the Secretary  
Federal Maritime Commission  
800 N. Capitol Street NW  
Washington DC 20573-0001  
(also served via email to [secretary@fmc.gov](mailto:secretary@fmc.gov))

  
Jennifer Oliver

**VERIFICATION**

I, Gary Hirschel, hereby verify as follows:

1. I am the Chief Operating Officer for Complainant VCC.
2. I am authorized to make this verification on behalf of Complainant VCC.
3. I hereby verify that the facts contained in the foregoing Verified Complaint are true and correct to the best of my knowledge, information and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

  
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Gary Hirschel, VCC

Dated: 12-15-23