

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

**COMPLAINANT SAMSUNG ELECTRONICS AMERICA, INC.'S
MOTION FOR CONFIDENTIAL TREATMENT**

Complainant Samsung Electronics America, Inc. (“SEA”), by and through its attorneys Holland & Knight LLP, hereby move pursuant to paragraph 19 of Chief Administrative Law Judge Wirth’s October 27, 2022 Initial Order and 5(b) of the Federal Maritime Commission’s Rules of Practice and Procedure (the “Rules”), 46 C.F.R. 502.5(b), for confidential treatment of SEA’s Appendix.

On or about February 20, 2023, the parties entered into a Stipulation and Order of Confidentiality (“Confidentiality Order”). The Confidentiality Order provides for the confidential treatment of certain materials produced in discovery in this proceeding (“Confidential Information”) between the parties. The Confidentiality Order also provides that all “Confidential

Material which is to be filed with the ALJ or Commission, or materials containing, reproducing, incorporating or otherwise disclosing Confidential Material shall be filed and labeled in accordance with 46 CFR §502.5.” Thus, under the parties Confidentiality Order, documents produced in discovery marked either as “CONFIDENTIAL” and/or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and filed in this proceeding must be designated as Confidential Information. Further, deposition transcripts and information disclosed therein are deemed Confidential Material for a period of thirty (30) days after the transcript of said deposition is made available, regardless of whether any party has so designated the transcript. The parties also have thirty (30) days, from the date the transcript is made available, to designate information disclosed in deposition as Confidential Material.

During discovery, a significant number of documents produced by ZIM and ZIM deposition testimony were marked as “CONFIDENTIAL” and/or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” On July, 11, 2023, SEA counsel emailed ZIM counsel to discuss confidentiality designations. SEA maintained that ZIM had over-designated its documents, and in several instances, ZIM had designated material, which by their nature did not appear to be confidential matters. In further communications, ZIM agreed to waive the confidentiality designations of depositions testimony and exhibits, *except testimony and exhibits that referred to or contained information about other ZIM customers*. However, ZIM requested that SEA upon filing its brief maintain the confidentiality designations, and that ZIM would review the documents within twenty-fours (24) of receipt, and inform SEA which confidentiality designations should be maintained.

SEA’s Appendix includes documentation and/or deposition testimony designated by ZIM as Confidential Material. In accordance with the Confidentiality Order and communications with

counsel, SEA is seeking confidential treatment of testimony and exhibits contained in SEA's Appendix, designated as Confidential Material by ZIM. Pursuant to Rule 5(b), SEA will file a confidential and public version of its Appendix.

For the sake of good order, SEA confirms its brief and proposed findings of fact are not being submitted for confidential treatment. SEA does not have any documents or materials marked confidential (save its expert reports which were only marked confidential because it referred to ZIM materials marked confidential; SEA withdraws the expert report confidential designations in light of the agreement reached with ZIM). Moreover, the brief and proposed findings of fact do not contain the information of any other ZIM customers, meeting ZIM's request following the parties further communications on confidentiality.

For the foregoing reasons, SEA respectfully requests that the materials and exhibits designated as confidential in its Appendix, be kept confidential and not disclosed to the public at this time.

Dated: August 23, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the execution date which appears below, the undersigned served the attached document on counsel at the following email addresses:

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Executed: August 23, 2023

/s/ Kristine O. Little
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