

BEFORE THE  
FEDERAL MARITIME COMMISSION

SAMSUNG ELECTRONICS AMERICA, INC.	)	
	)	
COMPLAINANT,	)	
	)	
v.	)	FMC DOCKET NO. 22-30
	)	
ZIM INTEGRATED SHIPPING SERVICES LTD.	)	
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RESPONDENT.	)	
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**RESPONDENT ZIM INTEGRATED SHIPPING  
SERVICES, LTD.’s PROPOSED FINDINGS OF FACT**

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Respondent ZIM Integrated Shipping Services Ltd. (“ZIM”), through its counsel, hereby submits the following Proposed Findings of Fact (“PFF”):

**A. The contracts under which Samsung shipped cargo using ZIM as an ocean carrier included a provision authorizing the establishment of a maritime lien on cargo when Samsung was delinquent in paying the charges due and owing to ZIM.**

1. ZIM established a cargo hold on Samsung containers from August 5, 2020, through August 11, 2020. CX\_05325, Rosenberg Tr. 22:11-15.
2. At the time the cargo hold was imposed, the overdue balance from Samsung was \$143,000. CX\_05341, Rosenberg Tr. 38:3-7.
3. To lift the hold, Samsung paid approximately \$37,000. CX\_05341, Rosenberg Tr. 38:12-23.

4. Zim established a second cargo hold on Samsung containers from May 27, 2021, through June 15, 2021. CX\_05324-25, Rosenberg Tr. 21:16-22:5; RX\_0172, ZIM0028934.
5. At the time the second cargo hold was imposed, the overdue balance from Samsung was approximately \$858,000. CX\_01570, ZIM0085708 (chart from Mr. Yaacoub showing an overdue balance of \$857,914.64); RX\_0699, ZIM0085709; (Ms. Rosenberg's deposition notes regarding the holds show \$857,915).
6. To lift the second hold, Samsung paid approximately \$510,000. CX\_05344, Rosenberg Tr. 41:21-22.
7. ZIM established a third cargo hold on Samsung containers from September 27, 2021, until October 6, 2021. CX\_05324, Rosenberg Tr. 21:16-22:5.
8. At the time the third cargo hold was imposed, the overdue balance from Samsung was approximately \$944,000. CX\_05349, Rosenberg Tr. 46:13-19.
9. To lift the hold, Samsung paid approximately \$639,000. *Id.*
10. A number of containers were released by ZIM prior to the full payment of the Samsung overdue balance at the request of Samsung. RX\_0172, ZIM0028934.
11. ZIM established a fourth cargo hold on Samsung containers from January 11, 2022, through March 17, 2022. CX\_05349, Rosenberg Tr. 46:20-47:1.
12. At the time the fourth cargo hold was imposed, the overdue balance from Samsung was \$1,538,000. RX\_0699, ZIM0085709 (Ms. Rosenberg's deposition notes regarding the holds show \$1,538,200), CX\_01570, ZIM0085708 (affirming same).

13. A number of containers were released by ZIM prior to the full payment of the Samsung overdue balance at the request of Samsung. RX\_0172, ZIM0028934.
14. To lift the hold, Samsung paid approximately \$120,000. RX\_0699, ZIM0085709 (showing \$119,615 was paid to release the hold); CX\_01570, ZIM0085708 (affirming same)..

**B. Samsung approved various amounts of charges when confronted with overdue balances but now seeks to recover all of the charges that were contemporaneously approved by Samsung.**

15. On May 22, 2020, Samsung emailed ZIM in response to overdue balances, broken down by specific invoice, with approvals of various charges and questions regarding others. RX\_0174-77, ZIM0051110-13.
16. On August 10, 2020, Samsung emailed ZIM in response to overdue balances, broken down by specific invoice, with approvals of various charges and questions regarding others. RX\_0182-83, ZIM0011412-13.
17. On August 20, 2020, Samsung emailed ZIM in response to the same overdue balances, broken down by specific invoice, with additional approvals of various charges and questions regarding others. RX\_0765-78, SEA0014500-13.
18. On March 16, 2021, JS Ryu from SDSHQ Ocean Logistics Operation Group wrote ZIM to identify invoices that were the subject of an overdue statement of accounts (SOA) which required review. RX\_0623-24, ZIM0030241-42.
19. In the email from Mr. Ryu, he identified \$28,795 in invoices as “Claim case” and another \$9,983 as “Under Review” but noted that Samsung would pay the remainder of the balances “as soon as verification is completed.” *Id.*

20. The rest of the SOA from Samsung that was due to ZIM was not contested and totaled \$633,758. *Id.*
21. On January 21, 2022, Samsung emailed ZIM to confirm that an approved invoice for \$291,610 had been paid and that an additional \$354,900 had been approved and was pending payment. RX\_0919-20, SEA0015206-07.
22. Samsung also approved individual charges over email during the period when Samsung alleges that it was not at fault for any charges. RX\_0682, ZIM0031912 (Ms. Fernando told ZIM that Samsung was responsible for a portion of accrued demurrage, noting “[i]t is not ZIM’s responsibility after that since the appt was provided for 02.09”); RX\_1736-40, SEA0006315-19 (SEA’s containers did not receive an appointment until after LFD, so ZIM requested approval for pre-pull and storage; Ms. Renteria of Samsung requested that ZIM clear on behalf of Samsung and approved the charges requesting that ZIM go ahead); RX\_1729, SEA0007624 (SEA identified two containers with \$5,300 in demurrage and asked ZIM to clear on behalf of Samsung, noting that Samsung had “approved the amount below [of \$5,300 per container] for demurrage charges”); RX\_1688, SEA0008017 (showing the approval of three demurrage invoices, storage, and costs associated with appointments set by customers 36, 26, and 24 days beyond the last free day on port); RX\_1113, SEA0023224 (approving various charges totaling over \$40,000).

**C. Samsung relied on evasive and inefficient tactics to avoid paying its overdue balances even after months, and sometimes years, had passed since Samsung was properly invoiced for charges.**

23. On July 8, 2020, ZIM notified Samsung that it was “\$154,483.16 in arrears with invoices ranging between 2 and 1,743 days still open on the account and not settled.” CX\_07228, ZIM0011383.
24. Samsung advised that the outstanding balance would be paid by Friday, July 21, 2020, in order to avoid a credit suspension or a cargo hold. CX\_07227, ZIM0011382.
25. On July 28, 2020, prior to paying the invoices as promised, Ms. Blair Ji of Samsung requested all of the outstanding invoices and corresponding “approvals of email threads for the invoices” be provided or that ZIM should obtain approval on the invoices from amongst two groups of eleven total email addresses. *Id.*
26. After the process in PFF 25 was completed by ZIM, Samsung instructed that the “email thread along with the corresponding invoice(s)” be sent once more so that Ms. Ji could “validate the process.” CX\_07226, ZIM0011381
27. ZIM responded by requesting clarification that the process described was not for ZIM’s action and that ZIM would extend the time period for Samsung to pay its overdue invoices until July 31, 2020. *Id.*
28. Samsung then responded that the multi-step approval process was, in fact, directed to ZIM. *Id.*
29. On August 5, 2020, ZIM advised Samsung that it was implementing a cargo hold, “effective today.” RX\_0778, SEA0014513.
30. Again, on September 8, 2020, ZIM notified Samsung of an overdue balance of \$115,983.16. RX\_0169, ZIM0025659.

31. In the same email chain, on March 10, 2021, ZIM notified Samsung of \$628,373 in overdue charges that required immediate payment to avoid credit suspension and a cargo hold. *Id.*
32. In response, Ms. Maria Kristina Fernando from Samsung inquired regarding freight charges totaling \$8,578 and advised that Samsung would review the invoices, requesting that ZIM wait until the following week to enact a cargo hold. RX\_0167-68, ZIM0025657-58.
33. ZIM resent all of the invoices to Ms. Fernando and requested that they be forwarded to the correct department for processing. RX\_0163-64, ZIM0025653-54.
34. On March 21, 2021, ZIM advised that a cargo hold would be implemented on March 22, 2021. *Id.*
35. Having received no reply on March 24, 2021, ZIM reached out again to Samsung, requested details regarding payment and advising that cargo hold would be effective on March 26, 2021, if payment was not received. *Id.*
36. Ms. Fernando finally replied on March 24, 2021, escalating the invoices to Ms. Ji and requesting that she review and provide additional details. RX\_0159, ZIM0025649.

**D. ZIM carried Samsung's cargo under contracts negotiated by its affiliated entities which included provisions related to CNTs and liability for a CNT's deficient performance and/or non-performance.**

37. ZIM does not contract directly with Samsung but instead with Samsung Data Systems or "Samsung SDS" and Samsung Electronics Logitech ("Logitech"), affiliates of Samsung. CX\_2205, Rapske Tr. 33:8-33:25.

38. Samsung relies on contracts negotiated by Samsung SDS or Logitech and does not contract with ocean carriers itself. CX\_05793, Smith Report ¶17 (citing Choi Tr. 43; Rapske Tr. 41); CX\_2205, Rapske Tr. 33:8-33:25.
39. Samsung is the consignee of the cargo shipped under the contracts between Samsung SDS and ZIM. *Id.*
40. Samsung ships only 2.6% of its volume with ZIM and relies on other ocean carriers to provide 97.4% of its shipping volume. CX\_05812-13, Smith Report ¶58 (citing Rapske Interview, June 19, 2023).
41. Service contracts negotiated between ZIM on the one hand and Samsung SDS or Logitech on the other hand included services on container yard and store door (or door to door) terms. *See* RX\_1794-95, Service Contract 7100204807; RX\_1822, Service Contract Z18436KR; RX\_1857-58, Service Contract 7100171730; RX\_1885, Service Contract Z19179KR, and RX\_1921-25, Service Contract 7100102863 (including Section 4 of each contract which covers the Geographic Scope of the Service Contract, Section 12b which contemplates Carrier Haulage shipments and Appendix A which lists port destinations for cargo).
42. The majority of Samsung's cargo that ZIM carried moved on store door terms. CX\_05793, CX\_05795-96, Smith Report ¶¶17, 22; CX\_2213, Rapske Dep. Tr. 41:11-24 (Samsung went from shipping on store door terms to container yard terms in 2022).
43. Under standard store door terms, ZIM is generally responsible for arranging, paying for, and managing inland movement. CX\_00006, Complaint ¶30.

44. Under standard store door terms, ZIM selects the motor carrier that provides the inland transportation to the ultimate destination.
45. In some service contracts, a customer has the right or ability to designate the motor carrier to be used to provide the inland transportation. In these circumstances, the motor carrier is often referred to as a customer-nominated trucker or “CNT.” See *TCW, Inc. v. Evergreen Shipping Agency (Am.) Corp. & Evergreen Line Joint Service Agreement*, FMC Dkt. 1966(I), Order Affirming the Initial Decision at 2 (Dec. 29, 2022) (identifying a preferred trucker, or “CNT” here, as a designated trucker to be used for a shipper’s cargo under an agreement with the ocean carrier).
46. ZIM’s service contracts with Samsung affiliates contemplate the designation of CNTs. RX\_1794, Service Contract 7100204807; RX\_1821-22, Service Contract Z18436KR; RX\_1857, Service Contract 7100171730; RX\_1885, Service Contract Z19179KR, and RX\_1925, Service Contract 7100102863 (each showing Section 12a, titled “DESIGNATION OF TRUCKING VENDOR”).
47. Samsung designated CNTs to be used by ZIM in moving Samsung containers. CX\_02112, Choi Tr. 63:4-11; CX\_02232, Rapske Tr. 60:8-20; CX\_02346, Fernando Tr. 26:2-8.
48. Samsung selected its customer-nominated truckers based on their capacity and ability to deliver cargo for SEA. CX\_02345, Fernando Tr. 25:8-20.
49. Samsung characterized customer-nominated truckers as truckers that Samsung would recommend for a particular lane for ZIM to consider, define rates, and

determine whether or not to use the trucker. CX\_02112, Choi Tr. 63:4-11;  
CX\_02232, CX\_02253, Rapske Tr. 60:8-20; 81:16-82:13; CX\_02344,  
Fernando Tr. 24:17-22.

50. ZIM was required to use CNTs under its contracts with Samsung SDS and its contracts with Logitech. RX\_0945, SEA0111293. (Samsung SDS's request for quotation and negotiations were premised on the agreement that "Carriers are required to provide local delivery service with consignee's preferred trucker if any"; RX\_0663, ZIM0032838 (the RFQ including the mandate to use preferred truckers was incorporated into contracts between Samsung and its affiliate); RX\_1939, 7100102863, RX\_1870, 7100171730 (these service contracts incorporate the RFQ in each Appendix B).
51. If a CNT was rejected by ZIM, Samsung raised questions and pressured ZIM to use the CNT. RX\_0914-17, SEA0017223-26 (advising PBI is the correct trucker and requesting reasons why another trucker was dispatched); RX\_0957-62, SEA0023441-46 (Samsung instructed XPO to manage deliveries without requesting XPO as preferred trucker and later requested delivery be transferred to XPO from the house trucker, incurring storage costs); RX\_0967-71, SEA0025200-04 (Samsung stated to ZIM that the CNT is a different trucker than the house trucker and instructing that Samsung "need[s] these loads to be dispatched to [the CNT]" due to customer's special delivery requirements); RX\_069-70, SEA0000167-68 (Ms. Fernando noted that "We need to find a trucker with BBY portal access now. Setting up with BBY portal it takes days to be registered and the trucker must have enough patience to

[enter] the appt request.” and “If we are going to use a house trucker, I need to make sure they have BBY portal access.”).

52. ZIM’s service contracts with Samsung’s affiliates contain the following provision:

12 – LAND TRANSPORTATION

12a – DESIGNATION OF TRUCKING VENDOR

For shipments designated for pick up or delivery at any U.S. location or facility located outside the Port or Container Yard (i.e., “Door” pick up or delivery, also referred to as “Carrier Haulage”), Carrier shall normally nominate the Vendor to provide such services. If, upon Contract of the parties, the Merchant is to nominate the Vendor (“Preferred Trucker”), the following shall apply:

Compensation rates shall be as set forth at Appendix G, and shall be subject to review and / or change in accordance with subparagraph 12b (below).

Should Merchant’s Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier shall nominate and provide instruction to an alternate Vendor; and

Any expense or charge in excess of the Compensation rate set forth at Appendix G, including demurrage, detention, or other storage fees, which accrue or are assessed as a result of the Merchant’s nomination of a new or alternate Preferred Trucker, or as a result of the Preferred Trucker’s failure to accept or perform a Transport Order, shall be to the account of the Merchant.

RX\_1794, Service Contract 7100204807; RX\_1821-22, Service Contract Z18436KR; RX\_1857, Service Contract 7100171730; RX\_1885, Service Contract Z19179KR, and RX\_1925, Service Contract 7100102863.

53. The effect of the foregoing service contract provision is to place the risk of CNT non-performance on the party designating the CNT, making a store door move with a CNT similar to a CY move in which the customer is responsible

for the inland transportation. *Id*; CX\_02687, Frigo Dep. Tr. 214:3-12 (noting that accepting nonpreferred door moves from customers under certain circumstances resulted in a risk that cost volatility would be experienced); CX\_2790, Frigo Dep. Ex. 13 (discussing ongoing efforts to secure truck capacity in February of 2021 and noting risks associated with accepting store door moves with house truckers).

54. Samsung knew that its arrangements with its customers could be so limiting that a house trucker could not provide the service required by Samsung and its customer such as a drop and hook service. RX\_0967, SEA0025200 (Lowe's required a drop and hook service); CX\_02253-54, Rapske Tr. 81:16-82:13 ("If we use ZIM lines house trucker. . . You're not able to drop-and-hook.").
55. The contracts between Samsung SDS and ZIM did not obligate ZIM to perform additional work or conform to manual, specialized invoicing procedures determined by Samsung SDS or its affiliates, including Samsung. RX\_1792, Service Contract 7100204807 (showing invoicing terms); RX\_1815-50, Service Contract Z18436KR (no special invoicing requirements included); RX\_1855, Service Contract 7100171730 (showing invoicing terms); RX\_1883, Service Contract Z19179KR (showing invoicing terms); and RX\_1922-23, Service Contract 7100102863 (to the extent invoicing is mentioned, rights in the contract relate to the Merchant and entitle the Merchant to a prompt invoice which shall be paid within thirty days. If the Merchant disputes an invoice, notice of any dispute must be made within ten

days of the date of the invoice, including specific details regarding the dispute. Otherwise, the invoice will be presumed valid under the contracts).

**E. Samsung caused numerous inland transportation charges through its actions and inactions but blames ZIM for the problems of its own making.**

56. Facilities were often unavailable to receive cargo which resulted in demurrage and detention charges. CX\_02249-50, Rapske Tr. 77:13-78:5; 78:12-23; RX\_0814-15, SEA0132657-58 (Samsung instructed that thirteen containers be prepulled a full two weeks before the customer's RDD); RX\_1023-25, SEA0046788-90 (Samsung instructed that a container be pulled and stored because the last free day was 26 days prior to the customer's available appointment); RX\_1533-37, SEA0023244-48 (driver detention occurred at Samsung's warehouse, and Samsung ignored requests for payment for a month); RX\_1688-89, SEA0008017-18 (showing containers with 36 days of storage, 26 days of storage, and 24 days of storage due to customer appointment scheduling).
57. Many Samsung warehouses and facilities required appointments for delivery that were not within the control of ZIM. RX\_1033, SEA0046798; RX\_1098, SEA0028101; RX\_1576-82, SEA0003414-20 (Samsung's warehouse double booked a slot which led to demurrage and detention); RX\_0682, ZIM0031910 (Ms. Fernando told ZIM that Samsung was responsible for containers for a portion of accrued demurrage, noting "[i]t is not ZIM's responsibility after that since the appt was provided for 02.09").
58. When Samsung's customers could not accept cargo within the free time on a port, Samsung often instructed the CNT to prepull and store the cargo to avoid

higher on-port demurrage charges. RX\_1978, SEA0005779 (including in blanket instructions from Samsung to its CNTs that they must “**prepull the loads before the port/rail** LFD if needed, kindly advise the rates and detail information for approval”); RX\_1688-1712, SEA0008017-41 (Samsung instructed that the trucker provide details for approval of accessorial fees but delayed providing approval for pre-pull and storage costs from containers with appointments 36 days, 26 days, and 24 days after the last free day due to customer appointment scheduling which resulted in demurrage).

59. Some customers such as Best Buy had rigorous appointment requirements which required “days to register” for their portal and “enough patience to [enter] the appt request” through the portal. RX\_1069-70, SEA0000150 at 167-68.
60. Samsung customers such as Lowe’s dictated the required delivery date (RDD) for a shipment, sometimes occurring after free time had expired (emails RX\_0814, SEA0132657 (showing a last free day of March 18, 2020, for 13 containers and a RDD of April 1, 2020); RX\_1963-68, SEA0005764-69 (showing containers in demurrage before CNT could pick them up due to a maximum delivery of five containers per day, slow devanning at Tobyhanna, accumulations of prepulls and storage, and no remaining storage capacity).
61. Samsung was at all times responsible for its cargo clearing customs, including any demurrage that resulted from delayed customs clearance. CX\_02239, Rapske Dep. Tr. 67:1-10 (admitting customs hold issues could drive demurrage through Samsung’s own act or omission); CX\_02244-45, Rapske Tr. 72:13-

73:21 (showing an example of delayed information from Samsung resulting in a customs issue and demurrage), RX\_0100, Rapske Dep. Ex. 8.

62. Samsung accrued demurrage on many occasions when its cargo did not clear Customs within free time. CX\_02244-45, Rapske Tr. 72:13-73:21; RX\_0144-46, Rapske Dep. Ex. 7; RX\_0100, Rapske Dep. Ex. 8.
63. Samsung incurred demurrage when it failed to provide delivery instructions for specific shipments. RX\_1121-34, SEA0136166-79 (CMA boxes ignored for nearly a month); RX\_1138-59, SEA0137517-38 (Samsung delayed a ONE shipment for weeks and failed to complete payment prior to appt, resulting in further delays); RX\_1180-89, SEA0058313-22 (UPS failed to send timely delivery orders, resulting in delays and demurrage).
64. Samsung accrued demurrage when it directed ZIM to terminate cargo at the port (container yard terms) because ZIM did not reach a rate agreement with Samsung's CNT; rather than rely on ZIM's house trucker, Samsung changed the terms of the move. RX\_1162, SEA0011131; RX\_1171-73, SEA0047462-64.
65. Samsung accrued demurrage and detention when its CNTs were unable or unwilling to perform cargo movement for Samsung. RX\_\_0832-34, SEA0135895 and SEA0135897; RX\_1503-04, SEA0024223-24 (CNT could not handle all of eight assigned containers in a day and later that it could not return thirteen containers within free time); RX\_1105-06, SEA0054103-04 (showing a CNT could only pick up containers over the course of five days while containers were already in demurrage).

66. At times, Samsung and its agents were unable or unwilling to pay DEM. CX\_02217, Rapske Tr. 45:6-20; RX\_1180, SEA0058313 (UPS had insufficient credit card balances to pay demurrage); RX\_1306-13, SEA0049720-27 (showing additional demurrage charges accrue due to high charge amounts and difficulty identifying which party (CNT, UPS, or Samsung) could provide payment); RX\_1526-27, SEA0016828-29 (UPS could not clear demurrage for containers scheduled after LFD by warehouse without the approval of Samsung for the charges).
67. These delays in paying demurrage led to additional charges. RX\_1306-15, SEA0049720-29 (showing additional demurrage charges incurred as a result of confusion between CNT, AV Logistics; UPS, and Samsung); ZIM0043662, ZIM0043692 (CNT Southern Companies email Samsung a spreadsheet identifying “all the loads” that were “sitting in the port” waiting for “confirmation that the storage will be cleared” by Samsung and noting that some had been “re-scheduled numerous times” already).
68. Samsung provided instructions and directions to its CNTs, including the RDDs, type of delivery (drop and hook or live unload), dating back well before the pandemic in 2018 and 2019. RX\_0832-34, SEA0135895-97; RX\_1195-99, SEA0133985-89; RX\_1202-05, SEA0027079-82; RX\_0811-15, SEA0132654-58; RX\_1490-1500, SEA0027022-32; RX\_1684-85, SEA0000652-53, RX\_1680-82, SEA0002095-97, RX\_1755-59, SEA0002631-35, RX\_1749-53, SEA0004709-13 (even instructing ZIM with regards to handling when the trucker was unknown), and RX\_1744-46, SEA0004694-96.

69. Samsung also helped manage its CNTs, including providing oversight to make sure its containers were not at risk of non-delivery. RX\_1385-87, SEA0124243-45 (showing Samsung intervene in emails where AV Logistics was at risk of being shut out by ZIM under the UIIA); RX\_0832-35, SEA0135895-98 (addressing issues with AV Logistics to try to improve performance on behalf of Samsung).
70. Samsung directed its CNT to prioritize cargo other than ZIM. RX\_1208, SEA0139186 (Samsung instructed its CNT to prioritize 126 CMA containers over other ocean carriers, including 19 containers from ZIM).
71. Delays in processing of paperwork and/or orders by customs brokers and/or Samsung personnel led to additional demurrage and detention. CX\_02244-45, Rapske Tr. 72:13-73:21; RX\_0100, Rapske Dep. Ex. 8.; RX\_1210-19, SEA0109560-69; RX\_1241-50, SEA0113960-69; RX\_1112-17, SEA0023223-28; RX\_1103-08, SEA0054101-06; RX\_1306-13, SEA0049720-27 (AV Logistics notes that Samsung ignored its requests for clearing demurrage “everyday for the last 2+ weeks”).
72. Confusion and delays on the part of Samsung providing information to ZIM led to demurrage and detention. RX\_0955-62, SEA0023439-46; RX\_0965-71, SEA0025198-SEA0025204; RX\_1252-60, SEA0026423-31; RX\_0811-15, SEA0132654-58.
73. Confusion and delays on the part of Samsung providing information to CNTs led to demurrage and detention. RX\_1195-99, SEA0133985-89; RX\_1269-80, SEA0007716-27.

74. Samsung ran up significant overdue balances with CNTs who would not accept delivery instructions prior to payment. CX\_02365-70, Fernando Dep. Tr. 45:24-50:5 (testifying that truckers Gold Point, CPG, and AV Logistics either stopped moving cargo or threatened to stop moving cargo because Samsung failed to pay them); RX\_, Fernando Ex. 2 (showing \$484,365 in charges had accrued for Samsung's account with AV Logistics and delays in payment such that AV threatened to suspend its service); RX\_, Fernando Ex. 3 (showing that CNT AV Logistics demanded payment by Samsung or that invoices for ZIM canceled prior to a shutout); RX\_, Fernando Ex. 4 (Samsung's CNT, Harvest Trans, was shut out by ZIM due to nonpayment by Samsung); RX\_1414-19, SEA0125517-22 (showing that the payments from Ex. 3 were not received, and AV Logistics was shut out).
75. Samsung caused demurrage by instructing CNTs that had either been rejected or had not yet been approved by ZIM rather than a house trucker. RX\_1490-1500, SEA0027022-32 (instructing a CNT on delivery prior to its approval, requesting a redispach to the CNT, and then delaying responses to questions about delivery instructions and confirming redispach to CNT only as demurrage was imminent)
76. Samsung caused demurrage by scheduling appointments and deliveries after the last free day for a container. RX\_1465-74, SEA0127765-74; RX\_1478-83, SEA0133828-33; RX\_1023-25, SEA0046788-90 (Last free day of 5/25/21 and delivery appointment on 6/23/21); RX\_0811-15, SEA0132654-58.

77. Samsung has admitted responsibility for demurrage when its customers or warehouses could not receive cargo. CX\_02250-51, Rapske Tr. 77:23-78:11 (admitting that Samsung was responsible for demurrage when it was incurred because a facility was unable to receive the cargo); RX\_0682, ZIM0031912 (Ms. Fernando told ZIM that Samsung was responsible for containers for a portion of accrued demurrage, noting “[i]t is not ZIM’s responsibility after that since the appt was provided for 02.09”);

**F. Samsung alleges ZIM is liable for all inland transportation charges without clearly defining each and without explanation for how certain charges could accrue through the fault of ZIM.**

78. Demurrage accrues when cargo arrives at a port or terminal facility and remains beyond its allotted free time. CX\_05981, Smith Tr. 35:2-11.
79. Detention accrues when equipment is not returned within a specific period of free days following delivery. CX\_05981, Smith Tr. 35:12-19.
80. Neither Mr. Smith nor Mr. McCown attempted to explain how charges such as “Prepull and/or Storage,” “Yard Storage,” “Rehandling,” “Expedite,” “Prepull,” or “Diversion” could be caused by ZIM in their reports. CX\_5931, Smith Rep. Ex. 2 (showing charges accrued for each of these descriptions).
81. Mr. Smith, in his report, alleges that ZIM is liable for damages under each of the categories identified in PFF 80. *Id*; CX\_05797-98, Smith Rep. ¶25.
82. “Prepull and/or Storage,” results from an interim move in which a container is removed from the terminal facility in order to avoid or minimize demurrage charges and stored elsewhere until it is actually delivered to its final destination. CX\_05798-05801, Smith Rep. ¶29.

83. Similarly, “Yard Storage” would result from an interim move before a final delivery to a warehouse or customer location. *Id.*
84. In his report, Mr. Smith offers no explanation of when these particular charges would be incurred other than a delayed appointment or impediment to delivery at a Samsung warehouse or customer location. CX\_05798-05801, Smith Rep. ¶¶29, 40 (the only locations where “prepull” is used in the report). Similarly, Smith offers no explanation of why the inability of Samsung or its customer to accept delivery makes ZIM responsible for these charges. In fact, Samsung admits it would be responsible for charges when it or its customer is unable to take delivery. CX\_02250-51, Rapske Tr. 77:23-78:11.
85. Nevertheless, Mr. Smith assumes that \$497,543 and \$402,576 in charges are for the account of ZIM in his categorized review of charges. CX\_05931, Smith Rep. Ex. 2.

**G. ZIM established reasonable demurrage and detention policies through its negotiated agreements with Samsung SDS, tariff, and rules governing the shipment of cargo.**

86. ZIM has and had clear procedures for requesting waivers, refunds, or modifications to invoices – *see* Detention, Demurrage, and Freight Dispute Resolution Guidance, ZIM (available at <https://www.zim.com/tools/detention-demurrage-and-freight-disputes>, last visited Aug. 10, 2023); CX\_05498, Cleva Tr. 69:3-17; CX\_04602, Cleva Tr. 73:2-9; CX\_04608-10, Cleva Tr. 79:16-81:1; CX\_03883, Michalski Tr. 87:3-90:3; CX\_02972, Speight Tr. 173:3-174:15; CX\_08813, McCown Tr. 221:14-24.

87. Prior to the pandemic, Samsung had a process for reconciling disputed charges and/or paying charges to ZIM for which it was responsible. CX\_05793-94, Smith ¶ 18; CX\_05986-88, Smith Tr. 39:24-41:5.
88. Samsung failed to continue its process, which it described as effective, even though Samsung's volume only went up approximately 10-15% after the pandemic began. CX\_05793-94, Smith ¶ 18 (describing a pre-existing process that was satisfactory to Samsung); CX\_02211, Rapske Tr. 39:7-18 (there was a "slight increase in the volume" of "about [] 10 to 15 percent" during that period).
89. After the pandemic began, Samsung's witnesses testified that Samsung never sought to dispute or resolve a charge with ZIM using Samsung's own process. CX\_02235-37, Rapske Tr. 63:16-65:10 (saying that Samsung did not believe "there was a good way to protest those charges" so "that's why we're here today"); CX\_02392-93, Fernando Tr. 72:22-73:2 (Samsung simply returned invoices to the email from which they came instead of disputing the invoice through the ZIM disputes inbox).
90. Samsung SDS disputed charges that were for the account of Samsung during 2020, 2021, and 2022. RX\_0148-49, ZIM0028439-40 (showing that Samsung SDS disputed eleven transactions that were for the account of Samsung).
91. Samsung also disputed five of its own invoices by emailing a ZIM point of contact and receiving a favorable resolution by providing the details and reasons why it disputed the invoices. RX\_0838, SEA0014631 (ZIM responded "I have reviewed your dispute and agree with your findings. I have cancelled

the below invoices... in the meantime, there should be no further collection efforts on them.”).

92. ZIM’s policy was to waive or refund demurrage and/or detention when incurred due to act/omission of ZIM. Speight Tr. 106:10-23; 145:19-146:9; 171:11-172:24; RX\_0914, SEA0017223 (ZIM covered storage for house trucker delays);
93. ZIM waived demurrage and/or detention charges in accordance with its policy. Speight Tr. 100:6-15; 106:10-23; 145:19-146:9; 171:11-172:24; RX\_0838, SEA0014631.
94. ZIM discounted demurrage and/or detention charges and/or balances, including with Samsung (emails including settlement of outstanding charges during cargo hold); RX\_0005, Yaacoub Ex. 23 (waiving \$3MM in demurrage and detention for SEA); CX\_03277, Yaacoub Tr. 220:22-20 (discussing same); CX\_02918, Speight Tr. 119:3- ; CX\_03044, Speight Ex. 5 – ZIM 0047002; RX\_0838, SEA0014631.

**H. Samsung never disputed any invoices from ZIM but instead allowed inland transportation charges to accrue and either failed to pay its bills or refused to pay its bills, resulting in significant overdue balances.**

95. Samsung accrued 9,984 separate demurrage and detention charges on 2,980 containers between July of 2019 and December of 2022. CX\_06503, Zayas Rep. ¶9 (citing Smith Report Ex. 1).
96. The charges were characterized as inland transportation charges consisting of demurrage, detention, rail storage, prepull and/or storage, yard storage, driver detention, and others. CX\_05931, Smith Rep. Ex. 2.

97. In its alleged damages, Samsung included charges that were paid to parties such as its CNTs and other logistics providers. CX\_2233-35, Rapske Dep. Tr. 61:13-63:7.
98. Samsung did not produce invoices or other details related to these charges for review by ZIM such as pricing agreements. CX\_02234, Rapske Dep. Tr. 62:15-22 (noting that payments would be made pursuant to pricing agreements).
99. Post-pandemic, Samsung did not dispute any invoices through a formal process despite the only modest increase in shipping volume. CX\_02232, Rapske Tr. 63:16-65:10; CX\_02211, Rapske Tr. 39:7-18 (there was a “slight increase in the volume” of “about [] 10 to 15 percent” post-pandemic).

Respectfully submitted,

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September 26, 2023

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of September, 2023, a true and correct copy of the foregoing Proposed Findings of Fact of Respondent ZIM Integrated Shipping Services Ltd. was served via email on counsel for the Complainant in FMC Docket No. 22-30.

*/s/ Kathryn Sobotta*