

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

SUPPLEMENTAL JOINT STATUS REPORT

Pursuant to the April 3, 2023, Order On Motion To Compel And Cross-Motion To Amend Scheduling Order (“Order”), Complainant, Samsung Electronics America, Inc. (“SEA”) and Respondent, Zim Integrated Shipping Services Ltd. (“Zim”) (each a “Party” and collectively the “Parties”), submitted a Joint Status Report on May 22, 2023 (“Status Report”). The Parties, by their respective undersigned counsel, have conferred further and submit this Supplemental Status Report in order to inform the Presiding Officer of the present status of this matter.

Conclusion of Fact Discovery

As noted in the Status Report, fact discovery was largely concluded with the exception of a deposition schedule to take place after the original deadline for the completion of fact discovery (which deposition was held on May 25 as scheduled) and a dispute over the deposition of ZIM's Xavier Destriau. That dispute was the subject of a motion to compel and an opposition to that

motion, and the dispute was resolved by the Presiding Officer's June 9 ruling on the motion to compel. The parties consider fact discovery to be substantially complete, in compliance with the Presiding Officer's April 3 admonition that there be no further extensions of time for the completion of fact discovery.

Status of Expert Discovery and
Notice of Expected Joint Motion for Scheduling Order Amendment

Under the applicable scheduling order in this proceeding, Expert Discovery was to commence on May 23 and to conclude on June 19. As noted in the "Remaining Discovery Matters" section of the Status Report, counsel for the parties planned to meet during the week of May 29, 2023 to discuss expert discovery matters (subject to the resolution of the issues related to the deposition of Mr. Destriau).

Counsel for the parties did meet and confer on the subject of expert discovery. Counsel for Complainant advised that they would be serving two expert reports, one on liability issues and one on damages issues. Counsel for Respondent advised that they had retained experts but did not intend to submit any initial expert reports and that Respondent's expert reports would be limited to rebuttal evidence. The parties agreed that after Complainant's reports are served, the parties would again promptly confer as to the schedule for submission of Respondent's rebuttal expert reports and to discuss the need for and scheduling of any expert depositions.

Despite the parties best efforts to adhere to the scheduling order, the 27 days allotted for expert testimony poses a real challenge for the completion and exchange of expert reports, and to conduct expert depositions if the parties believe that depositions are necessary. Accordingly, the parties are advising the Presiding Officer in advance that they will be seeking an extension of time to complete expert discovery.

Complainant expects to be able to serve its expert reports on the expert deadline of June 19, 2023 (or June 20 to account for the federal holiday). Once Complainant's reports have been served, Respondent will promptly consult with its experts as to the time needed to issue rebuttal reports. The parties will then endeavor to agree on a schedule for submission of the rebuttal reports. The parties will also give consideration to the possibility of foregoing expert depositions in order to minimize the length of any extension, although such depositions may be necessary in light of the content of the expert reports.

Once the parties have agreed on a proposed schedule, they will promptly submit a joint motion for an amendment to the scheduling order.

The parties understand and appreciate that the scheduling order is not a mere piece of paper and is not something to be taken lightly. However, the case is complex, involving thousands of shipments over a period of more than two years. Moreover, the parties have been diligent in conducting fact discovery, exchanging almost 250,000 pages of documents and taking 13 depositions in the space of one month. Despite their best efforts, the parties face a substantial challenge in completing expert discovery within the extremely truncated period for this phase of the proceeding.

The parties wished to advise the Presiding Officer of this fact in advance of the deadline, and to alert her to their intended course of action. The parties will submit their joint motion for revision of the scheduling order as soon as they are able and will be mindful of the timely conclusion of the proceeding as they negotiate and agree on their joint proposal.

Dated: June 16, 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 Supplemental Joint Status Report document on counsel at the following email addresses:

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