

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

SAMSUNG ELECTRONICS AMERICA, INC.	)	
	)	
COMPLAINANT,	)	
	)	
v.	)	<b>FMC DOCKET NO. 22-30</b>
	)	
ZIM INTEGRATED SHIPPING SERVICES	)	
LTD.	)	
	)	
RESPONDENT.	)	
	)	

**VERIFIED ANSWER**

Respondent Zim Integrated Shipping Services Ltd. (“ZIM”) hereby answers the Verified Complaint of Complainant Samsung Electronics America, Inc. (“Complainant” or “SEA”).

**I. COMPLAINANT**

1. ZIM admits that SEA has an office at 85 Challenger Road, Ridgefield Park, New Jersey, 07660-2118. ZIM lacks sufficient information to admit or deny the remaining allegations of paragraph 1.

**II. RESPONDENT**

2. Admitted.

### **III. JURISDICTION**

3. Denied.

4. Admit the first sentence. With respect to the second sentence, the Verified Complaint speaks for itself.

5. Admitted.

6. Denied.

### **IV. PRELIMINARY STATEMENT**

7. ZIM lacks sufficient information to admit or deny the date of SEA's incorporation in the United States and whether SEA is a "pioneering" company. ZIM lacks sufficient information to admit or deny the identity of the Samsung entity that offers various electronic products for sale to the American public.

8. ZIM lacks sufficient information to admit or deny the allegation of Paragraph 8.

9. ZIM admits that Samsung products are available to the public through a variety of retailers.

10. ZIM admits that it has transported Samsung goods, but lacks sufficient information to admit or deny the remaining allegations of Paragraph 10.

11. ZIM lacks sufficient information to admit or deny the allegations contained in the first sentence of Paragraph 11. The second sentence is admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admit that Zim's website contains the quoted language, but deny that the quoted language relates to all in-freight rates.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Paragraph 20 contains no factual allegations with respect to Zim and thus requires no response. The Biden Administration's press release and fact sheet speak for themselves.

21. Paragraph 21 contains no factual allegations with respect to Zim and thus requires no response. President Biden's State of the Union Address speaks for itself.

22. Paragraph 22 contains no factual allegations with respect to Zim and thus requires no response.

23. Denied.

24. Admit that Zim has exercised its lawful rights to hold cargo due to non-payment of charges and, in an effort to collect monies due, threatened to stop accepting further bookings from SEA due to non-payment, but deny the remaining allegations of paragraph 24.

25. Paragraph 25 contains no factual allegations with respect to ZIM and thus requires no response. To the extent a response is required, the allegations of Paragraph 25 are denied.

26. Denied.

## V. FACTUAL ALLEGATIONS

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Paragraph 32 states a legal conclusion to which no response is required. To the extent a response is required, Zim denies the allegations contained in paragraph 32.

33. Paragraph 33 states a legal conclusion to which no response is required. To the extent a response is required, ZIM denies that demurrage charges on store door shipments are always the responsibility of ZIM.

34. Paragraph 34 states a legal conclusion to which no response is required.

35. Admitted.

36. ZIM admits that SEA has been invoiced and paid demurrage and detention charges in connection with ZIM's store door transportation of SEA Containers. ZIM neither admits nor denies the subjective characterization of those charges as "substantial." ZIM lacks sufficient information to admit or deny the allegations with respect to "other drayage-related charges."

37. Denied.

38. Denied.

39. Denied.

40. Deny that ZIM received or rejected any proper request from SEA for mitigation, cancellation or waiver of demurrage or detention charges.

41. Admit that ZIM demanded payment of outstanding demurrage and detention charges and invoices, but deny such invoices/charges were disputed. Admit that Zim exercised its lawful rights to hold cargo due to non-payment of charges and, in an effort to collect monies due, threatened to stop accepting further bookings from SEA due to non-payment, but deny any of the foregoing were “punitive.”

42. Admit ZIM exercised its lawful right to refuse to release of SEA Containers due to nonpayment of charges. Deny all such charges arose from “foregoing ZIM practices.”

43. ZIM denies the allegations of paragraphs 43(a) and 43(e). ZIM denies that it engaged in the conduct alleged in paragraphs 43(b), 43(c) and 43(d) on a normal, customary and/or continuous basis.

44. Denied.

45. Denied.

46. Denied.

## **VI. VIOLATIONS OF THE SHIPPING ACT**

### **COUNT I**

#### **VIOLATIONS OF 46 U.S.C. § 41102(c)**

##### **Unjust and Unreasonable Practices in Handling Property**

47. Zim repeats its answers to each and every allegation above as if fully set forth herein.

48. Section 41102(c) of the Shipping Act speaks for itself.

49. Admitted.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Paragraph 54 states legal conclusions, to which no response is required. To the extent a response is required, ZIM denies the allegations of paragraph 54, including all subparagraphs thereof.

## COUNT II

### **VIOLATIONS OF 46 U.S.C. § 41104(a)(3) - 46 U.S.C. § 41102(d) – Retaliation**

55. ZIM repeats each and every response above as if fully set forth herein.

56. 46 U.S.C. §41104(3) speaks for itself.

57. 46 U.S.C. §41102(d) speaks for itself.

58. The Commission's Statement on Retaliation speaks for itself.

59. The Commission's Statement on Retaliation speaks for itself.

60. The Commission's Statement on Retaliation speaks for itself.

61. Admit that ZIM exercised its lawful right to refuse to release cargo due to non-payment. Deny that ZIM retaliated against SEA or that ZIM refused available cargo space accommodation to SEA.

62. Paragraph 62 states a conclusion of law that requires no response. To the extent a response is required, ZIM denies the allegations of Paragraph 62.

**COUNT III**

**VIOLATIONS OF 46 U.S.C. § 41104(a)(10) – Refusal to Deal**

- 63. ZIM repeats each and every response above as if fully set forth herein.
- 64. 46 U.S.C. §41104(10) speaks for itself.
- 65. 46 U.S.C. §41104(10) speaks for itself.
- 66. Deny that ZIM refused to meaningfully engage or that any of ZIM’s “underlying practices” required change.
- 67. Denied.

**COUNT IV**

**VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA – Invoices without Information**

- 68. ZIM repeats each and every response above as if fully set forth herein.
- 69. 46 U.S.C. §41104(15) speaks for itself.
- 70. Denied.
- 71. Paragraph 71 states a legal conclusion to which no response is required.
- 72. Paragraph 72 states a legal conclusion to which no response is required.

**COUNT V**

**VIOLATIONS OF 46 U.S.C. § 41104(a)(14) - OSRA – Unreasonable Charges**

- 73. ZIM repeats each and every response above as if fully set forth herein.
- 74. 46 U.S.C. §41104(14) speaks for itself.
- 75. Paragraph 75 states a legal conclusion to which no response is required.

**VII. CAUSATION AND INJURY TO COMPLAINANT**

- 76. Denied.

### **VIII. ALTERNATIVE DISPUTE RESOLUTION**

77. ZIM denies that SEA attempted to resolve this matter prior to filing the complaint. ZIM admits that SEA did not use the FMC's alternative dispute resolution process prior to filing the complaint, but denies the remainder of the allegations in the second sentence of paragraph 77.

78. ZIM repeats the answer to paragraph 77 in response to paragraph 78.

### **IX. AFFIRMATIVE DEFENSES**

1. The Federal Maritime Commission lacks subject matter jurisdiction.
2. SEA lacks standing to seek reparations.
3. SEA fails to state a claim upon which relief may be granted.
4. The conduct which is the subject of the complaint does not constitute a practice within the meaning of 46 U.S.C. §41102(c).
5. Some or all of the charges which are the subject to the complaint were imposed by and paid to persons other than ZIM.
6. Some or all of the charges which are the subject of the complaint were incurred due to the acts and/or omissions of SEA and/or its agents.

**X. PRAYER FOR RELIEF**

WHEREFORE, Respondent respectfully requests that the complaint be dismissed with prejudice.



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December 19, 2022

**VERIFICATION**

I, Mark E. Newcomb, am the Vice President and General Counsel of ZIM American Integrated Shipping Services Co. LLC, the General Agent for ZIM Integrated Shipping Services Ltd., and hereby declare and attest under penalty of perjury that I have read the foregoing Answer and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.



Dated: December 19, 2022

**CERTIFICATE OF SERVICE**


I hereby certify that, on December 19, 2022, a true and correct copy of the foregoing Answer was filed via electronic mail with the Secretary of the Federal Maritime Commission, and a copy was served via electronic mail on the following counsel:

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Counsel for Samsung Electronics America, Inc.

  
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Wayne Rohde