BEFORE THE
FEDERAL MARITIME COMMISSION

March 28, 2024

DOCKET NO. 24-16

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

COSCO SHIPPING LINES CO., LTD.,

RESPONDENT.

VERIFIED COMPLAINT

Complainant Samsung Electronics America, Inc. ("Complainant" or "SEA"), by its undersigned attorneys, files this Verified Complaint against Respondent herein, alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the "Shipping Act") as follows:

I. COMPLAINANT

1. Complainant SEA is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey, 07660-2118.

II. RESPONDENT

2. Respondent COSCO SHIPPING Lines Co., Ltd. is a global ocean carrier with its corporate office at No. 378, Dong Da Ming Road, Shanghai, China, conducting business in the

U.S. under COSCO SHIPPING (North America) Inc., with its principal corporate office at 100 Lighting Way, 3rd Floor, Secaucus, New Jersey 07094 ("COSCO" or "Respondent"). COSCO is a vessel-operating "ocean common carrier" as that term is defined by 46 U.S.C. § 40102(7) and (18) and is subject to regulation by the Federal Maritime Commission (the "FMC" or "Commission").

III. JURISDICTION

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

4. This Complaint is being filed pursuant to 46 U.S.C. § 41301. SEA is seeking a cease and desist order and reparations for injuries caused to it by Respondent due to its violations of the Shipping Act.

5. The FMC has personal jurisdiction over COSCO as a "common carrier" and a vessel-operating "ocean common carrier" as defined in 46 U.S.C. § 40102(7) and (18).

6. Respondent's actions alleged herein constitute failures to establish, observe, and enforce just and reasonable practices related to receiving, handling, storing, and delivering the property of SEA, in violation of 46 U.S.C. § 41102(c) (unreasonable practices); 46 U.S.C. §§ 41104(a)(3) and 41102(d) (retaliation); 46 U.S.C. § 41104(a)(10) (refusal to deal); 46 U.S.C. § 41104(a)(15) (non-compliant invoicing); and 46 U.S.C. § 41104(a)(14) (unreasonable charges).

IV. PRELIMINARY STATEMENT

7. SEA, a pioneering electronic products company incorporated in the United States in 1978, offers home appliances, phones, tablets, smartwatches, mobile accessories, mobile audio, televisions, monitors, and computer products to the American public.

8. The American public relies on SEA goods for its everyday personal and business needs.

9. SEA provides its consumer goods to the American public online through Samsung.com, through retailers like Best Buy, The Home Depot, and Lowe's, and through distributors.

10. In order to meet the needs of the American public, SEA has relied on transportation companies like COSCO to carry its goods to inland destinations throughout the United States.

11. Part of the appeal of working with an experienced transportation company like COSCO is its offering of a full range of services, from arrangements overseas to the final destination at SEA distribution centers and customers inland, otherwise known as inland transportation or "store door" delivery. Under store door terms, the ocean carrier issues a bill of lading or sea waybill indicating the marine port at which a container is discharged and an inland "place of delivery" to which the ocean carrier undertakes to transport the container after the container is discharged from the vessel at the port.

12. COSCO markets its full range of services to companies like SEA in personal meetings, at conferences, and publicly on its website.

13. Regarding its inland transportation services, COSCO states on its website that "[a]s the main container service provider worldwide, COSCO Shipping Lines helps [customers] explore more business opportunities with its container fleet, railway and trucking teams working 24/7 across the world. To deliver [customers'] cargo to the right place at the right time is the goal of our 'door to door' supply-chain solution."[1]

14. COSCO also states in public-facing materials that it provides "end-to-end solutions", including multi-modal transportation options.[2]

1 https://lines.coscoshipping.com/home/Services/transport
2 https://world.lines.coscoshipping.com/na/en/home

15. COSCO markets its ability to arrange and coordinate multiple inland transportation providers as part of its store door services: "[f]ollowing the steps of 'on[e] belt one road', COSCO Shipping Lines puts all ports and inland economies involved into its service planning, and establishes railway, trucking service teams, along with its container fleet, to fully coordinate our resources of port, storage yard amd [sic] warehouse."[3]

16. COSCO explains that with regard to its inland delivery services: "COSCO Shipping Lines has always been committed to optimizing the transportation route between places of origin and consumers, elimination [of] obstacles during transportation. Our expert team keeps track of each shipment to make it possible for customers to get real-time information about their cargoes. One click on our website, one tap on our App, your cargo status will be available."[4]

17. As set forth in more detail below, SEA relied on COSCO for store door transportation of goods to the U.S. in ocean shipping containers but COSCO fell far short of its responsibilities and obligations.

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[3] https://lines.coscoshipping.com/home/Services/transport#:~:text=COSCO%20Shipping%20Lines%20has%20always,time%20information%20about%20their%20cargoes

[4] https://lines.coscoshipping.com/home/Services/transport

18. Beginning in approximately 2020, COSCO began repeatedly failing to properly perform its obligations for inland transportation to the inland destinations.

19. Aware of challenges with intermodal transportation logistics, COSCO continued to transport SEA goods on store door terms under through bills of lading or sea waybills for inland delivery in the U.S., and continued to repeatedly fail to properly perform its inland transportation obligations, exposing SEA to unreasonable costs, charges, delays, and other harms.

20. As a result of COSCO's unreasonable practices, SEA has been forced to pay excessive and unlawful charges assessed by COSCO—known as "demurrage and detention" charges—and has been forced to undertake and perform the ocean carrier's inland transportation responsibilities in order to continue to import its products sold to American consumers.

21. SEA is apparently not alone in facing this exploitative behavior. Demurrage and detention charges and practices have risen so exponentially high that the Biden Administration highlighted the concern in a press release and fact sheet on February 28, 2022, titled "Lowering Prices and Leveling the Playing Field in Ocean Shipping."[5]

22. On March 1, 2022, President Biden highlighted escalating freight and demurrage and detention costs in his State of the Union address, noting that prices were raised "by as much as 1,000% …" and as such, the President announced "a crackdown" on practices that result in "overcharging American businesses and consumers."[6]

23. Separately, the FMC has long raised concerns with a host of unjust and unreasonable demurrage and detention practices, and the FMC is advancing efforts to promote

[5] https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/

[6] https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/

complaints and adjudicate wrongdoing, as the full scope of the unlawful practices concerning demurrage and detention in the last few years becomes known.

24. Earlier last year, FMC chairman Dan Maffei is reported to have expressed significant concerns about unlawful practices, particularly in regard to cargo holds and credit holds exacerbating charges against shippers. In a March 8, 2023 article by Tomer Raanan in *Lloyd's List*, addressing the issue at the *Journal of Commerce*'s recent TPM Conference, reporter Raanan observed:

> "[m]any shippers complained that carriers levied these charges on them without providing any information related to them and left them with little ability to dispute them. Some have also complained that ocean carriers refused to give them their cargo unless they paid the charges, essentially holding the cargo hostage. 'The whole detention and demurrage system is very complicated. I think it took a long time for it to get to a situation where in my view, it wasn't performing its central aspect of keeping cargo moving,' [FMC chairman Dan] Maffei said. 'When it is used to pad the rates without looking like it's padding the rates, then it becomes a distortion of the market.'"[7]

25. With the benefit of additional considerations at the FMC since the comments reported in Lloyd's List, above, Chairman Maffei has continued to acknowledge the shortfalls of ocean carriers. In a recent supply chain podcast, in regard to the FMC's responsibility to carefully consider the evidence proffered as to demurrage and detention charges during the pandemic, Chairman Maffei noted "[d]etention and demurrage, until we adjudicate it we don't [sic] whether it was fair or unfair, reasonable or unreasonable. **Certainly during the pandemic I'm comfortable saying a lot of those charges were unreasonable and maybe more than normal because there were several reasons why the ocean shippers simply couldn't get it.** We talk

[7] https://lloydslist.maritimeintelligence.informa.com/LL1144193/US-shipping-reform-changed-what-FMC-is-all-about

about the Incentive Principle -- a charge is reasonable if it can incentivize picking up that container or not…"[8]

26. When asked whether the ocean carriers used demurrage and detention charges as revenue centers during the pandemic, he stated, "[t]here were certainly complaints and **I think there were sufficient evidence that there was abuse let me just sort of say that.** I don't think it's my job to judge motive or any of that kind of stuff. **Companies are under pressure to make money for their shareholders.** And it's up to us to make sure that everybody you know follows the rules so that nobody can get away with something."[9]

27. And as Chairman Maffei recently observed on the supply chain podcast, ocean carriers like COSCO should have been very concerned about changing its behavior when on notice by the FMC of wrongdoing to avoid enforcement actions or those filed by private parties as here. "This isn't a game of gotcha. It's a game of trying to make sure that everybody plays by the same rules **and that if you're given a yellow card you change your behavior so you're not given a red card.** We're not interested in putting people out of business if we do that then competition is less and that's worse for the shippers and consumers because prices go up so we want to send the right message but we want a healthy industry."[10]

28. The observations as to changing ocean carrier behavior is apt in regard to COSCO because COSCO is no stranger to Shipping Act claims, as well as the FMC's recent actions to hold ocean carriers accountable for unreasonable demurrage and detention practices. During the pandemic, COSCO was named as a respondent in the first major pandemic supply chain Shipping

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[8] *See* Mike King, Host, September 27, 2023, Audio podcast episode, The Loadstar (Making Sense of the Supply Chain), FMC Chairman exclusive, container shipping forecast – and what next at Flexport?, Part 2 at minutes 30-34, https://theloadstar.com/news-podcast-sept-2023-fmc-chairman-exclusive-container-shipping-forecast-and-what-next-at-flexport/ (*emphasis added).*

[9] *See id. (emphasis added).*

[10] *See id. (emphasis added).*

Act dispute, *MCS Industries, Inc. v. COSCO Shipping Lines Co., Ltd. and MSC Mediterranean Shipping Company SA* (Docket No. 21-05) (2021), where MCS alleged that COSCO committed blatant Shipping Act violations involving refusal to deal, profiteering, and collusive behavior.

29. In the first FMC filing of 2024, a $1-2 million Shipping Act complaint was filed by Visual Comfort & Co., a Houston-based lighting store, against COSCO. *Visual Comfort & Co. v. COSCO Shipping Lines Co. Ltd*. (Docket No. 24-01) (2024). Visual Comfort alleges violations of 46 U.S.C. §§ 41102(c) and 41104(a)(10) and 46 C.F.R. § 545.5 regarding a failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering property; and an unreasonable refusal to deal or negotiate. Visual Comfort alleges these violations arose from the assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the complainant and its agents and service providers, and because of acts or omissions of COSCO.

30. In particular, the *Visual Comfort* complaint states that COSCO "did not act with sufficient urgency to clear empty containers and redirect traffic to less congested ports" and that "drivers who could not access the terminals to drop an empty and pick up an import had no way to prove how many time they had attempted to pick up the container unsuccessfully," pointing out that despite pandemic conditions, the exacerbation of these issues falls squarely on the ocean carriers like COSCO for their specific unjust and unreasonable practices. Compl. ¶¶ 19-28. SEA has suffered from similar conduct, and also seeks relief under 46 U.S.C. § 41102(c).

31. On February 14, 2024, COSCO was sued yet again for Shipping Act violations arising from its detention and demurrage practices. In *Impact Products, LLC and Safety Zone, LLC v. COSCO Shipping Lines Co. Ltd*. (Docket No. 24-09) (2024), the complainants allege that

"COSCO failed to provide adequate practices and facilities to handle and store COSCO's empty containers and also failed to provide adequate facilities for its customers, including Supply Source, to return empty containers." *Impact Products* Compl. ¶ 20. The *Impact Products* complaint notes that between 2021 and 2022, complainant "shipped 1,577 unique containers using COSCO," and "[o]f those containers, COSCO assessed Supply Source with demurrage on 244 containers, detention charges on 15 containers, per diem charges or 73 containers, and yard storage charges on 312 containers." *Id.* ¶ 11. The total demurrage, detention, per diem, and yard storage charges total $1,656,492.00. *Id.*

32. The legality of COSCO's detention and demurrage practices was called into question yet again on March 1, 2024 in *Access One Transport, Inc. v. COSCO Shipping Lines Co. Ltd*. (Docket No. 24-13) (2024). There, a drayage carrier claims that COSCO charged detention even when return appointments for COSCO containers were unavailable: "COSCO has charged detention in an unreasonable, arbitrary and capricious manger. To illustrate: 1) COSCO would issue daily empty return availability; 2) if any locations were identified for empty returns COSCO charged detention if the empty container was out beyond free time; 3) ACCESS ONE used its best efforts to determine if appointments were actually available for the returns; 4) if appointments were available ACCESS ONE would return empties to the extent it reasonably could; 5) COSCO charged ACCESS ONE detention for any empty container not returned during freetime regardless of the lack of any appointments to do so. Thus, COSCO would still charge daily detention per container even if the empty, in reality, could not be returned through the actions of COSCO or its designated terminals." *Access One* Compl. ¶ 25.

33. As explained in further detail below, SEA has dealt with and continues to face manifestly unjust and unreasonable charges and practices in connection with inland transportation

arrangements that are the responsibility of COSCO under its store door shipments. Like the complainants in the multiple FMC actions filed against COSCO, SEA suffered from COSCO's unreasonable detention and demurrage practices. Moreover, the consistency in the allegations across the complaints highlights that COSCO's conduct with respect to detention and demurrage charges was part of a broader unreasonable practice and policy.

34. Notwithstanding that COSCO is responsible for the inland transportation to the named place of delivery on the sea waybill under store door terms, COSCO has forced SEA to pay demurrage and detention charges that were not the responsibility of SEA by holding containers hostage and threatening to cut off further services.

35. This is a particular concern with COSCO with respect to rail demurrage, which comprises a substantial amount of the total demurrage charges. COSCO is legally responsible under store door terms as the common carrier for the cargo delivery to the inland destination by all multi-modal methods.

36. COSCO cannot claim that rail demurrage charges were unexpected, that it was unaware, or that they were out of its control. The issues COSCO faced with inland transportation, such as chassis shortages, terminal congestion and similar issues during the pandemic, were not isolated events; they were systemic, ongoing, and well-known conditions. These issues were known at the time COSCO made the vast majority of the bookings and arrangements with non-party rail interests and equipment providers.

37. SEA is entitled to seek reparations for rail storage charges even if COSCO did not directly assess the charges or receive the payments. What matters is that SEA was forced to pay these charges assessed by COSCO's subcontractors, agents, or otherwise on COSCO's behalf when COSCO was responsible for the inland transportation.

38. Rail terminal demurrage and/or rail storage charges assessed on COSCO's shipments were substantial, with over 5,000 demurrage charges in total, a substantial amount of which were for rail storage.

39. The staggering costs of demurrage and detention charges are unsustainable, present a material threat to SEA's ability to provide its products to American consumers, and have made it necessary to bring this Complaint.

40. As a result of COSCO's conduct, SEA has sustained serious and substantial injuries and monetary damages, including paying erroneous demurrage and detention charges, which continue to be tabulated and accrued as of the filing of this Complaint. SEA paid over 22,000 demurrage, detention, and associated charges.

V. FACTUAL ALLEGATIONS

41. SEA is the consignee of cargoes of home goods shipped to the U.S. in ocean shipping containers ("SEA Containers") by COSCO.

42. COSCO transported SEA Containers under through bills of lading, or sea waybills, from the overseas locations through U.S. ports and on to designated U.S. inland locations (commonly known as "store door" terms).

43. Under through bills of lading and sea waybills, COSCO is responsible as the common carrier for both (1) the ocean carriage of the SEA Containers to a U.S. port, and (2) the inland carriage of the SEA Containers to the U.S. inland locations, generally SEA warehouses or directly to SEA customer locations.

44. The inland movement of containers under "store door" terms is commonly referred to as "carrier haulage" because the ocean carrier is responsible for the inland movement via rail

and/or truck drayage to the named place of delivery and the provision of chassis to move the SEA Containers.

45. In contrast to carrier haulage, under "CY" (container yard) or "port-to-port" terms, the inland movement of containers is commonly referred to as "merchant haulage" because the shipper or consignee is responsible for the inland movement from the port to the final inland destination.

46. In store door shipments, COSCO is responsible for arranging and paying for the inland movements, and for ensuring the removal of containers from U.S. marine and intermodal terminals and the delivery of containers to the designated inland locations.

47. In store door shipments, costs and charges relating to delays in the timely removal of containers from terminals (generally known as "demurrage" charges) should be borne by COSCO, not a consignee like SEA.

48. In store door shipments, costs and charges relating to delays in the timely delivery of containers (and chassis) to the designated inland locations and ultimately the return of empty containers and equipment to COSCO's possession or control at COSCO's designated location (generally known as "detention" or "per diem" charges) should be borne by COSCO, not the shipper or consignee, when the delays result from matters for which (1) COSCO is responsible (e.g., delays in equipment return caused by ocean carrier empty return restrictions or limitations), and/or (2) COSCO bears the responsibility for the underlying transportation delays (e.g., delays in equipment return caused by problems performing inland drayage services, such as subcontracting adequate trucking, and/or availability of chassis the ocean carrier is responsible to provide).

49. Since January 2020, COSCO has transported SEA Containers under "store door" terms to the U.S. from various overseas locations, through numerous U.S. ports (including Seattle and Los Angeles/Long Beach), to numerous inland locations throughout the U.S.

50. Since 2020 and through the time of this Complaint, SEA has been invoiced and paid substantial amounts of demurrage and detention charges and other drayage-related charges in connection with COSCO's store door transportation of SEA Containers.

51. Beginning in approximately mid-2020, COSCO began repeatedly and chronically failing to properly perform its inland transportation obligations, including failing to timely remove SEA Containers from U.S. marine and intermodal terminals and failing to timely deliver SEA Containers to their designated inland locations.

52. During that same period, COSCO began charging SEA dramatically increasing amounts for alleged demurrage and detention charges resulting from COSCO's inland transportation failures.

53. When asked to explain the reason for assessing the charges to SEA, COSCO proffered various excuses relating to alleged chassis shortages, trucker shortages, inclement weather, and port and terminal congestion matters, which were neither within the control of SEA nor the responsibility of SEA under the store door terms.

54. When asked to mitigate, cancel, or waive charges for which SEA was not responsible and on the basis that COSCO was responsible for such inland charges under store door terms, COSCO refused to mitigate, cancel, or waive the charges.

55. COSCO has repeatedly demanded payment of disputed demurrage and detention charges and invoices and threatened various punitive actions against SEA if payments were not

made, including refusing release of subject SEA Containers and threatening to refuse release of unrelated SEA Containers.

56. COSCO has in fact refused release of SEA Containers moving under store door terms on the basis of allegedly outstanding demurrage and detention charges arising from the foregoing COSCO practices.

57. In addition to charging SEA for inland transportation costs and charges never actually earned as a result of COSCO's failures to perform under "store door" terms, COSCO's billing practices and policies caused further injuries to SEA:

a. COSCO's invoices routinely lacked adequate information to determine the basis for the individual demurrage and detention charges;

b. Based on information and belief, COSCO assessed charges against SEA Containers without consideration of COSCO's responsibility (or SEA's absence of responsibility) for the circumstances resulting in such demurrage and detention charges;

c. COSCO repeatedly rebilled SEA for charges previously billed, and for charges previously paid, based on information and belief, on COSCO failing to properly reconcile its invoices with payments received from SEA and others, including payment vendors;

d. COSCO improperly and systematically required that SEA undertake initial payment responsibility for demurrage and/or detention charges as a condition to release cargo from intermodal terminals and without taking adequate steps to address increasing delays, costing SEA not only the direct costs of paying such charges, but also causing SEA to incur significant and substantial costs for

employees and systems to undertake responsibility for COSCO's inland transportation obligations; and

e. COSCO failed to have or engage in an adequate or meaningful dispute resolution process for demurrage and detention charges.

58. COSCO's conduct also resulted in container processing and handling delays at SEA's warehouses and client delivery locations, as well as delays in container and equipment returns, resulting in further detention charges and injuries.

59. Based on information and belief, as a result of COSCO's unjust and unreasonable practices and other unlawful conduct, SEA was repeatedly charged detention and/or per diem in connection with empty containers and chassis when COSCO failed to provide reasonable opportunity to return such equipment without incurring additional charges, including inadequate availability of return locations, and inadequate and/or inaccurate information concerning return locations.

60. On September 23, 2022, SEA sent a Notice of Demand for Action letter ("Demand Letter") to COSCO regarding unreasonable and unlawful charges for demurrage, detention, handling, and/or storage, and other unreasonable and unlawful conduct. The Demand Letter invited COSCO to respond in a substantive manner, and asked that COSCO indicate its interest in discussing cooperative resolution.

61. COSCO acknowledged receipt of the Demand Letter by email, but summarily responded only that "this claim does not include any shipment list/details for review" and did not respond to SEA's invitation to discuss cooperative resolution.

62. On October 14, 2022, SEA sent COSCO a final notice letter ("Response Letter") following up on SEA's Demand Letter. SEA explained that the "shipment list/details" cryptically

referenced in COSCO's acknowledgement email were readily available to COSCO from its records, which SEA had already indicated in the Demand Letter. As explained in the letters, COSCO is fully aware of COSCO's store door shipments for which SEA was the consignee. The Response Letter further explained SEA's position that COSCO's practice of charging demurrage and detention under store door moves was unreasonable and unlawful under the Shipping Act of 1984. SEA again sought to meet with COSCO to discuss potential resolution of SEA's claims.

63. On October 20, 2022, COSCO responded and agreed to meet in person.

64. On October 28, 2022, a meeting with COSCO representatives was held at SEA headquarters in New Jersey, attended by James Houghtalin, a COSCO Deputy General Manager, Commercial Division and Qin He, a COSCO General Manager, Commercial Division.

65. At the meeting, the parties exchanged information on claims and views, and the meeting resulted in COSCO's Houghtalin stating that COSCO would "crunch the numbers" on the charges, would undertake additional internal fact-finding, and would meet again in two weeks.

66. In the ensuing weeks, and ultimately months, there was no meaningful dispute resolution progress made. Indeed, it became apparent to SEA that COSCO was unwilling or unable to even meaningfully evaluate its own charges, and in significant instances COSCO did not know and could not substantiate COSCO's own charges and invoices on SEA Containers that had been issued and paid.

67. Despite COSCO's commitments to engage in a dispute resolution process with SEA, it became apparent that COSCO does not have a reasonable or adequate dispute resolution practice, policy or procedure at all.

68. In a last effort to address resolution before seeking relief before the FMC, SEA and COSCO met on September 28 and September 29, 2023, to address the full range of issues. In

attendance for COSCO, in addition to Mr. Houghtalin, was in-house counsel John Pan and Ashley Harper, along with COSCO's outside counsel. In preparation for the meeting, at the request of COSCO, SEA provided COSCO a fourteen-page letter which provided exemplars of COSCO's unreasonable conduct. The letter included emails with COSCO which addressed its shortfalls in the following areas:

(a) chassis shortages and empty container returns;

(b) rail delays and mismanagement;

(c) trucking issues;

(d) port congestion; and

(e) communication delays.

COSCO also unilaterally changed several key aspects of how it treats SEA under store door terms in contravention of FMC directives and applicable regulations, including invoicing and collection practices and shifts in prior practices with transportation arrangements and SEA addressed this in detail.

69. While no resolution was reached at the two-day settlement meeting, the parties agreed to meet again on October 25, 2023. In the interim three weeks, SEA provided COSCO with additional information supporting its damages claims, including the requested container numbers, bill of lading numbers, SCAC codes and total amounts of the charges for each COSCO move where SEA wrongfully paid charges and is seeking reparations. Following an additional request by COSCO, SEA also provided an additional column to the spreadsheet indicating the cost category for each charge.

70. On October 25, 2023, SEA and COSCO met and made no progress to resolution of the disputes, with further time sought.

71. In a last ditch effort, SEA and COSCO held subsequent telephone and in-person conversations in 2024, with no resolution reached, necessitating this filing.

72. As a result of COSCO's wrongful conduct, SEA incurred serious and substantial injuries and monetary damages, including paying improper charges for demurrage and detention, with charges continuing to be tabulated and accrued as of the filing of this Complaint.

VI. VIOLATIONS OF THE SHIPPING ACT

COUNT I

VIOLATIONS OF 46 U.S.C. § 41102(c)

Unjust and Unreasonable Practices in Handling Property

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

74. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

75. Respondent COSCO is an ocean common carrier as defined by the Shipping Act.

76. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are directly related to receiving, handling, storing, or delivering SEA's property.

77. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention have been occurring on a normal, customary, and continuous basis, in excess of 5,000 individual demurrage charges and over 17,000 individual detention-type charges.

78. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are unjust and unreasonable in violation of § 41102(c).

79. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are the proximate cause of SEA's claimed injury and damages.

80. The following practices and procedures relating to the assessment of demurrage and detention are specifically unjust and unreasonable in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5:

a. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers moving under store door terms for reasons that are not within SEA's control;

b. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers when COSCO is responsible for the pickup from the port, movement to the inland place of delivery, and return of the SEA Containers;

c. continuing to book new SEA Containers under store door terms without taking adequate steps to address increasing delays and costs incurred in securing timely intermodal movement of SEA Containers;

d. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers without a meaningful practice or procedure to first determine responsibility for such charges (under store door terms, or otherwise);

e. failing to provide SEA with adequately detailed billing information and/or invoices related to demurrage and detention charges that would permit SEA to meaningfully understand and/or contest the charges;

f. rebilling demurrage and detention charges already billed and/or already paid;

g. refusing to extend free time and/or mitigate, waive or reduce demurrage or detention charges that were not SEA's responsibility;

h. failing to have or employ an adequate dispute resolution policy or practice with regard to demurrage and detention charges;

i. threatening to withhold services and refusing to release SEA Containers without payment of charges that were not SEA's responsibility;

j. assessing demurrage and detention charges on SEA as consignee for costs and charges of delays in the inland intermodal transportation of SEA Containers moving under store door terms that serve no incentivizing principle and do not promote freight fluidity because SEA is not responsible for the inland portion of the transportation;

k. demanding/requiring that SEA undertake COSCO's responsibilities as common carrier in order to release and/or move SEA Containers, including, but not limited to, requiring that SEA arrange for and directly pay marine terminals and other service providers for release of SEA Containers from intermodal terminals and for inland transportation of SEA Containers moving under through bills of lading;

l. assessing detention charges for equipment return delays that were COSCO's responsibility and for delays arising because COSCO did not provide adequate opportunity to return containers; and

m. refusing release of SEA Containers without payment of charges that were not SEA's responsibility.

COUNT II

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

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

82. Prior to the enactment of the Ocean Shipping Reform Act of 2022 ("OSRA"), 46 U.S.C. § 41104(a)(3) prohibited a common carrier from "retaliat[ing] against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason."

83. On and after the enactment of OSRA, 46 U.S.C. § 41102(d) prohibits a common carrier (among others) whether acting alone or in conjunction with another person, directly or indirectly, from "retaliat[ing] against a shipper . . . by refusing, or threatening to refuse, an otherwise-available cargo space accommodations, or . . . resort to other unfair or unjustly discriminatory action for – the reason that a shipper . . . has . . . filed a complaint against the common carrier . . . or any other reason."

84. The Commission explained in its December 28, 2021 Statement On Retaliation that: "shipper" is defined broadly and includes "a cargo owner, the person for whose account the ocean transportation of cargo is provided, [and] the person to whom delivery is to be made …" FMC Docket No. 21-15, Dec. 28, 2021, *Statement of the Commission On Retaliation*, at 7.

85. The Commission also explained that "to establish a violation of § 41104(a)(3), a complainant alleging retaliation or other unfair or unjustly discriminatory conduct based on the above grievance-related activity (filing complaints, etc.) does not need to prove that the carrier's

conduct was designed to stifle competition of other carriers or that the shipper at issue sought the services of a carrier other than the respondent – cases suggesting otherwise are inapplicable." *Id.*

86. Grievance-related activity protected by the anti-retaliation prohibitions extends beyond filing complaints, and that the Commission "will interpret 46 U.S.C. § 41104(a)(3) – the anti-retaliation provision – broadly to effectuate Congress's intent that shippers feel free to air their grievances to the Commission, and to address new shipping practices and new forms of retaliation." *Id.*

87. In response to Complainant's efforts to address COSCO's shipping and charging practices, resolve disputes, and dispute invoices, COSCO threatened to retaliate, and in fact did retaliate, against Complainant and SEA Containers with respect to delivery of cargo and refusing available cargo space accommodation.

88. Prior to and on numerous occasions to and through the date of this Complaint, COSCO retaliated against Complainant and SEA Containers in violation of 46 U.S.C. §§ 41104(a)(3) and 41102(d).

COUNT III

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

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

90. Prior to the enactment of the OSRA, pursuant to 46 U.S.C. § 41104(a)(10) it was unlawful for a common carrier to "unreasonably refuse to deal or negotiate."

91. On and after the enactment of OSRA, 46 U.S.C. § 41104(a)(10) makes it unlawful for a common carrier to "unreasonably refuse to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier."

92. In response to Complainant's efforts (a) to address COSCO's shipping and charging practices with respect to inland services under through bills of lading and demurrage and detention charges and practices, (b) to resolve disputes, and (c) dispute invoices, COSCO has refused to meaningfully engage or change its underlying practices, specifically including the practices and actions described in Section V above.

93. Prior to and on numerous occasions to and through the date of this Complaint, COSCO refused to deal or negotiate with Complainant and with respect to SEA Containers in violation of 46 U.S.C. § 41104(10).

COUNT IV

VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA – Non-compliant Invoices

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

95. As amended by OSRA, 46 U.S.C. § 41104(a)(15) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not--…invoice any party for demurrage and detention charges unless the invoice includes information as described in subsection (d) [referring to 46 U.S.C. § 41104(d)] showing that such charges comply with—(A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and (B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled 'Interpretive Rule on Demurrage and Detention Under the Shipping Act' (or successor rule)."

96. Based upon information and belief, on numerous occasions through and to the date of this Complaint, COSCO, itself or in conjunction with sub-contractors or others on behalf of COSCO, sought to invoice and/or charge for demurrage and detention on and after the effective

date of OSRA without complying with 46 U.S.C. § 41104(a)(15)(A) or (B) or 46 U.S.C. § 41104(d).

97. Issuing such invoices, without properly complying with 46 U.S.C. § 41104(a)(15)(A) or (B), or information outlined in 46 U.S.C. § 41104(d), would be a violation of 46 U.S.C. § 41104(a)(15).

98. In addition to other penalties and remedies, the issuance of such invoices that would trigger 46 U.S.C. § 41104(f), which provides that "[f]ailure to include the information required under subsection (d) of an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge."

COUNT V

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

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

100. As amended by OSRA, 46 U.S.C. § 41104(a)(14) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not--…assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations)."

101. As alleged in each of the Counts above, on information and belief, COSCO's practices and actions in connection with assessment of demurrage and detention charges in Q2 and Q3 2022 (after the effective date of OSRA) under through bills of lading would also violate 46 U.S.C. § 41104(a)(14).

COUNT VI

VIOLATIONS OF 46 U.S.C. § 41102(c) –

Unjust and Unreasonable Dispute Resolution Practices

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

103. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

104. In addition to the elements set forth in Count I, each of which is applicable here and incorporated herein, Section 41102(c) applies equally to dispute resolution practices, policies and procedures (or lack thereof) in connection with assessment, collection, and dispute resolution of charges relating to or connected with receiving, handling, storing, or delivering property.

105. Respondent's dispute resolution practices (or lack thereof), including, but not limited to, Respondent's failures to meaningfully engage in commitments to address disputed charges beyond those paid directly to it, and Respondent's apparent lack of any workable practice, policy or procedure to meaningfully evaluate disputed charges, both throughout the relevant time period of this Complaint, and between October 2022 to date, as set forth in Section V above, constitute violations of Section 41102(c).

106. Respondent's foregoing lack of just and reasonable dispute resolution practices was and continues to be a proximate cause of injury and damages to SEA.

VII. CAUSATION AND INJURY TO COMPLAINANT

107. As a result of Respondent's violations of the Shipping Act, Complainant has sustained serious and substantial injuries and monetary damages, including paying erroneous

detention and demurrage charges, and other damages. COSCO's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

VIII. ALTERNATIVE DISPUTE RESOLUTION

108. SEA has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. These multiple discussions and meetings, between October 2022 to date, as set forth in Section V above, provide detailed allegations as to SEA's efforts. Considering statements made by Respondent and consequent noncooperation in resolving this matter, including those outlined specifically in this Complaint, SEA did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint.

109. For the same reasons stated above, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution under the FMC's ADR program (46 C.F.R. § 502.64).

IX. REQUEST FOR ORAL HEARING

110. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol Street, NW, Washington, D.C. 20573-0001.

X. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after thorough investigation that the FMC issue an Order:

1. Requiring Respondent to pay Complainant reparations for the unlawful conduct described above[11];
2. Requiring the payment of any other amounts that the FMC deems appropriate;

[11] The Parties entered into a tolling agreement, effective as of January 1, 2023.

3. Ordering that Respondent cease and desist from the unlawful conduct, including collection by COSCO of any pending charges arising from the unreasonable policies and practices complained of above; and
4. Providing Complainant such other and further relief that the FMC deems just and proper.

Dated: March 22, 2024

Respectfully Submitted,

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Counsel to Samsung Electronics America, Inc.

VERIFICATION

I, Michael Rapske, am Vice President, Logistics, of Complainant Samsung Electronics America, Inc. and hereby declare and attest under penalty of perjury that I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: March 22, 2024

Michael Rapske