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## WITNESS TESTIMONY FOR PETITION OF THE COALITION FOR FAIR PORT PRACTICES FOR RULEMAKING

PETITION NO. P4-16

### I. Identity of Witness

My name is Mr. Sam Sorbello, Owner and President of Atlantic Coast Freezers (ACF) located in Vineland, NJ. ACF is a cold storage warehousing facility and one of the largest receivers of imported meat products in the Port of Philadelphia (Packer Marine Terminal). ACF provides U.S. Department of Agriculture (USDA) import inspection & warehouse services for our clients, the importers of record for imported meat products.

I am the principle of the company and oversee all of its operations and day to day activities. During periods of delay in the processing of cargo at the Port of Philadelphia which are outside of our control, such as inclement weather, labor or government inspection delays, my company and my clients may be assessed demurrage and detention fees by the carrier or terminal operator. I am intimately familiar with the detention and demurrage practices of the carriers and terminal operators during these periods. In my testimony today, I will focus primarily on the impact that mandatory government inspection has on these practices.

### II. Company Information and Affected Products

ACF receives approximately 4,000 ocean containers per year of imported meat products. By federal law, one hundred percent of all imported meat containers are subject to inspection and clearance by Customs and Boarder Protection (CBP) officers operating on behalf of USDA Animal and Plant Health Inspection Services (APHIS) before they can be released from the terminal. After they are released, the products are transported to a cold storage facility that is approved to inspect meat (I House) and must be inspected by USDA Food Safety and Inspection Service (FSIS) personnel at that facility. Once a container of imported meat product arrives at the I House, every carton in the container is offloaded by hand and staged in the cold

storage warehousing facility for FSIS inspection. Each container can take up to 3 to 4 hours in the staging area for the most basic FSIS government inspection processes to be finalized. If the container is selected, randomly or otherwise, for an intensified examination, it can take several more hours for the product in that container to be inspected by FSIS.

In performing their mandatory inspection activities, CBP officers at the port and FSIS personnel at the I House sometimes cause a delay in the release of the imported meat cargo to the importer or his agents, which is outside the control of the importer. These delays can be caused by any number of reasons, such as random selection by CBP for intensive inspection at the port for security reasons, lack of adequate FSIS staff availability, weather or traffic problems, labor issues, etc. This can result in significant delays in picking up and dropping off containers by ACF or the importer of record. None of these delays are a direct result of ACF or the importer of record's action or inaction. Yet during these mandated government inspection activity delays, the "clock is running" with regard to detention and demurrage free time provided by the carriers and terminal operators on ACF and the importers of record.

### III. Process for Assessment of Demurrage/Detention/Per Diem Charges on Company

Our industry association, the Meat Importers Shipping Association (MISA), has established a Code of Practice with a number of ocean lines that provides voluntary protocols that govern this issue for imported meat product originating in Australia and New Zealand. Not all shipping lines are party to this voluntary Code of Practice, nor does it cover product originating from other countries, such as South or Central America.

Under the current MISA Code of Practice, demurrage and detention expenses charged by the shipping lines are assessed 4 days following the day of discharge from the vessel and 4 days following the day of interchange respectively. Demurrage fees are typically invoiced directly to the importer of record by the shipping line while detention fees are typically charged to the trucking company, even though the trucker may not have been responsible for any delays in returning the container to the shipping line under the allotted free time.

From time to time, MISA will approach the shipping lines to modify the current Code of Practice to reflect changes in the trade and supply chains. Some shipping lines are more willing than others to change the current terms of the Code, and significant disparity exists in the implementation of the Code even among those shipping lines that have agreed to its terms.

There is no standard in the Code of Practice for the fee a shipping line may charge for detention and demurrage costs. The fees vary wildly, with some of the shipping lines charging up to \$400.00 per day for the empty container that has exceeded the free time allotment. This dollar amount is significantly out of line for what should be

charged. The purpose of these fees is to encourage the importer to return the container within the allotted free time. It should not be a revenue stream for the shipping lines. This is especially true when the reason for delay often arises from mandatory government inspection of the container in the interest of public health and safety.

#### IV. Company Experience with Recent Port Disruption Beyond the Control of the Company and Demurrage/Detention Costs and Practices

Government inspection delays beyond the control of ACF were especially apparent during recent port congestion on the East Coast in 2014 and 2015. Starting in 2014 and throughout 2015, U.S. meat import volumes from Australia, New Zealand and South and Central America were much heavier than the past several years. This had to do with a number of market and non-market factors, such as domestic U.S. meat production and consumption levels, currency strength, available foreign supply, etc., but a primary contributor was the labor issues taking place on the West Coast ports during the same time period. In an effort to avoid the West Coast ports during that period, many importers shifted their product supply chains to enter the U.S. using East Coast ports. Import volumes increased nearly 50% over their normal average during this period.

However, the government inspection activity from CBP and FSIS did not likewise increase in capacity as import volumes increased during this period, creating a bottle neck at the government inspection point in the system. Despite this delay being caused by the government inspection bottlenecks, and not the actions of ACF or the importer of record, the shipping lines continued to assess significant detention and demurrage fees. I would project, based on the expenses charged by the shipping lines for per diem during that time period, that 30% of total meat imports in our facility were affected purely by port congestion related to government inspection activity in 2015.

For ACF, during 2015 we had a total of \$266,037.25 in per diem charges from the shipping lines. Some of these costs were born by us, while others were passed on to our customers, the meat importers of record. Attached are the quotes and evidence from our customers and the carriers to corroborate this amount.

During this time period the shipping lines were approached by our company and MISA, asking them to provide 6 days of free time before charges would be assessed, rather than 4 in the current Code of Practice, due to the significant import volumes we were experiencing. In March of 2015 some of the shipping lines did agree to provide our industry up to 6 days free time, but only after hundreds of thousands of dollars of per diem charges had been billed to the importers.

Having the 6 days free time with the heavier import volumes did help to safeguard per diem costs for a short time. However, the shipping lines together reduced this

free time allotment back down to 4 days shortly thereafter, even though import volumes were still higher than normal. In this situation, the shipping lines hold all of the bargaining power and are able to unilaterally alter these terms without much recourse by ACF or our customers.

V. Request for FMC Action to Clarify Conduct that May Constitute Unreasonable Demurrage/Detention Practices in a Policy Statement

When performing mandatory inspection activities, CBP officers at the port and FSIS personnel at the I House sometimes cause a delay in the release of imported meat cargo to the importer or his agents, which is outside the control of the importer. These delays can be caused by any number of reasons, but none of these delays are a direct result of the importer's action or inaction. Yet meat importers and their agents are nevertheless assessed detention or demurrage fees by shipping lines or terminal operators regardless of the source or reason for the delay. This is not an equitable position to the importer or their agents, nor is it something that can be alleviated by commercial negotiation between the importers and the shipping lines.

Mandatory government inspection of imported meat products is in the interest of public health and safety. Shipping lines and terminal operators should not be able to assess detention or demurrage fees to importers or their agents for delays arising from these government-mandated activities.

Therefore, I request the FMC issue a policy statement clarifying unreasonable free time, demurrage/detention and free time practices or rules that address this issue. This Policy Statement would reduce inefficiencies in company supply chains by removing confusion and uncertainty that exists today regarding the widely inconsistent practices and rules of ocean carriers and terminals during periods of port congestion. It would also reduce disputes over free time, demurrage and detention during port congestion events outside the control of the importer.

Thank you for this opportunity to appear before you today.

Sam J Sorbello, President  
Atlantic Coast Freezers  
Phone: (856) 696-1770  
Email: sam@acfreezers.com  
Website: www.acfreezers.com