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**OPENING STATEMENT OF CAMERON W. ROBERTS ON BEHALF OF THE FOREIGN TRADE ASSOCIATION**

Good afternoon Chairman Khouri, Commissioner Dye, and Commissioner Maffei. On behalf of the Foreign Trade Association and Roberts & Kehagiaras LLP, I want to thank the Commission for holding this hearing and accepting our request to provide witness testimony on the practice of assessing demurrage, detention, and per diem charges (Charges) during periods of port congestion.

My name is Cameron W. Roberts. I am the FTA's Chairman and a partner at Roberts & Kehagiaras LLP in Long Beach, California.

As a native Southern Californian who commutes through the ports daily, I know traffic, and I know what port congestion looks like, dozens of ships at anchor and thousands of trucks, all waiting, waiting, waiting.

The FTA's members are part of a 1.4 trillion dollar logistics industry, equaling 8 percent of annual gross domestic product in 2015.

Founded in 1919, the FTA's membership reflects the logistics industry as a whole, including freight forwarders, NVOCCs, customs brokers, drayage operators, U.S. importers and exporters, and others who, like the FMC, are committed to encouraging just, efficient, and reliable international ocean trade.

I am here today because port congestion, delay, and the assessment of Charges during periods of congestion have created huge inefficiencies in the marketplace, putting the ocean logistics industry at risk and damaging U.S. opportunities to participate in free and fair trade.

OTIs and their customers, American exporters, and importers rely on the custodial ocean carrier and terminal operator to mitigate port congestion, not create it. In the Ports of Los Angeles and Long Beach, port congestion is a byproduct of terminal labor negotiations, vessel alliances, and divestment by the custodial ocean carriers in intermodal equipment.

It is undisputed that the Shipping Act prohibits a custodial ocean carrier or marine terminal operator from engaging in unjust and unreasonable practices relating to or connected with receiving, handling, storing, or delivering of cargo.

The collection of Charges in the midst of port congestion is an unjust and unreasonable practice and, if the terminal gate is closed, a violation of California law.

During periods of port congestion, Petitioners have established that the "open for the business" sign is an illusion fraught with frustration, commercial impossibility, and the outright refusal to interchange containers even when a terminal purports to be open. Despite the known causes of port congestion, custodial ocean carriers and terminal operators have continued the practice of accessing these Charges.

The practice of collecting Charges during port congestion encourages future congestion and unjustly and unreasonably shifts the cost of inefficiency to OTIs and their customers, American exporters, and importers. This business practice is unjust, unreasonable, and contrary to the policy goals of both the FMC and the FTA.

OTIs and their customers, American exporters, and importers, need reliable access to world markets at a just and reasonable cost. Every dollar spent on unjust and unreasonable charges make American sourced products less competitive.

The Hanjin bankruptcy created catastrophic inefficiency when thousands of containers were randomly abandoned in U.S. ports and around the world. To offset

the cost of this inefficiency and delay, marine terminal operators refused to handle, release, or receive Hanjin containers without upfront payment of "special charges," including Charges to offset their losses at the expense of the OTIs and their customers, American exporters and importers.

As I am on the OTI panel, it is important to point out that OTI's cannot prevent or resolve port congestion. OTIs do not determine the size of the vessel or its schedule. OTIs do not control the decisions made by the custodial carrier in the course of loading or offloading the vessel. OTI's do not control custodial carriers choice of terminal operator. OTIs are not parties to labor negotiations. Accordingly, it is an unjust and unreasonable business practice to demand payment of Charges of the OTI during periods of port congestion.

I have been involved in international trade for twenty-nine years and negotiated hundreds of detention, demurrage and per diem cases in the Ports of Long Beach, Los Angeles, the United States, and the world. My testimony is based on my experience as a licensed customs broker, a former OTI industry executive, an attorney representing hundreds of OTIs and motor carriers, a past president of two trade associations in Southern California, and as an adjunct professor at California State University, Long Beach in its Global Logistics Specialist Program.

The FMC should adopt Petitioner's policy statement. Frustration with port congestion and Charges associated with an unjust and unreasonable business practice are the reasons why I am here. Those are real-world impacts that have the potential to choke international ocean commerce and stunt economic growth. I respectfully submit that the Commission's better understanding of those negative impacts of these practices, from the perspective of those who are being injured, will be useful to the Commission as it considers the Petitioner's proposed policy.

Thank you again for the opportunity to testify before the Commission. I am available to answer any questions you may have.