



Ambassador Robert E. Lighthizer
United States Trade Representative
Office of the United States Trade Representative
601 17th Street Northwest
Washington, DC 20508

13 July 2018

Attention: Mr. William L. Busis
Chair, Section 301 Committee

Re: Testimony for Public Hearing pursuant to Section 301 Tariffs (USTR-2018-0018), for goods listed in Annex C, HTSUS subheading 8609.00.00 Containers (including containers for transport of fluids) specially designed and equipped for carriage by one or more modes of transport.

My name is James Silver and I am appearing today on behalf of the International Tank Container Association, otherwise known as ITCO. I am a USA based member of ITCO and one of five Directors of the Board.

Established in 1998, ITCO is a trade organisation representing the interests of the international tank container industry to the public and to governmental bodies, with the aim of promoting the safe transportation of liquids in UN Portable tanks via ship, truck and rail.

With 160 members worldwide, ITCO's principle focus is on the use of tank containers to meet quality, safety, regulatory, technical and environmental criteria.

The Organisation's principle aim is for the tank container to be the preferred method of transporting bulk liquids, gases and powders.

ITCO is managed as an independent, not-for-profit, organisation, governed both by English Company law and by ITCO's Articles of Association.

Membership of ITCO is open to any company involved in the tank container business.

75% of ITCO's members have operational entities in the U.S, and its members control approximately 80% of the current global fleet of nearly 550,000 containers with a market value in excess of 6 billion US dollars.

ITCO members portable tank containers, intermodal tanks, IMO tanks and UN Portable tanks (including containers for transport of fluids) fall under HTSUS subheading 8609.00.00 and as such, ITCO requests removal of said line item from the proposed 25% tariff under USTR-2018-0018, Annex C.

ISO standardized portable tanks are 19'10-1/2" long by 8 ft wide x 8-1/2' tall with a stainless steel cylindrical shell designed to carry potable, non hazardous and hazardous liquids such as lube oil, chemical feed stocks or environmental pollutants. The standard tanks range from 21,000 to 24,000 liter (6340 gallons) with corner castings at all 4 corners, for quick and easy interchange between various modes of transport via ship, truck or rail.

I would like to describe to the Commission why ITCO believes that, similar to the 53ft freight container the prior speakers may have described from the 2015 Stoughton Study (Investigation Nos 731-TA-514 and 731-TA-1250), where it was determined that the establishment of an industry in the United States is not materially retarded by reason of imports of containers from China, the Tankcontainer is nearly identical in terms of market development and production with entrenched dominant producers similarly located in China with relatively few buyers of the global production.

Of the 25 possible intermodal tank container types for liquids and gas transport service, the T11 makes up approximately 90% of the Intermodal fleet and is the workhorse of the Industry. The T-11 may convert to a T 12, 13 or 14 by adding or removing one valve and adding or removing a flame screen and a rupture disc in order to safely carry flammable products. The easy adaptability of the T-11 to other tank types to carry a wider range of products ensures the T-11 will remain the Industry workhorse for many years to come. Since the tanks are merely a barrel within a frame, there have been relatively minor changes to the tanks original design for the last 30 years and therefore the product is not part of a US technology transfer to China by any means.

Our internal review of the 2015 case study by this Trade Commission regarding Stoughton Trailers, directly correlates to the current state of the T 11 portable tank market and we agree with the Commission's view that the US market has NOT been materially retarded by the import of containers from China.

Similarities of the T-11 Intermodal tank production to the 53 ft trailer production are identical in most respects and had a case arisen for the Commissions review, we believe an identical ruling would have been forthcoming as the similarities between the case of the 53 ft unit and intermodal containers is quite similar. For example; there is NO current production of T-11's in the USA , nor historically in any substantial quantities to reach economic viability. More than 20 years ago, Two manufacturers produced low volumes of tank containers between 1989 and 1995 with a max total capacity of under 50 tanks per month, combined. Currently, neither manufacturer produce T-11 tanks. The annual resupply/production and growth rate needed to support the Industry is approximately 3,667 tanks per month (based upon average production over the past 5 years) **.

The manufacture and production of intermodal tanks and containers require substantial up-front investment in order to take advantage of economies of scale in order to compete with the current manufacturers in China and South Africa. Once the factory is set up for Intermodal equipment, the

variation to other lines of work are limited due to specific sizes of the containers and use of fixed jigs used to maintain the dimensional tolerances within acceptable limits (typically +0,- ¼ inch) .

Competitive forces within China, the UK, Belgium, France and South Africa have maintained steady pricing for the past ten years with the minor price fluctuation dependent upon the price of Nickel, a primary cost component used in the production of stainless steel. The majority of the tanks utilize heads and shells of ASTM A240-316 (or equivalent), cold rolled, 2 B finish, stainless steel. Other cost considerations include specialized valves and labor costs. Labor rates represent less than 15% of the input cost manufacturing cost.

Historically, currently and in the future, the actual or potential Industry for UN Portable/Intermodal tanks production in the USA does NOT exist.

From the Commission's final report in 2015 regarding Stoughton Trailer

Item III identified Whether the Actual or Potential Domestic Industry is Established*

The domestic industry was defined as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." In defining the domestic industry, the Commission's general practice had been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.*

Based on the definition of the domestic like product, the commission defined the actual or potential domestic industry as all actual or potential producers of certain domestic containers. Stoughton and Navistar were the only firms known to have produced certain domestic containers." *

Similarly, in the portable tank intermodal market, only two manufacturers in the USA produced a like product (IMO type 1) similar to the current Industry norm, T-11. To our knowledge, T-11 like Production ceased more than 20 years ago as local demand did not materialize.

In applying the first step of the framework to determine if a domestic industry is established, the Commission in previous investigations has examined several or all of the following criteria:*

- (1) the length of domestic production operations;
- (2) the characteristics of domestic production;
- (3) the size of domestic operations;
- (4) whether the proposed domestic industry has reached a reasonable financial "break-even" point; and
- (5) whether the activity is more in the nature of introducing a new product line by an already established business.

In the specific Stoughton investigation, the Commission made the following conclusion:

"In these investigations, the Petitioner and all respondents addressing this issue agree that the domestic industry producing certain domestic containers is not established."*

Similarly, in ITCO's review of our own portable tank Industry, we agree that the portable tank container market in the USA is NOT established based upon the above criteria.

Viewing the market from another angle, using The Scale of Domestic Operations

Where "lower operation levels sometimes suggest the domestic industry was not established. In one instance, the Commission found the domestic industry was established where the domestic factors such as production as a share of the total market, capacity relative to the total market. "**

UN Portable tanks/ intermodal tanks have been produced at an annual production rate of approximately 44,500 units/year, on average, over the past 5 years.** Prior USA production (over 20 years ago , between 1989 and 1995 was limited to less than 600 units per year at its peak or only 1.35% of total annual production (an historic maximum).

Because domestic operations were relatively small, (and currently non-existent) this factor also favors finding that the domestic container industry is not established.

We believe, granted a study of portable tanks (and intermodal containers in general), the Commission would generally find the domestic container industry is not established for all types of intermodal containers due to the limited and in many cases, non-existent production carried out in the USA today.

Reviewing Whether the Establishment of a Domestic Industry Has Been Materially Retarded by Reason of imports from China; Subject Imports via supply and demand:

Viewing from the Demand side Considerations

Demand for containers is derived from the demand for intermodal shipping, which in turn is related to several factors including general economic activity, a transition from other forms of shipping to intermodal for efficiency reasons, the need to replace retired containers reaching their 15-year average useful life, and capital availability to purchase containers.*

Portable tanks tend to have an extended useful life of up to 25 years due to principal components made of stainless steel.

Similarly, to the Stoughton study, only a relatively small number of intermodal tank purchasers account for the overwhelming majority of purchases in this industry.

In the Stoughton study, viewing from the Supply side Considerations found that

Before 2005, the U.S. market for 53-foot intermodal dry goods containers was served primarily by mechanically assembled lightweight aluminum plate intermodal containers,*

From 2011 onwards, Stoughton had made a very limited number of U.S. shipments and has supplied an extremely small percentage of apparent U.S. consumption.*

The USA market for UN portable tank containers produced similarly low volumes of like equipment but during an even earlier time period (more than 20 years ago between 1989 to 1995).

Therefore, both the supply side and demand side identify that the domestic Industry has NOT been established, nor has the market been materially retarded due to imports from China,

Identically to the Stoughton study, our intermodal tank container purchasers also rely upon

Quality Issues as predominant factor in their purchasing decisions.

The most important factor for purchasing is a supplier's ability to meet the purchaser's container specifications. Production capacity and delivery time was the second most important factor in selecting a manufacturer. Quality, price, and other delivery factors were also ranked among purchasers' top concerns in purchasing decisions.*

Other factors include availability, life cycle costs, and product consistency. Factors related to quality and design (e.g., container design, prototype testing, and quality that meets or exceeds CSC, ISO 1496-3, IMDG and ADR standards) were also stated in tank container purchasing decisions.

There are currently no known producers of standard T-11 (through T14) portable tanks in the USA in order to ascertain quality comparison.

We also considered **Whether the Establishment of a US Domestic Industry is Materially Retarded by Reason of Subject Imports from China (it is not).**

The Stoughton study concluded that

for a variety of reasons, the Commission determined that the establishment of an industry in the United States is not materially retarded by reason of imports of 53-foot domestic dry containers from China .*

Based upon the prior factors described including lack of current production, previous production with a maximum output of only 1.35% of the average annual supply and customer's reliance upon production quality and delivery time.....we conclude that the US domestic Container Industry has not been established (nor retarded by imports from China).

Manufacturing facilities:

There is currently no commercial production of 53-foot marine containers in the United States.

Similarly , there is no current production of T-11 through T-14 tanks in the USA.

Upon our review and comparison of the Stoughton study to our own Tankcontainer Industry, including production of tanks designed for liquid transport including T11, T12, T3 and T14, ITCO finds the tank container is and has been non-existent in the USA and has NOT been materially retarded by reason of imports from China,. These findings should warrant an exclusion of HTSUS subheading 8609.00.00 from

the Section 301 Tariffs proposed under USTR – 2018-0018 based upon the above AND the following additional factors:

CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET CHARACTERISTICS and Purchasers

The market for intermodal tank containers is relatively concentrated. Chinese manufacturers supply the bulk of the market at 86% worldwide, with additional supply from South Africa and a small percentage from manufacturers in the UK and Belgium.

Ten firms purchase the vast majority of the portable tanks for the leasing market, 90% of which maintain offices and staff within the US.

Five leasing companies purchase 70% of the leased tank container annual production and rounding out the top ten lessor account for 86% of the leased fleet annual production purchases. **

Tank container operators purchase the balance of the production with the top ten Operators accounting for 51% of the remaining annual production. **

U.S. freight carrier, tank operators and leasing companies engaged in intermodal shipping within the United States are the primary customers for, and end users of containers.

Intermodal transport containers generally, and certain domestic containers specifically, are used to transport goods across long distances*, typically by a combination of ship, rail and truck. The market for tank distribution has been expanding as railroads embrace the advantages of intermodal equipment, vessel TEU capacity has increased and global chemical production and global supply chains has grown steadily.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. supply

Domestic production (none, zero, zip, nada)

Subject imports from China

Based on available information, producers of certain domestic containers from China have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of certain domestic containers to the U.S. market. The main contributing factors to this degree of responsiveness of supply are recent fluctuations in capacity (a new Chinese manufacturing facility was added in 2018 capable of producing up to 20,000 units per year AND a 2nd production line was recently added at the number 2 ISO tank container producer (by volume) in China, doubling their production capacity from approximately 6000 to 12,000 tankcontainers per year.

Tank utilization at factories will decreased due to the added capacity. Other market influences such as availability of alternatives (road tankers and portable tanks have an equal hand in truck driver shortages but rail use of tanks will increase the likely use of intermodal equipment vs over the road equipment going forward dependent upon delivery distance from loading source to discharge point). Current inventory levels impact current and future production and inventory levels are currently low in the US.

Industry capacity

Both Chinese capacity and production increased by more than 10% per annum (average) since 2013, with production matching demand. In 2013, Chinese capacity was at 45,000 units and capacity utilization at 90 percent. Between 2013 and 2017, Chinese production capacity increased to 60,000 with utilization falling to 80 percent. Additional manufacturing capacity of 26,000 units/year was added earlier this year in China. This increase in capacity is in line with demand with higher levels of competition ensuring increased demand as well as maintain pricing highly competitive price levels.

Alternative markets

Chinese producers have exported a low percent of their total shipments for US based registration and ownership.

As transit mechanisms for trade, Containers may be imported temporarily (for up to 6 mos., free of tariffs) while the asset ownership remains offshore. The very low share of new tank shipments designated for the U.S. market **registration and ownership** suggests that Chinese producers may have substantial ability to shift shipments between the U.S. market and other markets in response to price changes. Only USA based purchasers without multinational offices will be affected by the proposed 25% tariff to their detriment and disproportionate negative effect.

U.S. demand

Based on available information, the overall demand for certain domestic (owned) intermodal containers is likely to experience no change other than the cost to the US owner will increase and the cost increase will be passed on to the final consumer.

Substitute products

Most U.S. purchasers report that there are no viable quantities of available substitutes for intermodal tank containers.

SUBSTITUTABILITY ISSUES

The degree of substitution between imported tank containers depends upon such factors as relative prices, quality (e.g., availability of material grade to specific standards, mandatory regulations, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, etc.).

Knowledge of country sources

Purchasers advise they had marketing/pricing knowledge of globally produced intermodal tank containers including marketing/pricing knowledge of Chinese containers.

Purchasers reported that they and their customers do not make purchasing decisions based on the producer or country of origin. Purchasers reported that they make decisions based on the manufacturer and their cited proven ability to meet design and quality specifications (design and production certification to Lloyd's Register and Bureau Veritas inspection and certification) as reasons for making decisions based on a producer including ability to produce tanks in accordance with Industry standards such as ISO 1496-3, IMDG Code, ADR Chapter 6.7 and Convention for Safe Containers (CSC). Several purchasers reported making decisions based on producer in order to ensure quality containers and promote fleet standardization.

Factors affecting purchasing decisions

The top factors buyers consider in their purchasing decisions for containers were reported to be production capacity, delivery time, quality, price and ability to meet purchaser's container specifications. The most important factor specified by purchasers was production capacity and delivery time.

Supplier certification

Purchasers require their suppliers to become certified or qualified to manufacture UN Portable tanks (design and production certification to Lloyd's Register and Bureau Veritas inspection and certification) as reasons for making decisions based on a manufacturer, including ability to produce tanks in accordance with Industry standards such as ISO 1496-3, IMDG Code, ADR Chapter 6.7 and Convention for Safe Containers (CSC).

PRICING DATA, FACTORS AFFECTING PRICES and Raw material costs:

Raw materials represent approximately 85% of the cost of goods sold (COGS) in the manufacture of intermodal tank containers. Stainless steel, ASTM A240-316, cold rolled 2 B finish and high strength carbon steel rectangular tubing and corner castings and stainless steel valves constitute the major raw material used and accounts for the majority of raw material costs. Aluminum sheathing and insulation of tank containers also typically account for the next largest share of raw material costs. Nickel, a stainless steel input raw material cost is a predominant cost driving factor in the total production cost of the tank container barrels (head and shell).

Price leadership

Purchasers reported that the two largest producers in China are the price leaders due to economies of scale, quality, delivery and reliability.

Price comparisons

Purchasers report relative price stability over the past few years with fluctuations of +/- 14% due to the price of raw materials (particularly Nickel).

THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Tariff treatment

The current general rate of duty for this product heading is free. Imports of the subject merchandise that meet the definition of, and requirements for “instruments of international traffic” pursuant to 19 U.S.C. § 1322 and 19 C.F.R. § 10.41a may be imported under HTSUS subheading 9803.00.50 (for up to 90 days use during product content shipment, duty free).

Related portable tank industries in the United States are threatened with material injury by reason of imposed tariffs on Chinese import of intermodal equipment/containers if tariffs are applied.

We assume the counter available subsidies are available to all Chinese manufacturers in accordance with those identified in the 2015 Commission Study. The subsidies in place have not adversely impacted the price of portable tanks and intermodal equipment nor impacted the level of imports into the USA.

Any existing unused and new unused production capacity or imminent, substantial increase in production capacity in the exporting country will NOT increase imports of the subject containers into the United States, as historically speaking, the growth rates and imports are based upon chemical production and shipping at an annual historic average of approximately 10% per year over the past 5 years.

We believe the implementation of tariffs on Chinese containers will reduce the customary 10% annual growth rate and decrease the production and import of containers by US based companies and multinational companies with USA operational entities leading to reduction in work force and lower growth rates below the current 10% annual average. This will trickle down across US based repair facilities, US based tank inspection companies, US truckers and US tank owners and operators reliant upon USA registration of their equipment with disproportionate economic disadvantage to the US based tankcontainer related employers including small and medium sized companies.

The ongoing import of subject tank containers and related equipment has not had a significant depressing or suppressing effect on the price of intermodal tanks. Prices are primary dependent upon raw materials costs and competitive forces due to additional manufacturing base continued growth in China.

ANTIDUMPING OR COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY or Domestic MARKETS

The undersigned is not aware of any antidumping duty, countervailing duty, or safeguard investigations on portable tank containers in any other country, nor have any Tankcontainer dumping allegations been raised historically in the USA.

Summary:

Due to the above striking similarities of IMO/UN Portable tank containers to the 53 ft Intermodal cargo container in the Stoughton study and Commission finding that “the establishment of an Industry is NOT materially retarded by the import of 53ft dry containers from China “, and the related lack of USA producers of Intermodal containers in general (past, present and future),

And ITCO’s review and clear evidence provided herein of the Tankcontainer meeting the identical criteria as the 53ft dry freight container (where both container and Tankcontainer domestic manufacturing has NOT been materially retarded by the import of containers from China, and whereas,

there is NO established production of 53 ft containers and T11 through T14 tankcontainers in the USA, And whereas,

only USA based purchasers without multinational offices will be affected by the proposed 25% tariff to their detriment and disproportionate negative effect (which will trickle down to the USA based supply chain of repairers, shippers, truckers and inspection companies including small and medium sized businesses);

we hereby request removal of containers falling under line item/heading HTSUS “subheading 8609.00.00 Containers (including containers for transport of fluids) specifically designed and equipped for carriage by one or more modes of transport” from the Section 301 Tariffs (USTR – 2018- 0018) in Annex C, from the final list of China origin goods that USTR proposed be subjected to 25% tariff (83 Federal Register 28,710 , June 20, 2018 Notice of Action)

Thank you.

***53-Foot Domestic Dry Containers from China**

Investigation Nos. 701-TA-514 and 731-TA-1250 (Final)

**** 2017 Global Tank Container Study ; Prof. Bingliang Song, Shanghai Maritime University (sponsored by International Tank Container Organisation**