Testimony for Foss Maritime and Young Brothers in response to

USTR-2018-0025

Procedures to Consider Requests for Exclusion of Particular Products from the Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation.

Submitted July 13, 2018

Thank you for the opportunity appear before you today to state our case. My name is Chris Coakley, Vice president of government relations and public policy for Saltchuk, the parent company for Foss Maritime Company and its wholly-owned subsidiary, Young Brothers.

Foss Maritime was founded in 1889 in Tacoma, WA, by Thea Foss, a young Norwegian immigrant and her husband, Andrew, who turned one rowboat into what eventually became a world class fleet.

Thea Foss first bought a used rowboat, hoping to rent it out to help with the family's finances. She sold the rowboat at a profit and used the money to buy several more boats. Soon she was in business renting the small boats to fishermen and duck hunters, ferrying customers, and delivering supplies in the Tacoma waterways. She continued to purchase more rowboats and launches while her husband, a carpenter, began building them. Soon, the fleets were up to 200 boats. Thea then expanded the business by transporting logs with towboats, under the name Foss Launch and Tug Company. By 1904, the company boasted 10 launches, a shipyard, a 60-passenger oil powered boat, and a small rescue craft to help disabled vessels. World War I propelled the small towing business to a new level, allowing Foss to purchase interests in a Seattle-based towboat company.

In 1987 Foss Maritime was bought by Saltchuk Resources, Inc., a privately owned family investment company that primarily focuses on maritime transportation. Although Foss Maritime continues to operate independently, it is now part of a nationwide network. Together with our Saltchuk sister companies, we can provide customers a full range of transportation services.

Foss supports many types of entities requiring marine transportation services, from harbor assist services bringing large oceangoing container ships into port all over the West Coast, to providing complex logistical assistance for ocean transportation. Foss has provided crucial support to energy exploration companies and in several instances, been a key logistical piece of US-government-led disaster recovery efforts, most recently in Puerto Rico. Foss also operates two full-service shipyards which provide maintenance and repair services for vessels both private (fishing fleet, other tug companies) and public

(Alaska Marine Highway ferries, Washington state ferries, federal research vessels, city fireboats) and perform new construction work.

Young Brothers Limited is a wholly-owned subsidiary of Foss Maritime. Young Brothers is Hawai‘i’s foremost interisland freight handling and transportation company, serving individuals and businesses alike, moving goods by barge among the Hawaiian Islands. Young Brothers is the only regularly scheduled common carrier authorized by the State of Hawaii to transport goods over water from one island to another and can handle almost any shipment. Our fleet of seven barges has a combined capacity of over 60,000 tons, and our equipment (including dry and refrigerated 20’ and 40’ containers) can accommodate a range of capacity needs. Young Brothers frequently assists the US government with moves of military equipment between islands to facilitate training exercises.

References to Foss Maritime in this testimony will include Young Brothers.

The importance of the affordable services provided by Foss Maritime and Young Brothers to Hawaii, Alaska and Puerto Rico cannot be understated. These communities rely on us to move goods among islands and to terrain that is not otherwise available for land transit. As you can imagine, costs for shipping to these remote communities is already very expensive. The potential increase in primary container costs will have a direct impact on our companies, on these states, the localities and the families that rely on the goods being transited.

On behalf of Foss Maritime, and Young Brothers, we respectfully request HTSUS 8609.00.00 Containers (including containers for transport of fluids) specially designed and equipped for carriage by one or more modes of transport be excluded from the final list of China-origin goods on which the U.S. Trade Representative (“USTR”) is proposing to assess an additional 25 percent tariff in its *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301:*

China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28,710 (June 20, 2018) ("Notice of Action").

The USTR's specifically requested information on (1) "whether imposing increased duties on a particular subheading listed in Annex C would be practicable or effective to obtain the elimination of China's acts, policies, and practices"; and (2) "whether maintaining or imposing additional duties on a particular product listed in Annex C would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers."[1]

We aver that the imposition of additional tariffs on these products will not be practicable or effective in obtaining the elimination of China's acts, policies or practices. We further submit that maintaining or imposing the proposed additional duties on this product will cause disproportionate economic harm to U.S. interests, our company, and many other small and medium sized businesses.

Foss Maritime is not aware of the Chinese government restricting the manufacture of the containers Foss primarily uses in its business. Foss does not own the plants in China that manufacture these products but relies on manufacturers to supply our maritime shipping business with the necessary containers to move and transport goods. We are not aware of the Chinese government employing any tactics, such as opaque and discretionary administrative approval processes, joint venture requirements, foreign equity limitations, procurements or other mechanisms to regulate or intervene in our providers in China. Further, because these items are basic commodities and are not leading technology, China has not required or pressured its users to transfer any technology or intellectual property The Chinese government's acts, policies and practices did **not** deprive our Chinese suppliers of the ability to set market-based terms in licensing and other technology-related negotiations.

Young Brothers relies on the containers in HTSUS 8609.00.00 to serve the people of Hawaii.. These containers are specifically designed for the maritime industry and the

[1] *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 28,710 (June 20, 2018).

special and demanding conditions of marine transportation. These containers are not made in the United States and those containers that are made in the United States do not meet the specifications required for the maritime industry.

The imposition of the duty only harms US companies and individuals, especially harming the Hawaiian people, who depend heavily on Young Brothers for interisland movement of cargo.

Unlike commodity products, these containers must meet specific industry required standard as well as structural and physical specifications which differ from customer to customer. Container purchases are a significant capital investment. Because of the requirements that maritime containers be water tight/resistant and welded, not riveted or otherwise constructed, must have thicker walls and substantial framing to support extremely heavy loads and to be stacked three or more on top of each other and have 16 corner castings to withstand the loads, the manufacture cannot be easily moved or replicated in a reasonable time frame.

Equally important is the fact that marine containers must meet requirements of the International Convention for Safe Containers which is codified in 49 C.F.R. 450 – 453. These containers must be inspected and maintained in conformity with the CSC. Thus, they are designed to meet specific needs that have already been demonstrated not to be made in the United States pursuant to previous antidumping duty cases. There are no alternative domestic sources for these specialized containers. Alternative third country suppliers are extremely limited as well because of the required specifications and availability of raw materials.

The imposition of the duty harms small and medium companies.

Foss Maritime and its subsidiaries serve Alaska, Hawaii, West Coast, and Puerto Rico. These communities rely on our vessels to service their companies and their people. Additional costs or unavailability of sufficient container supplies will strangle small and medium sized companies. Small businesses in Hawaii will be especially negatively impacted. Additionally, many communities served by Foss are not served by numerous alternative shippers and are reliant on our ability to be an affordable part of the logistical teams that provide them service. For example, as already mentioned, Young Brothers is the only regularly scheduled common carrier providing inter-island marine cargo service.

The imposition of the duty will not change the practices of the Chinese government.

The products at issue are not relevant to the Chinese goals for 2025. The sectors targeted by the government for becoming global leaders does not include the manufacture of cargo containers, and especially not this subset of special marine containers. These tariffs will have no impact or influence on the Chinese government in changing its policies and practices with respect to intellectual property violations and trade secrets theft. There is no IPR nor trade secrets to the manufacture and provision of shipping containers.

We submit that shipping containers in HTSUS 8609 be removed from the list of targeted items potentially subject to an additional 25% duty.