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July 15, 2005

Deborah A. Garza, Chair  
Jonathan R. Yarowsky, Vice Chair  
Antitrust Modernization Commission  
Attn: Public Comments  
1120 G Street, NW  
Suite 810  
Washington, DC 20005

Dear Ms. Garza and Mr. Yarowsky:

As counsel to the American Pork Export Trading Company ("APEX"), I am writing in response to the Federal Register notice of May 19, 2005 (70 Fed. Reg. 28,902) requesting comments on issues being studied by the Commission. In particular, APEX fully supports the comments filed by the Joint Export Trade Alliance and is providing these comments to voice further support for the Export Trading Company and Webb-Pomerene Export Acts ("ETCA" and "Webb-Pomerene Act"). As discussed below, APEX strongly urges that the Commission not recommend the elimination or limitation of these laws to the President and Congress.

APEX is a consortium of exporting companies organized by the National Pork Producers Council for the purpose of stimulating exports of U.S. pork products, such as fresh, cured, cured and smoked and fully-cooked pork products. APEX' members, which are located throughout the United States, currently have annual domestic sales of over \$42 billion and annual export sales of approximately \$2.3 billion.

APEX' views in support of the ETCA and Webb-Pomerene Act arise out of its experience as a recipient of an Export Trade Certificate of Review under the Export Trading Company Act of 1982. The Certificate, which was issued to APEX in April 1993, was sought to provide the protections of the ETCA to APEX and its member companies by allowing members to engage in a variety of joint marketing activities in overseas markets in order to succeed and compete effectively in foreign markets. See 58 Fed. Reg. 19,652 (Apr. 15, 1993).

Today, APEX is currently exploring new ways to use its Export Trade Certificate. Specifically, the exemption provided by the Export Trading Company Act has a unique application in the implementation of certain trade agreements negotiated between the United States and foreign governments, which include tariff-rate quotas ("TRQs") permitting imports of U.S.-origin products. In order to ensure that the U.S. industries that are the intended beneficiaries of the quotas obtain the intended benefits, the United States has sometimes obtained agreements that the quotas would be managed in the United States. However, because the U.S. Government does not have the legal authority to manage an export quota, such management can only be

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accomplished through an industry-managed system protected by explicit antitrust immunity, coupled with some imprimatur of the U.S. government (which foreign governments often require). The export exemptions provided in the Export Trading Company and Webb-Pomerene Export Acts provide mechanisms which can address these concerns.

For example, the Commerce Department has granted at least two Export Trade Certificates of Review in recent years for the purpose of managing TRQS – one for the European Union rice TRQs and one for Mexican High Fructose Corn Syrup TRQs. Under both of these TRQ programs, the quotas are auctioned to any U.S. bidder through an open tender. These programs have benefited the U.S. industries by maintaining competitive market access for U.S. producers in the face of prohibitive EU and Mexican tariffs.

APEX is looking into expanding the use of its Export Trade Certificate to avail itself of similar opportunities as the U.S. continues to negotiate trade agreements in the agricultural sector. For example, allowing for the administration of TRQs by an agricultural sector under the Export Trade Certificate would be very beneficial to that sector in maintaining competitive market access for U.S. producers in the face of prohibitive agricultural tariffs. Moreover, it would generate quota revenues that can be used to fund joint marketing efforts and other related activities. These and the other benefits identified above would only be provided to U.S. firms through the recognition that these activities have been previously certified by U.S. antitrust authorities. At a time when U.S. trade deficits are routinely setting record highs, and with the growing proliferation of barriers to U.S. exports it would be unthinkable for the Antitrust Modernization Commission to come to the conclusion that these laws merit repeal.

Any attempts to change U.S. antitrust law should, at a minimum, do no harm to the U.S. economy. There can be no doubt that the repeal of the Export Trading Company and Webb-Pomerene Acts would harm the U.S. economy, including members of the American Pork Export Trading Company.

Thank you for your consideration of these comments.

Sincerely,



LAURENCE J. LASOFF

Counsel to the American Pork Export Trading Company