

**May 26, 2011**

Mr. Andrew McGilvray  
Executive Secretary  
Foreign-Trade Zones Board  
Herbert Clark Hoover Building  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Re: Foreign-Trade Zones Board Proposed Rule  
75 *Federal Register* 82340-82362, December 30, 2010  
Docket # ITA-2010-0012, RIN 0625-AA81

Dear Mr. McGilvray,

On behalf of PointTrade Services, Inc. (“PTSI”), please find the following comments on the Foreign-Trade Zones Board Proposed Rule published December 30, 2010. PTSI provides FTZ consulting services to Grantees, Operators, and Users throughout the country and realizes that the FTZ Program is very important to the US economy, economic development efforts, and the communities in which the zone users operate. We recognize the immense value of companies’ capital investment and job creation in the US and believe the FTZ Program is important to helping companies and communities maintain investment in the US. Further, PTSI appreciates the Board’s efforts to revise and update the Foreign-Trade Zones Board regulations, 15 CFR Part 400. We agree that changes are needed to the regulations to maintain and enhance the effectiveness of the Program.

Foreign-trade zones are used to help stabilize and create employment in the United States. Without the benefit of a level playing field through use of the Program, more and more manufacturers will determine that they must conduct production and distribution activities outside the US.

PTSI participated with the National Association of Foreign Trade Zones (“NAFTZ”) in efforts to review and provide input to comments regarding the proposed revisions to the regulations. We support the comments submitted by the NAFTZ and offer the following additional comments.

### **Proposed Sec. 400.1(c) – Scope.**

The proposed new regulations struck the statement: “Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from certain state and local *ad valorem* taxes (19 U.S.C. 810(e)).”

We believe this statement should remain. Eliminating the statement will remove an important reference to the benefit of exempting zone status merchandise held in a zone from state and local *ad valorem* taxation.

### **Proposed Sec. 400.2 – Definitions**

#### **- Agent**

The definition for Agent is too broad for provisions of the FTZ Board regulations. The use of “under agreement” and “in zone-related matters” also make the term open to misinterpretation. The proposed regulations seem to be focused on an agent as one that represents a grantee; just as a broker acts as an agent for an importer, and a grantee administrator acts as an agent for a grantee, an FTZ administrator may act as an agent for a zone operator.

#### **- Zone Operator**

The proposed regulations define a zone operator as a person that operates within a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the Port Director. The proposed definition of a zone operator limits operations to an entity within a zone site or subzone. The current definition of a zone operator indicates an entity that operates a zone or subzone. We disagree with the proposed revision to change the definition from “...operates a zone or subzone...” to “...operates within a zone or subzone...”.

Not all zone operators are located within the zone or subzone. Some established zones are currently operated by zone operators from a centralized location outside the zone or subzone site. This has been an advantage to companies with multiple zone sites and/or subzones across the country – the zone operator relies on trained and qualified personnel to consistently operate multiple zone/subzone sites from a centralized location, which enhances compliance.

Zone operators should not be limited to operating from a physical location within every zone or subzone site when operations can be effectively and compliantly achieved from a location outside the zone or subzone.

- **Zone Participant**

The proposed regulations add a new term, zone participant, which is defined as a zone operator, zone user, property owner, or other person participating or seeking to participate in some manner in, or to make use of, the zone project.

This term seems to generally group too many entities without clearly identifying them. The phrase “or other person participating or seeking to participate in some manner in, or to make use of, the zone project” will be open to interpretation. If developers, customs brokers, consultants, administrators, or other entities would be considered zone participants, the intent of the regulations may not be clear for each of those entities each time the term is used in the regulations.

**Proposed Sec. 400.3(d) – Authority of the Assistant Secretary for Import Administration (Alternate Chairman)**

We understand that the position of Assistant Secretary for Import Administration (AS/IA) is currently vacant. The regulations should indicate who will have this authority and ensure that the AS/IA’s responsibilities are fulfilled even when the position is vacant.

**Proposed Section 400.4 – Authority and responsibilities of the Executive Secretary**

- **(h) Direct processing of applications and reviews, including designation of examiners and scheduling hearings, under various sections of this part.**

In the spirit of uniform treatment, PTSI requests that language be added to ensure the efficient and timely processing of all applications.

It has been our experience that the processing of applications does not always occur within the timelines set forth within the FTZ Board’s regulations. While we understand caseloads, case issues, and staffing resources impact the ability to complete processing of applications according to the timelines set forth in the regulations, it would be helpful to the FTZ industry if the Board make provisions to communicate when circumstances warrant additional timing for processing.

PTSI suggests the following language for consideration:

*Direct processing of applications and reviews, including designation of examiners and scheduling of hearings, under various sections of this part in a manner to ensure efficient and timely processing of applications under uniform treatment.*

- **(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications as provided in §400.12(b);**

If the Executive Secretary will have authority to issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications, the authority should be limited to a defined process and timeline in which those instructions, guidelines, forms and related documents may be implemented, particularly when instructions, guidelines, forms and related documents are already in use.

PTSI suggests the following language for consideration:

*Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications as provided in §400.12(b) by providing a minimum 30-day written notice before implementing such instructions, guidelines, forms and related documents.*

- **(s) Direct monitoring and reviews of zone operations and activity under §400.38**

CBP currently has oversight and control of zone operations. While the Executive Secretary should monitor zone activity, it is not necessary to duplicate or overlap CBP's supervision of the operational processes and procedures. Understanding that the FTZ Board and Executive Secretary make decisions regarding an FTZ scope of authority, PTSI suggests the following language for consideration:

*Direct monitoring of zone activity under §400.38 and review zone operations for compliance with the granted scope of authority.*

- **(u) Assess potential issues and make determinations pertaining to uniform treatment under §400.43 and review and decide zone rate complaints cases under §400.46**

This language implies the Executive Secretary will make determinations based on hypothetical issues that may or may not have reasonable merit or standing. PTSI suggests limiting authority to "Assess known potential issues..."

#### **Proposed Section 400.5 – Authority to restrict or prohibit certain zone operations**

- **a) *In general.* After review, the Board may restrict or prohibit any admission of merchandise into a zone project or any operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.**

The proposed regulations should be limited to zone-related activity. PTSI suggests rather than restricting or prohibiting any admission of merchandise into a zone project or any

operation in a zone project, that the language be revised to authorize the restriction or prohibition of any admission of merchandise into a zone project or any *zone* operation in a zone project.

**Proposed 400.11 – Number and location of zones and subzones**

- **(b)(2)(i) – A general-purpose zone site is located within 60 statute miles or 90 minutes’ driving time (as measured by the Port Director) from the outer limits of a port of entry.**

Satisfying the adjacency requirement is often determined based on a description of the limits of a port of entry as defined in Treasury Decisions or Executive Orders. Some ports of entry were established in older Treasury Decisions or Executive Orders that may not be accessible to the public. In our experience, not all CBP officials know the port of entry limits for the port in which they serve. If the adjacency will be qualified by CBP, it is important to have the ability to verify that the CBP officials making the determination for adjacency understands the provision is based on the outer limits of a port of entry. PTSI further suggests implementation of a process to allow an appeal of a decision. While we certainly respect CBP’s workload and appreciate their oversight responsibility of the foreign-trade zones, with the advancements in technology and CBP’s progress to utilizing electronic means of receiving and transmitting data, PTSI wishes to be sure to retain the ability for sites to be established within the existing criteria.

**Proposed Sec. 400.13 - General conditions, prohibitions and restrictions applicable to grants of authority**

- **(a)(3) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the Board order authorizing the zone or subzone.**

This provision does not consider the three-year sunset lapse for usage-driven sites established via administrative action (minor boundary modification).

- **(b) Board authority to restrict or prohibit activity. .... When evaluating zone or subzone production activity, either as proposed in an application or as part of a review of an ongoing operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in §400.25.**

The last statement in this provision indicates that as part of its evaluation of an ongoing operation, the Board will determine whether activity is in the public interest by reviewing it in relation to the evaluation criteria contained in §400.25. Under this provision, a zone

operation that has already received approval and has been operating within an approved scope of authority is at risk to potentially lose that authority.

**Proposed Sec. 400.14 Production – activity requiring approval or reporting; restrictions**

- **(a) Activity requiring advance approval. Approval in advance by the Board (or notification to the Board under the circumstances described in §400.37) is required for all production activity in zones or subzones which involves:**

**(4) For a production operation that had been the subject of prior Board consideration and approval (including delegated authority), a foreign article:**

**(i) For which there is a new (or increased) inverted tariff due to a new (or increased rate of) general or special duty relative to the circumstances in effect at the time of the Board’s prior consideration of the foreign article’s use in the production operation;**

**(ii) Which is subject (were it to enter U.S. customs territory) to an AD/CVD duty or suspension of liquidation under AD/CVD orders that were not in effect at the time of the Board’s prior consideration of the foreign article’s use in the production operation; or;**

**(iii) Which is subject (were it to enter U.S. customs territory) to a Section 337 order that was not in effect at the time of the Board’s prior consideration of the foreign article’s use in the production operation.**

The provisions requiring re-approval due to changes in the HTSUS would be burdensome to the zone operators and users as well as to the FTZ Board staff. FTZ Board regulations already require PF status on merchandise subject to AD/CVD orders; zone users should not be required to re-apply for authority they have already been granted.

**§ 400.21 - Application for zone**

- (b) Application format. Applications shall comply with any instructions, guidelines, and forms or related documents, published in the *Federal Register* and made available on the Board’s internet site, as established by the Executive Secretary specific to the type of application in question.**

PTSI agrees that applications should comply with instructions, guidelines, and forms or related documents when the instructions, guidelines, and forms or related documents are published in the *Federal Register* and made available on the Board's internet site. However, the Board should not have the ability to make changes to instructions, guidelines, and forms or related documents and post the new information on the Board's internet site without public notice and a time of transition to the requirements and formats. PTSI provides the following suggested language:

*Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications by providing a minimum 30-day written notice before implementing such instructions, guidelines, forms and related documents in cases where public notice in the Federal Register is not warranted.*

PTSI appreciates the opportunity to comment on the Foreign-Trade Zones Board Proposed Rule and urges the Board to carefully consider the above comments as well as the comments presented by the National Association of Foreign-Trade Zones.

Very truly yours,



Tommy L. Berry  
*President & CEO*