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May 23, 2011

VIA eRulemaking Portal: Docket No. ITA-2010-0012

Mr. Andrew McGilvray
Executive Secretary, Foreign Trade Zones Board
International Trade Administration, U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 2111
Washington, DC 20230

REF: RIN 0625-AA81

RE: Proposed Revisions to the Foreign Trade Zones Regulations

Dear Mr. McGilvray:

The Dallas/Fort Worth International Airport Board ("DFW Airport") is the grantee of Foreign Trade Zone No. 39. We applaud the Foreign Trade Zones Board's effort to update and simplify its regulations. In particular, proposed Section 400.47 stating the standard for grantee liability is a welcome clarification for public sector grantees. In addition, we have comments on five specific provisions:

Formally Adopt ASF

We recommend the Proposed Rule be amended to include the detailed criteria for the Alternative Site Framework (ASF). DFW Airport was an early adopter of ASF. Our service area covers most of the fourth largest MSA in the country, and our plans for future development of our zone consistent with ASF have been well received across the region. We, along with other grantees, are heavily invested in the concept, and believe the structure and process for approval should be formally adopted in the revised regulations.

Simplify Site and Production Approvals

We question the necessity of continued use of the "subzone" designation. It is confusing in the marketplace. Businesses regularly confuse a site designation with a subzone designation, and often use the words interchangeably. This has been compounded with the Foreign Trade Zones Board's adoption of subzones for distribution, and with the ASF concept of a usage driven site as a general purpose site specifically for a single user, which is particularly hard for business not versed in foreign trade zones history to grasp. The regulations may be simplified

significantly by separating geographic approval from production activity approval – a site would be the geographic designation that would allow all activity other than that requiring production approval, and production approval would be required as set out in the proposed regulations.

In the long run, we believe this would eliminate confusion in the market. Even now, DFW Airport would contemplate only two possible future applications of the subzone concept: first, where a site is outside the 60 mile/90 minute driving time limitation on general purpose site, or second, when a site is determined by the Foreign Trade Zones Board not to meet general purpose criteria. The first barrier can be eliminated with adjusting the concept of adjacency in Section 400.11(b)(2)(i) to refer to a "site," rather than "general purpose zone site" and Section 400.11(b)(2)(ii) to replace the word "subzone" with "site." The second barrier is completely arbitrary, and may be eliminated by removing further references to "subzone," and note only the need to request "production" authority for particular activity.

Clarify Annual Reporting Requirements – Proposed Regulation Section 400.14(b)

Annual reporting continues to be a significant responsibility of grantees, and the Foreign Trade Zones Board is generally trying to update the process to make it more efficient. Proposed Section 400.14(b), which requires all production activity to be reported to the Board, could be problematic for users of some existing foreign trade zone software systems, and consequently for grantees trying to timely file annual reports. Specific information on items which are not controlled for FTZ purposes (e.g., domestic status goods) may not be tracked by some systems. It seems to us that the Foreign Trade Zones Board should be interested only in items placed in foreign status and used in production, not in items that may be in domestic status and used in production. The current definition of production does not seem to distinguish these items, as it apparently applies to any item which changes tariff classification, regardless of whether or not the item may have been imported duty paid, or was of domestic origin.

Ad Valorem Tax Exemption – Proposed regulation Section 400.16

Congress enacted the ad valorem tax exemption as a result of an effort by DFW Airport that began in 1982. The specific intent of the provision is to clarify that Texas local governments cannot tax qualifying inventory in foreign trade zones. The Foreign Trade Zones Board first addressed the statutory provision in 1991 regulations in Section 400.1(c). That text remains unchanged in the proposed regulations, and very simply conditions the application of the ad valorem tax exemption with the phrase "to the extent activated."

Proposed Section 400.16 essentially repeats the applicable portion of Section 400.1(c), but replaces the phrase "to the extent activated" with the phrase "in the zone in zone status." We believe there is no impact to this change – the phrases mean the same thing. However, local Texas taxing authorities have become familiar with "activation" as the trigger for the tax exemption over the past 20 years. To avoid any confusion as to the reason different language was selected for these two provisions, we recommend making Sections 400.1(c) and 400.16 parallel by amending 400.16 as follows:

"Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from state and local ad valorem taxation while such merchandise remains in an activated zone (19 U.S.C. 810(e)). . ."

Conflicts of Interest – Proposed regulation Section 400.43(e)

Newly proposed Section 400.43(e) seeks to preclude certain conflicts of interest. While we understand that conflicts may pose problems in some instances, the provision is drafted so broadly that it would preclude situations that have not been identified as problematic, including the way we have historically conducted operations at DFW Airport.

The Foreign Trade Zones Board has approved grantees of a variety of sizes and composition, apparently without a great deal of consideration as to the infrastructure or capacity of the grantee to handle zone operations. We are aware for example, of the approval of non-profit corporations with all volunteer boards, and no members of staff, as grantees. DFW Airport is at the other end of the spectrum. DFW Airport is the third largest airport in the world in terms of operations. We have 1,775 employees and contribute \$16.6 billion to the local economy. The activity of the DFW International Airport Board is governed by the Texas Open Meetings Act. There is no question that in our capacity as grantee we make all decisions related to the applications to the Foreign Trade Zones Board, activation recommendations to CBP, and submission of the annual reports.

When we do use advisors, we want people that are knowledgeable about our needs and the needs of our users. In particular, we regularly face complex situations because of the unique tax attributes of operations at DFW Airport. Not only do our users take advantage of the inventory tax exemption, but as you are aware, there is a special real property tax exemption applicable to DFW Airport foreign trade zone property, and there are interplays between foreign trade zone operations and special tax sharing provisions applicable to DFW Airport. We absolutely expect our advisors to provide a recommendation on the effectiveness of a particular structure prior to our decision to make application for a site or to activate a site. The way the proposed regulations are drafted, providing this recommendation can create a prohibited conflict of interest.

The Foreign Trade Zones Board has the authority to restrict grants when in the public interest. Rather than mandating a blanket prohibition that would restrict business relationships with which the Board has no concern, we recommend that the Board adopt a regulation that would allow review of situations which are believed to be problematic, and then, following notice and appropriate due process to establish pertinent facts, provide the Board with the discretion to restrict particularly identified activities on a case by case basis. Following is an example of a provision which may serve this purpose.

(e) *Preclusion of conflicts of interest.* To avoid non-uniform treatment of zone participants, this section provides the Board with the authority to restrict the activities of grantees and/or their agents when the Board has made a finding that a material conflict of interest exists. A material conflict of interest exists if:

(a) The Board finds that the grantee has actually or in practice delegated the authority to approve applications made to the Board, approve annual reports to be submitted to the Board, or approve activation by CBP to a third person (or a party related to such third person) who currently engages in offering or providing a zone related product or service to a zone participant in the grantee's zone project, and

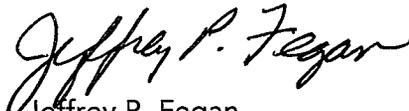
(b) the Board finds that the conduct of the grantee and/or agent has detrimentally impacted one or more zone participant or prospective zone participant.

(f) Unchanged.

(g) *Reviews.* Reviews of potential material conflicts of interest may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, or they may be undertaken in response to requests from parties directly affected by the activity in question showing good cause. After initiation of review, any affected parties shall provide in a timely manner any information requested as part of the conduct of the review. Upon the request of any affected party, the Executive Secretary shall schedule and hold a public hearing with no less than 30 days advance notice. The Executive Secretary shall develop a recommendation to the Board within 90 days of the completion of the public hearing if it believes further action is warranted. If the recommendation proposes to restrict activities of either a grantee or a third party, the affected party will be notified in writing of a preliminary recommendation and the factors considered in the development of the preliminary recommendation. Such party will be given 30 days from the date of notification in which to respond to the preliminary recommendation and submit additional evidence pertinent to factors considered. Final action will be documented in a Board Order.

We appreciate the opportunity to provide these comments.

Sincerely,



Jeffrey P. Fegan
Chief Executive Officer

cc: Phil Ritter, Executive Vice President, Government and Stakeholder Affairs
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