

475 Park Avenue South
New York, NY 10016

Tel: 212 725-0200
Fax: 212 889-4135
www.barnesrichardson.com

May 23, 2011

303 East Wacker Drive
Suite 1020
Chicago, IL 60601
Tel: 312 565-2000
Fax: 312 565-1782

11 Dupont Circle, NW
Suite 500
Washington, DC 20036
Tel: 202 483-0070
Fax: 202 483-0092

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 No. ITA-2010-0012, RIN 0625-AA81

Dear Mr. McGilvray:

On behalf of our client, Brother Industries (US), Inc., located in Bartlett, Tennessee (hereafter "BIUS"), we are submitting comments in response to the Notice of Proposed Rulemaking ("NPRM") published in the Federal Register on December 30, 2010 at 75 Fed Reg 82340, *et seq.* BIUS is the operator of a FTZ subzone located within the Memphis, Tennessee Foreign Trade Zone area.

First, we would like to commend the Board on the enormous effort that is reflected in the publication of this NPRM to simplify and speed up the approval process for approving and expanding FTZ activities. As a company which is part of a group of companies that makes a variety of consumer and industrial products, BIUS has sought to maximize the utilization of its subzone. Sometimes these opportunities arise with little lead time and therefore BIUS very much welcomes the FTZB proposal to substitute a notification requirement for the current prior approval process for new manufacturing activities in some instances and shorten approval times in other instances.

We have two specific comments to offer:

1. The NPRM proposes to do away with the current distinction between manufacturing and processing and substitute the term “production,” which is defined in Sec. 400.2(l) as “any activity which results in a change in customs classification of an article or in its eligibility for entry for consumption, regardless of whether U.S. customs entry is ultimately made on the article resulting from the production activity.”

We are concerned with the ambiguity in the language “change in customs classification” because there is no indication as to whether such change needs to occur at a heading or subheading level or whether it needs to result in a change in classification which also results in a change in duty rate. Accordingly we suggest that this definition be modified to add a sentence addressing this ambiguity. In this regard we propose the following language:

“A change in customs classification means any change in the Harmonized Tariff Schedule of the United States whether it be at the heading or subheading level and whether or not it results in a change in duty rate.

2. The NPRM sets forth, in Sec. 400.22, the information that is required to be submitted with an application for production or subzone authority, including applications for additional production activity in an existing subzone. Sec. 400.22 (a)3(iii) specifically requires that “For each product or material/component, the tariff schedule category, tariff rate, other import requirements or restrictions, and whether the material/component is subject to any antidumping or countervailing duty proceeding...”

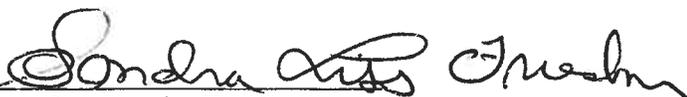
In the PowerPoint presentation posed on its website by the FTZB, in slide number 28, under the heading “Predictability and Responsiveness,” the Board notes that notification of new components or new finished products must be provided at the

4-digit HTSUS headings. It is our understanding, based on further public comments, that the belief of the Board in suggesting notification at the 4-digit level is that notification at this level is expected to allow companies to submit relatively broad notifications so as to not unduly restrict their opportunity to take advantage of new business opportunities as they arise. This understanding is apparently grounded in the belief that companies generally produce similar products which are likely to fall within the same 4-digit tariff heading. The experience of our client, however, suggests that this is not the case. While BIUS may currently be producing certain consumer products, because it is a subsidiary of a large corporation, the opportunity may arise to produce other consumer products which fall under different 4-digit headings, which are now produced by related companies outside the US. For example BIUS produces certain printers in their subzone which fall under Heading 8443. However sister companies produce other consumer products, such as sewing machines which fall under Heading 8452. The occasion may arise for BIUS to assume some of this production in the U.S. without necessarily having a lot of lead time. It would greatly simplify the notification process for BIUS if notification of new components or new finished products could be provided at the 2-digit Chapter level. Alternatively, BIUS would support the position suggested by the NAFTAZ which proposes notification of a "general description of intermediate/finished products that will be the subject of inverted tariff benefits" to meet the notification requirements of this section.

Thank you for the opportunity to file comments on this proposal.

Respectfully submitted,

Barnes, Richardson & Colburn
Attorneys for Brother Industries (US), Inc.

By: 
Sandra Liss Friedman