



May 26, 2011

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

Re: Docket Number ITA-2010-0012

Dear Mr. McGilvray:

We are writing to share our thoughts with you regarding the proposed revisions to the Foreign-Trade Zones Board regulations. There are a number of proposals in the regulations as published in your Federal Register Notice of December 30, 2010 which, if implemented as proposed, would yield results other than those you might have anticipated when you drafted the proposed regulations. Some of these results would be negative. We would like to share a few thoughts that we hope you will keep in mind as you move forward in trying to fashion regulations that enhance the program without inadvertently harming any of its participants.

We believe that the very foundation of the U.S. Foreign-Trade Zones program rests on the idea that U.S.-based businesses will respond in one way versus another depending on the rules put in place by the federal government. The FTZ program's very existence is dependent on the recognition that the broad-brush rules as embodied in the Tariff Schedule of the United States can sometimes motivate business operations to locate or maintain their economic activity at a foreign location instead of the United States. The Zones program in general, and your agency in particular, act as administrative remedies to the unintended consequences of our tariff structure. In serving this function it is vital that your agency listens to and evaluates completely and fairly the proposals and counterproposals put before it in the application process.

It is clear to us from the content of the regulations and from what we heard at your public forum, that the process by which the proposed regulations were developed was strictly internal. The strength of this approach is that the government alone sets the framework in which the final regulations will be developed. The weakness of this approach is that the government alone sets the framework in which the final regulations will be developed.

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Several proposed provisions that relate to the use of third-party service providers are written in a manner that clearly ignores the history and the details of the manner in which moribund or underutilized Zone projects have employed third-party expertise to cost-effectively bring the Foreign-Trade Zones program to their communities. The proposed regulations, through a list of pedantic mandates, ignore the ways in which third-party contractual arrangements, outsourcing accounting and finance functions, and full service professional services (including a dual role for service providers in helping grantees and Zone users) help bring the FTZ program to small and medium-sized businesses. Ignoring innovation that has led to success in favor of addressing isolated problems through all-encompassing mandates that cripple grantee's abilities to adjust to local circumstances is inconsistent with the objectives stated in Section 1 of President Obama's Executive Order of January 18, 2011. In Section 1, General Principles of Regulation, the Executive Order states that each government agency "must, among other things: 1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the cost of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and, (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public."

We recognize that the Zones program has two core constituencies: Zone grantees who form and maintain Zone projects in order to foster economic activity in their own communities, and Zone users who conduct the economic activity that the program is designed to encourage. Everyone else is hired help. That being said, there are many occasions in which the hired help is a valuable resource in predicting the outcome of a proposed course of action, whether that action be contemplated by a company, a local government agency, or by the federal government as it engages in the rulemaking process. We are aware of

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the natural predisposition to employ a process in developing the draft regulations that is not consultative with all members of the trade community. At the same time we are confident in asserting that a better set of proposed regulations could have been developed had there been an effort to include all members of the trade community – including the hired help – in developing the draft regulations. Doing so would comply with the current Administration's intent which was set forth in Section 2 (c) of President Obama's January 18, 2011 Executive Order, which states, "Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Your May 11 webinar made it clear that you desire to truncate the process of developing final regulations. For the past several years we (principals of the Foreign-Trade Zone Corporation) have thirsted for a genuine dialogue with your office. This desire, expressed by us to you on more than one occasion, has been driven by what we believe we have learned in serving a number of communities and companies within those communities whose economic activity is vital to their prosperity and social stability. It is without conceit that we say that we have learned a few things that can be of value to you as you try to implement regulations that benefit your fellow citizens. We recognize that individual companies who use the Zone program do so out of self-interest. At the same time we recognize that their use of the Zones program is based solely on that use serving the overall economic interests of the United States. We count ourselves among those service providers involved in the Zones program who recognize our duty to serve the interests of Zone grantees and Zone users regardless of any competitiveness they may feel between and among themselves. This enables us to count ourselves among those can use their experience and work to help their fellow citizens enjoy the benefits that the U.S. Foreign-Trade Zones program is designed to offer.

We are writing to ask for one simple thing: Please engage us and our colleagues – grantees, users and service providers – in open and intellectually honest dialogue as you sort through the ideas you receive. In short, we ask that you find a way of telling us what you're considering, and getting some sort of feedback from us, before publishing another Federal Register Notice. We think this can enable us to be of better service to you, and can enable us all to be of better service to the Zones program and the domestic economic activity that it encourages.

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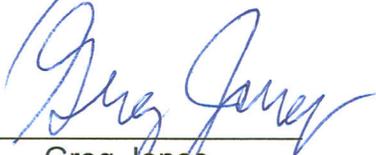
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We hope these thoughts are useful to your efforts to improve the FTZ program, and we look forward to the opportunity of engaging in a genuine dialogue about the merits of the regulatory provisions that have been proposed and the trade community's responses to them.

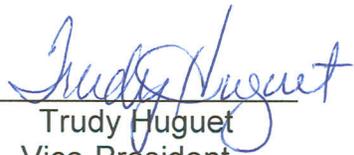
Sincerely,



Craig Pool
President



Greg Jones
Vice-President



Trudy Huguet
Vice-President