

May 26, 2011

Submitted through Federal eRulemaking Portal at www.Regulations.gov

Mr. Andrew McGilvray
Executive Secretary/Staff Director
Foreign Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 2111
Washington, DC 20230

Re: NPRM Docket No. ITA-2010-0012

Dear Mr. McGilvray:

Thank you for the opportunity to comment on the U.S. Foreign-Trade Zones Board (“Board”) Notice of Proposed Rulemaking published December 30, 2010. Dow Corning Corporation is a U.S.-based manufacturer and exporter as well as an Operator/User in the Foreign-Trade Zone (“FTZ”) program.

In general, Dow Corning agrees with the technical comments submitted by the National Association of Foreign-Trade Zones (“NAFTZ”). The issues specifically discussed herein are intended to emphasize and supplement the NAFTZ’s comments based on our direct experience in the FTZ program.

Preamble

The preamble to the 1991 Board regulations contained an essential sentence about the policy objectives of the FTZ program. The sentence was removed and should be reinstated in the current proposed regulations. The objective of assisting U.S. exporters and manufacturers has never been more important or relevant as evidenced by the President’s National Export Initiative (“NEI”) and the country’s need for employment and economic recovery.

The subject sentence is the second sentence below: [Emphasis added.]

“Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for customs reasons, might otherwise have been carried on abroad. *The objective is furthered particularly when zones assist exporters and reexporters, and usually when goods arrive from abroad in an unfinished condition for processing here rather than overseas.*”

In addition to re-inserting the omitted sentence, it is our belief that every decision made by the Board involving production activity should be guided by this principal theme. The fact that there may be competing federal priorities or opposition in specific cases should not automatically result in restrictions or denials. The importance of preserving and expanding overall U.S.-based production and exports should be at the forefront of case analysis. The Board has the unique responsibility of prioritizing the interests of U.S.-based companies so that they may compete on a level playing field with foreign producers in order to maintain and attract investment and employment in the United States. No other agency has this mandate or authority with respect to U.S. tariff policy and that mandate should not be subordinate to other interests unless net economic detriment is found at the national level.

Sec. 400.7 – CBP Port Director as Board Representative

We agree with the NAFTAZ comment creating this new section. CBP has an important role to play in implementing the decisions of the Board and carrying out the policies of the Board in a consistent manner. This section is necessary to ensure that FTZ Program improvements, which are designed to provide faster access to FTZ benefits in response to the needs of U.S. businesses, are consistently supported by CBP's actions. In order to achieve the desired effect on the economy, it is imperative that CBP prioritize resources to timely concur on FTZ applications and to activate qualified operators.

Sec. 400.8 – Export Promotion

The FTZ program may be better utilized as an economic development tool if closer coordination exists at the federal level between the Board and other departments with complimentary mandates. Therefore, we agree with the addition of this section as proposed in the NAFTAZ's comments.

Sec. 400.9 – Federal Agency Uniform Procedures on FTZ Compliance

We agree with the addition of this provision as proposed by the NAFTAZ. The use of FTZ's has grown and so has the number of agencies and rules involved in international trade regulation. It is critical for the concept of informed compliance to permeate all applicable federal agencies as their policies relate to FTZ's. An integral part of the development of uniform procedures must also include the necessary automation to provide for electronic reporting in compliance with those rules. Many federal agencies have their current rules and reporting configurations tied to entries for consumption, which occurs when product leaves a FTZ for transfer into the United States. In those situations where vetting is needed prior to entry for consumption for public health or safety reasons, reporting should be tied to FTZ admission (understanding that all FTZ shipments are subject to security and manifest reviews prior to release from the port of arrival). In other situations where vetting is not necessary for products that will be admitted and exported from a FTZ, associated rules and reporting should exist to promote such U.S.-based activity for export without unnecessary restrictions or burdensome procedures that discourage economic activity and limit the utility of FTZ's.

Sec. 400.11 Number and location of zones

We strongly support the changes recommended by the NAFTAZ to this section, particularly those dealing with adjacency requirements. Some of the highest unemployment areas and targeted economic recovery initiatives are found in rural, inland communities. Many emerging exporters, especially small and medium-sized businesses, are located in rural areas. The Board, CBP, Grantees and Zone Participants can and should work together to provide the farthest reach possible for the FTZ program's positive economic impact. The use of modern tools and strategies including Importer Security Filings, C-TPAT, and electronic reporting should lessen the importance of the physical distance between zone activities and CBP Ports of Entry locations.

Zone Applications – Various Sections

The application requirements for all types of zones should be included in the regulations for transparency, predictability and consistency purposes. Posting current requirements to the Board's website alone does not provide opportunity for public notice and comment on changes prior to implementation and may impact applications in process requiring additional cost, time, and resources while creating uncertainty.

All NAFTAZ recommendations for faster review and approval periods are strongly supported to advance the use of the FTZ program as an effective tool for maintenance and attraction of U.S. investment.

Due Process – Various Sections

In general, prospective zone operators/users for FTZ's should be provided ample opportunities for due process during the application phase and post approval related to reviews of ongoing operations. Prospective zone Operators/Users that have received Grantee sponsorship have been determined to be in the public interest at the local economic development level. This is a meaningful step in the process evidencing local community support and need for associated economic development. Prospective Operators/Users (especially manufacturers) should not be disapproved or later denied benefits by the Board unless substantial economic detriment is demonstrated on the record that would result in a net economic loss to the nation. Prospective applicants must have a level of predictability in the FTZ process in order to inspire use of U.S. FTZ's as a viable alternative to moving offshore.

In the event of opposition, negative comments should not inherently negate public interest findings. Only U.S.-based companies can take advantage of the U.S. FTZ program. Therefore, any opposition should be supported by evidence of significant and material detrimental impact upon a directly affected person that results in net negative economic effects. Otherwise, the ability of the FTZ program to positively impact the

U.S. economy will be limited by those that oppose importing as a matter of principle or posture opposition as a way to reduce competition and/or increase prices. This is a particularly salient point for downstream manufactures that must have equal access to key raw materials and intermediates, which are often in short supply in the U.S. and available at significantly lower prices overseas. U.S. producers must have equal access to foreign raw materials for exports in order to compete for global sales.

U.S. manufacturers must be able to produce for export in order to be globally competitive. Therefore, balance is needed between AD/CVD policy and the FTZ program. AD/CVD policy can be applied uniformly to U.S. producers for U.S. sales. AD/CVD policy does not apply evenly to U.S. and foreign producers selling in the global marketplace. The current privileged foreign status requirement of the Board's regulations for AD/CVD strikes the correct balance to protect U.S. suppliers in the U.S. market while promoting global sales by U.S. producers. The opportunities represented by this manufacturing activity for export will not otherwise take place in the U.S. at all so no U.S. supplier is truly disadvantaged. The Board should preserve this historical balance and prioritize U.S. manufacturing for export along with protecting U.S. suppliers for sales into the U.S. consumption market where the playing field can be leveled.

Sec. 400.14 Production--activity requiring approval or reporting; restrictions

Corporations need the reliance of a formal government ruling in order to reduce or eliminate U.S. duty through production in a zone. Therefore, while the objective of expediting access to FTZ benefits for exporters is meritorious, there still needs to be a documented permission for FTZ producers to justify investments and reduce the risk of loss of benefits. Interim authority presents challenges for the same reason but may be appropriate after the public comment period is closed and reasonable assurances exist through precedence that approval will be forthcoming.

Another approach to expedited export production authority that would provide certainty is a blanket Board Order authorizing manufacturing in zones for export as long as all imported components are placed in privileged foreign status. As an administrative matter, individual companies must be able to request and receive a written confirmation of benefits from the Board for Customs or other purposes.

As importantly, normal changes in the course of business including growth in capacity and new components must be managed efficiently within the FTZ program. Therefore, we agree with the comments submitted by the NAFTAZ on this section. The NAFTAZ proposed approach to include in Board scope of authority all inputs used to make the intermediate or finished products approved by the Board unless certain product categories are specifically exempted by the Board on public interest grounds as requiring advance approval. Such lists must be maintained and made publicly available on the Board's website so Operators/Users can monitor and comply accordingly. Capacity can be monitored by the Board through the Annual Report and should not require separate reporting or scope of authority updates. With respect to new components or components that become subject to AD/CVD, the privileged foreign status requirement is sufficient

for ongoing activity. When production applications are filed involving components subject to AD/CVD, the Board should uphold the privileged foreign status requirement and authorize zone activity for export production whenever it finds that U.S. competitiveness will be advanced and that similar activities are authorized in other countries.

Sec. 400.24 Criteria for evaluation of production activity

The criteria for evaluation of production activity in U.S. FTZ's needs to reflect global realities if the FTZ program is going to be a tangible tool to maintain and attract manufacturing and exports in the United States. If proposed U.S. FTZ activity can be conducted in another country and result in the same U.S. tariff impact, the Board should equalize U.S. producers and remove the tariff incentive of moving outside the U.S. While each case before the Board is analyzed individually for public interest impacts, the Board must be extremely careful not to place direct U.S. competitors at a disadvantage to one another by providing benefits to one and denying the exact same benefits to another. If companies cannot accurately gauge their likelihood of obtaining FTZ benefits as a measure of precedence on previous recent Board decisions in the same industry, they will simply disregard the FTZ program as a competitive relief mechanism against foreign producers and become foreign producers themselves. U.S.-based manufacturing and exports are inherently in the public interest and should be treated as such in the absence of direct evidence of net negative economic effects. For these reasons, we agree with the NAFTAZ's comments on this section.

Sec. 400.27 Burden of proof

For the same reasons discussed in previous sections, this section should also be strengthened. Where U.S. manufacturing or exports are involved, the burden of proof should shift to opposing commenters to prove that the proposed activity is not in the public interest recognizing that the Grantee, as the local public interest representative has supported the application prior to filing. We agree with the NAFTAZ's proposed improvements to this section and recommend strengthening the section further to recognize a shift in burden of proof as described herein.

Original Section 400.37 – Procedure for notification and review of production changes

We support the NAFTAZ's recommendation to delete this section. Proposed quarterly reporting and associated public notice and comment is too burdensome for government and industry and creates significant uncertainty.

Sec. 400.40 Monitoring and reviews of zone operations and activity

We agree with the NAFTAZ that this section is more appropriate under Subpart E and should be distinguished from new proposed activity. The standard for review to

remove benefits must be very high or FTZ producers will not consider relief under the FTZ program as a viable alternative to off shoring.

Sec. 400.48 Retail trade

We strongly recommend the NAFTAZ's comments on this section, which recognize changes in modern business and ensures clarity and uniformity.

Sec. 400.51 Accounts, records and reports

We agree with the NAFTAZ's comments on this section.

Sec. 400.52 Notice and hearings

We agree with the NAFTAZ's comments on this section.

Sec. 400.53 Official record; public access

We agree with the NAFTAZ's comments on this section.

Sec. 400.54 Information

We agree with the NAFTAZ's comments on this section.

Sec. 400.61 Revocation of grants of authority

We agree with the NAFTAZ's comments on this section.

Sec. 400.62 Fines, penalties and instructions to suspend activated status

The introduction of specific provisions for fines and penalties is appropriate to provide clarity to the existing statutory authority of the Board. However, this section must be very carefully managed so as not to deter participation in the FTZ program by public and private entities concerned about risk as well as the cost of FTZ program participation. We agree with the NAFTAZ comments on this section.

Sec. 400.63 Voluntary disclosure

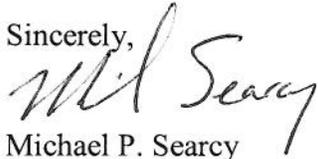
This section is critical to promote informed compliance as well as to encourage corrective actions by FTZ program participants upon discovery. Since the purpose of the FTZ program is to increase the competitiveness of U.S.-based companies, it is appropriate to eliminate penalties when companies disclose and rectify mistakes and no fraud is involved. We strongly agree with the NAFTAZ's comments on this section.

Sec. 400.64 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary

We agree with the NAFTAZ's comments on this section.

We are pleased to provide this information to assist the Board staff in better understanding the challenges and concerns facing FTZ program participants. We appreciate the Board's interest in improving the utility of the FTZ program to promote U.S. investment, manufacturing, employment and exports. The recommendations made to further enhance the proposed regulations can positively impact our shared objectives.

Sincerely,



Michael P. Searcy
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Dow Corning Corporation