

National Association of Foreign-Trade Zones
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June 27, 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 (December 30, 2010), 76 Fed. Reg. 12887 (March 9, 2011); Docket # ITA-2010-0012, RIN 0625-AA81
Reply Comments**

Dear Mr. McGilvray:

The National Association of Foreign-Trade Zones (NAFTZ) submits these reply comments in accordance with the rulemaking schedule announced by the Foreign Trade Zones Board in its notices of December 30, 2010 and March 9, 2011. Over one hundred additional comments were submitted by a wide range of organizations. The NAFTZ is the association most directly concerned with the establishment, operation, and administration of the Foreign-Trade Zone Program and its benefits to the U.S. economy.

We note at the outset that of the more than 100 comments submitted, no fewer than 59 specifically endorsed the comments submitted on May 4, 2011 by the NAFTZ. No comments were critical of the foreign trade zones program in general.

As our initial comments indicated, there were many issues raised by the proposed rule that would affect FTZ grantees, administrators, operators and users. We strongly support the growth of the FTZ program; the regulations can help further the program as a flexible avenue for the growth of manufacturing and exports, or it can hinder that growth.

In our reply comments, we concentrate on the public comments that endorsed a requirement in the proposed rules mandating advance approval for any manufacturing for merchandise that would, if entered for consumption, be subject to antidumping or countervailing duties (“AD/CVD merchandise”). We oppose such a requirement because it would damage American competitiveness and therefore would be contrary to the public interest. Zones help companies compete in the United States where, without zone procedures, activity and jobs could well take place in other countries. That is our principal objective in creating new regulations for the 21st Century to govern this critical program.

The Board’s proposed authorization of zone-based manufacturing without advance approval is a step forward. We cautioned that it could be rendered meaningless if Customs does not permit activation without specific Board approval of manufacturing operations, and if there are unworkable exceptions. Our comments addressed both of these concerns.

We note, while several comments addressed the AD/CVD merchandise issue, none addressed the other three provisions for which the Board proposed to require advance manufacturing approval: (1) inverted tariffs; (2) merchandise which, if entered for consumption, would be subject to a Section 337 exclusion order; and (3)

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waste and scrap. The lack of opposition to the FTZ program in general supports our firmly held view that it enjoys broad public support. The regulations should be written to continue the long tradition of exercising discretion, not to make rigid and unnecessary rules that would create an incentive to manufacture outside the United States.

The FTZ program encompasses movement of hundreds of billions of dollars of domestic and foreign merchandise annually. Over 330,000 American workers are employed in zone operations. Yet, with these impressive credentials, the fact remains that creation of jobs and economic activity can be much greater in U.S. FTZs than it is today—more than 50 million workers worldwide are employed in free trade zones or the equivalent, nearly one percent of the world's population. If zones in the U.S. employed an equivalent proportion of workers, 3 million U.S. workers would be employed in zones, in globally competitive operations.

As the NAFTAZ explained in its May 4 comments, we believe that our suggested structure comports with the public interest responsibilities of the Board and the Act, as well as the requirements of 21st Century trade and Customs policy. President Obama's Executive Order 13563 (January 18, 2011) calls upon all agencies to conduct "careful analysis of regulations, including considerations of costs and benefits." See President's statement on administrative flexibility (February 18, 2011). In the context of FTZs, the regulations must take account of the flexibility needed by today's companies for U.S. operations to compete with foreign locations, and to encourage them as much as possible to choose the U.S. This in turn leads to three imperatives that guide our reply comments:

1. The benefits of the U.S. FTZ program must be predictable; the use of the FTZ program must be a genuine and workable alternative to moving operations offshore.
2. Companies must be afforded the maximum degree of flexibility in zones to conduct operations and procure raw materials and equipment at the same costs that could be used in foreign locations.
3. Zone administration and timely approvals must not be overly burdensome, in order for zones to offer companies the greatest degree of international competitiveness at the lowest possible cost.

Accordingly, the NAFTAZ has the following reply comments:

- 1. Advance Approval for Manufacturing.** We reaffirm our proposal to limit the requirement for advance approval to specific situations outlined in our original comments. We oppose any requirement by the Board for company-specific advance approval of manufacturing for export. As we indicated in our initial comments, approval of zone-based operations must be obtainable quickly and based on objective criteria.

The policy adopted in the 1991 Foreign Trade Zones Board Regulations required the election of privileged foreign status for merchandise admitted to a FTZ that would, if entered for consumption, be AD/CVD merchandise. This was a compromise between those who wanted to ban all AD/CVD merchandise from zones and those who believed that zones should have the same ability to make use of AD/CVD merchandise as exists in non-U.S. locations. This compromise is more important than ever, given our renewed focus on manufacturing for export. Retail distribution for export also requires this flexibility.

However, to an even greater extent than in 1991, global competition is a fact of life critically important to most American companies. The need for flexibility in Customs procedures, especially in export competitiveness, is vital to the creation of jobs and economic activity that otherwise could happen outside our country. Continued foreign investment, which is a critical job-creation engine (see President's Statement, June 20, 2011 and accompanying report of the Council of Economic Advisors), requires that U.S. based production can be treated the same as foreign based production for U.S. tariff treatment purposes. Investment as well as procurement and employment takes place in a global marketplace today where businesses have many more choices than they did a generation ago. The FTZ

regulations must continue to position the U.S. to compete globally for jobs and economic activity, a primary purpose of the program since 1934.

We note that the May 26 comments filed on behalf of MPM discuss in detail the considerations that went into the 1991 regulations. We agree with this analysis and urge that the Board maintain the existing presumption that manufacturing for export is in the public interest.

This can and should be accomplished by the publication of a Board Order that explicitly authorizes in advance manufacturing activity under FTZ procedures in authorized locations, provided that only privileged foreign or domestic status merchandise is used in such manufacturing. Any zone operation that includes the use of non-privileged foreign merchandise in manufacturing (inverted tariffs) would require advance approval by the Board before commencement of such operations, as is the case today.

Clearly, any company considering a new or expanded manufacturing operation would conclude that an operation in a foreign country that requires no advance approval will be preferable to one that requires a lengthy and uncertain review process. Therefore, we oppose the comments that supported advance approval for manufacturing that incorporates AD/CVD merchandise, and urge the Board to reject them as contrary to the public interest.

If privileged foreign status is required for inputs, AD/CVD duties will be imposed upon entry of finished goods into the United States if they contain AD/CVD merchandise. Requiring entry and duty payment for production inputs for later export is not rational because it cedes business advantage to companies located outside the United States. Only once in recent memory has the Board required entry and duty payment on AD/CVD merchandise for export manufacturing. Nothing in the proposed regulations would prevent the Board from exercising its discretion to restrict activity in specific cases upon expression of public interest concern and review of specific facts and circumstances. But nothing in one case supports a regulation pushing export manufacturing offshore.

There is no public benefit in enshrining in a regulation a requirement for advance approval for export manufacturing. The current presumption in the regulations should be strengthened, not weakened; the proposed regulation, to its credit, introduced the concept of manufacturing without awaiting a lengthy approval process. The requirement of advance approval in all cases would cost result in less American export manufacturing and lost American jobs.

Moreover, advance approval is not needed to prevent harm to domestic industry. The Board should provide an expeditious opportunity to identify and address objections to a particular use, without making *all* applicants go through a process of advance approval. The country could thus avoid the likely impact on the economy of companies relocating to foreign countries rather than facing the burdens of advance approval. The Board would also avoid the burden of conducting lengthy investigations in every export manufacturing situation. It must be remembered that locating outside the United States requires no advance approval.

We also believe that the Board should not restrict export manufacturing in specific cases, so long as similar operations could be conducted outside the United States. While we fully support the enforcement of trade laws, exclusion orders and sound tariff policy, we believe that a rigid requirement in the regulations for advance approval would harm U.S. competitiveness in the majority of cases where there is no objection and needlessly burden applicants and the Foreign Trade Zones Board.

- 2. Uniform Treatment/Public Utility Principles.** The majority of the comments submitted objected to the proposed Foreign-Trade Zone Board Regulations and how they addressed both uniform treatment and public utility principles. It is noteworthy that 59 comments were filed supporting the Association's position. A very few comments supported the extensive provisions governing uniform treatment and public utility principles. We reaffirm our support of a simpler and more direct method of resolving issues in this area, as reflected in our May 4 comments.

Our primary concern is that the additional burdens could force Grantees to withdraw from the FTZ program. Given that many smaller public Grantee organizations expressed their concern that restricting access to outside FTZ administrators would put them at a significant disadvantage from larger public Grantee organizations that could afford an in-house FTZ manager. A number of Grantees supported these comments. The few comments that supported these provisions embraced the principles of uniform treatment and avoiding conflicts of interest; but they did not address the serious dislocations that the proposed rules would introduce into the administration of zones. NAFTAZ did so; we have suggested important modifications to the rules to prevent unnecessary disruption and burden to FTZ projects, especially those entrusted to small public Grantees.

- 3. Fines and Penalties.** Only one comment specifically called for comprehensive fines and penalties or supported the proposed rule (Section 400.62), but many comments endorsed the NAFTAZ position. The NAFTAZ continues to support its suggested changes to the provisions on fines and penalties.

The significant fines and penalties provisions in proposed Section 400.62 raised serious concerns for our members, which they have expressed in the comment process, both explicitly and through support of NAFTAZ's comments. The new fines and penalties section would have a chilling effect on new and existing zone projects. Significant changes that NAFTAZ suggested to provide a reasonable level of assurance that fines or penalties would be limited to appropriate circumstances. In addition, the NAFTAZ supports a voluntary disclosure provision, with certain necessary changes.

- 4. Alternative Site Framework/Foreign-Trade Subzones.** In several comments, including our own, it was urged that the Alternative Site Framework (ASF) be better defined in the final Board regulations. We also note that one comment (from FTZ 39) specifically mentioned the necessity for similar treatment of ASF zone sites and Subzones. We agree that they should be treated the same; in addition, the NAFTAZ supports treatment that recognizes the need for practical administration and a minimum of regulatory burden. In short, ASF sites should be given all the benefits of Subzones that the Board can provide, including all reasonable operational flexibilities.

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The NAFTAZ appreciates the opportunity to provide these reply comments. They should be read together with our extensive comments dated May 4, 2011 and our additional comments filed May 19, 2011.

The many issues raised in the initial comments require careful balancing of interests. We look forward to working with the Foreign Trade Zones Board, our members and all stakeholders to craft a balanced and effective set of new regulations. We would support a further proposed rule comprehensively taking into account the necessary considerations.

We continue to believe that a strong U.S. Foreign-Trade Zone program is essential to sustain and enhance the U.S. investment and jobs created by the Foreign-Trade Zone program. We would be pleased to discuss the issues identified in this submission, as well as what had been provided previously.

Very truly yours,



Dr. Willard M. Berry
President