

COMMITTEE TO SUPPORT U.S. TRADE LAWS

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June 27, 2011

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

Re: CSUSTL Rebuttal Comments; Foreign-Trade Zones in the United States; Docket Number ITA-2010-0012; RIN 0625-AA81

Dear Mr. McGilvray:

These rebuttal comments are submitted on behalf of the Committee to Support U.S. Trade Laws (“CSUSTL”) in response to the request for comments on the proposed regulations of the Foreign-Trade Zones Board (the “Board”) and the notice extending the public comment period.¹ We appreciate this opportunity to provide rebuttal comments concerning the proposed regulations.

CSUSTL is an organization of companies, trade associations, labor unions, workers, and individuals committed to preserving and enhancing U.S. trade laws. Its membership spans all sectors, including manufacturing, technology, agriculture, mining and energy, and services.

CSUSTL strongly opposes the use of foreign-trade zones as a means of escaping payment of antidumping or countervailing duties (“AD/CVD”). Such use of Foreign-Trade Zones (“FTZs” or “zones”) undermines AD/CVD orders protecting U.S. companies and workers that have been injured by unfair import competition and facilitates continued dumping and subsidization. This is true regardless of whether the merchandise manufactured with a product covered by an AD/CVD order is entered into the U.S. for consumption or is exported.

I. CSUSTL Supports the Advance Approval Requirement for Production Activity Involving Products Subject to AD/CVD Duties

The proposed regulations would require advance Board approval for all production activity in FTZs that involves articles subject to AD/CVD orders. Such advance approval would

¹ *Foreign-Trade Zones in the United States*, 75 Fed. Reg. 82,340 (Dec. 30, 2010) (“Proposed Rule”); *Foreign-Trade Zones in the United States*, 76 Fed. Reg. 12,887 (Mar. 9, 2011).

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be obtained through a formal application and review process. As part of this process, the applicant would be required to describe the proposed production activity, including the inputs/components that will be used, and to identify the inputs/components that are subject to any AD/CVD duty. The proposed regulations would also mandate publication of a notice of initiation of the review, including an invitation for public comment, and allow directly affected parties to request a hearing on the application.

The preamble to the proposed regulations makes clear that the advance approval requirement is intended to address the public interest concerns that are raised by the use of FTZs to avoid paying AD/CVD duties. It is longstanding Board policy that FTZs are not to be used to circumvent or undermine AD/CVD orders. The U.S. unfair trade laws are intended to protect U.S. producers, as well as their workers and the communities in which they live, from injury caused by unfairly traded imports. The use of FTZs to avoid paying AD/CVD duties weakens the effectiveness of these laws and is contrary to congressional intent.

The advance approval requirement of the proposed regulations would strengthen the ability of the Board to ensure that FTZs are not used in a manner that damages import sensitive U.S. industries and is contrary to the public interest. For these reasons, the Board should retain the advance approval requirement in the final version of the regulations.

II. The Comments Submitted by the NAFTAZ, Dow Corning, and Others Advocate Changes That Would Effectively Eliminate the Advance Approval Requirement

The National Association of Foreign-Trade Zones (“NAFTZ”), Dow Corning, and others are advocating changes to the proposed regulations that would fundamentally undermine the advance approval requirement for production activity involving articles subject to AD/CVD orders. These suggested changes would weaken the requirement that applicants for production authority identify each material/component to be used in the proposed activity and disclose whether the material/component is subject to any AD/CVD duty, by focusing the application process on “intermediate/finished products not detailed listings of materials/components used to produce such products.”² More importantly, the changes would alter the scope of approval of production authority so that it would encompass production of the intermediate or finished products approved by the Board – including “all inputs used to make the intermediate or finished products”³ – instead of being limited to the specific “inputs, finished products, and production capacity presented in the approved application,” as the proposed regulations would require.⁴

The NAFTAZ, Dow Corning, and others also advocate unreasonably short deadlines for Board and U.S. Customs and Border Protection actions, the use of an expedited approval process, and other inappropriate changes in the application and review process for proposed production activity. These changes would impede parties affected by the proposed activity from

² NAFTAZ Comments at 41 (May 4, 2011).

³ *Id.* at 30.

⁴ Proposed Rule, 75 Fed. Reg. at 82,350.

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receiving proper notice and having an adequate opportunity to make their views known to the Board. In addition, these changes would prevent the Board from having sufficient time to evaluate fully the proposed activity and to take into account the views of companies and workers affected by the activity.

Finally, the NAFTAZ and others advocate changing the subsection of the proposed regulations containing the statement of Board policy that zone procedures shall not be used to circumvent AD/CVD actions in a way that would invalidate that policy. They advocate adding new language requiring the Board to approve zone activity “for export whenever it finds that U.S. competitiveness will be advanced and that similar activities are authorized in other countries.”⁵ Not only would this suggested new language undercut the Board’s longstanding policy of restricting the use of zones to circumvent AD/CVD orders, it would also negate the standards and considerations that the Board applies in determining whether proposed zone activity is in the public interest.

III. The Board Should Reject The Proposed Changes by the NAFTAZ and Others as Noted Above and Ensure that the Final Regulations Provide for Proper Notice to Parties Affected by Any Proposed Use of an FTZ to Avoid Paying AD/CVD Duties and for a Full Opportunity to Comment for Those Affected Parties

The proposed advance approval requirement for production activity involving articles subject to AD/CVD orders is consistent with longstanding Board policy and addresses the public interest concerns raised by the use of FTZs to avoid paying AD/CVD duties. Accordingly, the Board should retain this requirement in the final version of the regulations and should reject the changes proposed by the NAFTAZ and others.

In addition, the Board should ensure that the final regulations include strong disclosure obligations and other procedural safeguards to provide notice and a full opportunity for comment by parties affected by the proposed use of FTZs for production activity involving articles subject to AD/CVD.

Very truly yours,



Alan Price
Vice-President

Committee to Support U. S. Trade Laws

⁵ NAFTAZ Comments at 31 (May 4, 2011).