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Docket No. ITA-2010-0012

Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
International Trade Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 2111
Washington, D.C. 20230

Re: *Foreign-Trade Zones in the United States*, 75 Fed. Reg. 82,340 (Dec. 30, 2010)
(proposed rule and request for comments); Reply to Public Comments, Stewart and Stewart

Dear Executive Secretary McGilvray:

Stewart and Stewart is filing these reply comments in response to the public comments filed pursuant to the Federal Register Notice identified in the caption. Our firm frequently represents American producers and workers in antidumping and countervailing duty proceedings. For the reasons discussed below, we support the agency's proposed rules concerning the administration of Foreign-Trade Zones ("FTZs") as they relate to the treatment of merchandise subject to antidumping duty ("AD") or countervailing duty ("CVD") orders.

I. BACKGROUND

Pursuant to 19 U.S.C. § 81b, the Secretary of Commerce and the Secretary of the Treasury may establish, operate, and maintain FTZs. 19 U.S.C. § 81b(a). Foreign



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merchandise that enters into a FTZ may do so without being subject to the customs laws of the United States. *Id.* § 81c(a).¹ However, if that merchandise is sent from a FTZ into U.S. customs territory, “it shall be subject to the laws and regulations of the United States affecting imported merchandise.” *Id.* Thus, foreign merchandise that is under the discipline of an AD or CVD order is exempt from the AD or CVD order upon entry to the FTZ, and AD or CVD duties are not assessed unless and until the merchandise is sent from the FTZ to U.S. customs territory. 19 C.F.R. § 400.33(b)(2) (stating that, with regard to items that are subject to an AD or CVD order, “{u}pon entry for consumption {in U.S. customs territory}, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355”). The Department of Commerce (the “Department”) has consistently recognized that FTZs should not be used as a means to avoid payment of antidumping and countervailing duties. Indeed, the regulations themselves explicitly include such a requirement, stating that “{z}one procedures shall not be used to circumvent {AD} and {CVD} actions” 19 C.F.R. § 400.33(b)(1).² Therefore, any modifications to the Department’s regulations should continue to promote the goal of and assist the Department in ensuring that FTZs are not used to circumvent AD and CVD orders.

II. THE DEPARTMENT SHOULD REQUIRE ADVANCED APPROVAL FOR PRODUCTION ACTIVITY THAT INVOLVES INPUTS SUBJECT TO AD AND CVD ORDERS AND INPUTS THAT ARE NEWLY SUBJECT TO AD AND CVD ORDERS.

¹ Specifically, pursuant to the statute, the merchandise, “may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise{.}” 19 U.S.C. § 81c(a).

² The proposed rules do not seek to change this requirement. *Foreign-Trade Zones in the United States*, 75 Fed. Reg. 82,340, 82,343 (Dep’t Commerce Dec. 30, 2010) (proposed rule and request for comments) (“Section 400.14(g) mirrors current § 400.33(b).”).

Stewart and Stewart supports the Department's proposed rules insofar as they seek to ensure that FTZs are not used to circumvent AD and CVD actions. Under the current agency regulations, approval by the FTZ Board or the Department is required

prior to the commencement of manufacturing beyond the scope of that approved as part of the application or pursuant to reviews under this part . . . and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components.

Id. § 400.28(a)(2). In adopting this regulation, the Department explained that it “has a responsibility to evaluate zone activity in terms of the public interest, not only at the time the applications are reviewed, but also on a continuing basis as circumstances change.” *Foreign-Trade Zones in the United States*, 56 Fed. Reg. 50,790, 50,794 (Dep't Commerce Oct. 8, 1991) (final rule) (“1991 Final Rules”).

The proposed regulations recognize the continued importance of ensuring that FTZ activity is in the public interest and that FTZs are not utilized to circumvent AD and CVD orders. The Department explained that proposed section § 400.14(a) “parallels the general effect of current § 400.28(a)(2), but focuses on the types of production activity that have raised public interest concerns in certain circumstances in the past, or that appear to have significant potential to raise such concerns in the future (e.g., . . . avoidance of antidumping or countervailing duties . . .).” *Foreign-Trade Zones in the United States*, 75 Fed. Reg. 82,340, 82,343 (Dep't Commerce Dec. 30, 2010) (proposed rule and request for comments) (“2010 Proposed Rules”). In the *2010 Proposed Rules*, the Department proposed the elimination of

the general requirement for advance approval from the FTZ Board for all manufacturing (*i.e.*, substantial transformation) activity. The proposed regulations would only require advanced approval for production activity

under specific circumstances (*e.g.*, if a lower U.S. duty rate will be applied to a component through its incorporation into a downstream product in the FTZ) (see § 400.14(a)).

Id. at 82,342. Specifically, the proposed regulation (§ 400.14(a)) requires advance approval for all production activities in zones and subzones that involve certain articles, including articles that are subject to AD or CVD orders and articles that become subject to AD or CVD orders that were not previously in effect. *Id.* at 82,350 (proposed § 400.14(a)(2) and (a)(4)(ii)).

In the public comments submitted in response to the Department's proposed rules, some parties have voiced concern that these regulations would impose burdensome requirements. However, as the Department explained, these regulations have been "carefully balanced" to ensure that the Department is able to "restrict activity that is determined not to be in the public interest." *2010 Proposed Rules*, 75 Fed. Reg. at 82,341-42. Requiring advance approval of activity that would involve inputs subject to AD and CVD orders, and of activity involving inputs that have become subject to a new AD or CVD order, further supports the Department's objective of ensuring that FTZs are not used to circumvent AD and CVD orders. Moreover, requiring advance approval provides the opportunity for interested domestic parties to receive notice and submit public comments,³ furthering the Department's objective of ensuring that FTZs are in the public interest. *See 1991 Final Rules*, 56 Fed. Reg. at 50,790 ("The regulations are designed to make zone procedures reasonably accessible to qualified zone users without resulting in harmful consequences that are detrimental to the public interest."); *2010 Proposed Rules*, 75 Fed. Reg. at 82,342 ("The

³ Proposed § 400.22(a) requires that an application for proposed production activity under § 400.14(a) must include, among other information, whether any "product or material/component" is subject to an AD or CVD order. *2010 Proposed Rules*, 75 Fed. Reg. at 82,352. Pursuant to proposed § 400.32(c), an application under proposed § 400.22 must be published in the Federal Register, which will include an invitation for public comment. *Id.* at 82,354.

proposed regulations are intended to improve access and flexibility . . . and to enhance safeguards in order to avoid negative economic activity from certain zone activity.”).

Finally, the Department has often required approval of certain types of activity that occur in FTZs despite the burden that may potentially result,⁴ recognizing that it must consider whether FTZs are in the public interest “on a continuing basis as circumstances change.”

1991 Final Rules, 56 Fed. Reg. at 50,794. Thus, the Department should adopt the discussed changes to its regulations because they help guarantee that FTZs are not used to circumvent the trade remedy law and that FTZs are in the public interest.

III. CONCLUSION

Stewart and Stewart appreciates the opportunity to provide these comments to the Department and thanks the agency for its attention.

Respectfully submitted,



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⁴ For example, in responding to comments regarding the adoption of § 400.28(a)(2), some of which argued that the approval requirements would be too burdensome, the Department noted that “require{ing} that changes in the scope of manufacturing activity are subject to further approval has been a long-standing practice. It has been included as a proviso in zone grants issued since the early 1970s requiring notification for approval prior to the commencement of new manufacturing activity.” *1991 Final Rules*, 56 Fed. Reg. at 50,794.