

National Association of Foreign-Trade Zones
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October 21, 2009

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

Re: Foreign Trade Zones Board Docket Numbers 20-2009, 22-2009—Comments of the National Association of Foreign Trade Zones

Dear Mr. McGilvray:

The National Association of Foreign-Trade Zones (NAFTZ) hereby submits comments to the Foreign Trade Zones Board for the record of the above-reference applications. These comments supplement the statement of the NAFTZ at the public hearing held on September 1, 2009. The NAFTZ is a not-for-profit trade association representing a membership of over six hundred (600) people representing 361 public and private organizations.

In these comments, the NAFTZ addresses the issue of whether goods subject to antidumping or countervailing duties should be permitted to be processed in foreign trade zones for export, which is expressly permitted under the Foreign Trade Zones Act and the regulations which were promulgated in 1991. The NAFTZ strongly supports the authority of the Board under these regulations. The policy encouraging the productive employment of Americans that otherwise could be done overseas applies to all products, including those that may be subject to antidumping or countervailing duties if entered directly into the Customs territory of the United States.

The Board wisely chose to permit value-added activities in zones for export using goods otherwise subject to antidumping or countervailing duties, because they were aware that the alternative to using globally competitive products in the United States would be using them in other countries and denying U.S. workers and companies a share of global markets.

Those parties objecting to the proposed activities for export have mischaracterized this issue as a “loophole” in the protection afforded to domestic petitioners in antidumping and countervailing duty cases. That characterization utterly fails to consider that the alternative to FTZ operations in the U.S. is to cede the production and jobs to manufacturers outside the United States. The NAFTZ’s core function is to promote U.S. activity that could otherwise be done abroad.

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The Foreign Trade Zones Act clearly permits the Foreign Trade Zones Board to make this choice, including allowing the use of goods subject to antidumping and/or countervailing duties in zones. The 1991 implementing regulations explicitly provide that merchandise subject to antidumping or countervailing duties must be admitted to a zone in privileged foreign status, which retains the tariff classification, country of origin and any antidumping or countervailing duty liability until the finished product is entered for consumption into the U.S. Customs territory. When Customs entry is made, regular Customs duties are assessed and deposits of estimated antidumping and countervailing duties are paid.

If goods are processed and then exported, they are not entered for consumption in the United States and antidumping and countervailing duties, along with ordinary Customs duties, are not applicable. U.S. manufacturers producing for export markets are thereby able to compete in global markets. If the Board required payment of antidumping and countervailing duties to be paid on goods that would be exported, U.S. production for foreign markets would be uncompetitive.

At the September 1 public hearing, the representative of CSUSTL argued incorrectly that language in the legislative history of the 1988 amendment that restricted duty drawback for goods subject to antidumping and countervailing duties should apply equally to foreign trade zones. To the contrary, the 1988 provision by its terms applies only to duty drawback and not to zones or any other Customs procedure (bonded warehouses and temporary importations under bond). This is a telling point. CSUSTL's argument wrongly attempts to elevate legislative history to a higher interpretive station than the statutory language; the latter, which is all that matters, refutes CSUSTL's position.

It is important to consider that domestic producers that file antidumping and countervailing duty petitions would gain no benefit from denying FTZ exporters the ability to compete in global markets. Imposing draconian duties on products subject to antidumping or countervailing duty orders would make U.S. exports uncompetitive in global markets, because foreign factories are able to use those same inputs at much lower cost. The Board's 1991 regulations reflect this reality and correctly balance the interests of zone users and petitioning U.S. producers. The Board's judgment was sound in 1991. Nothing has changed since then to call that policy decision into question.

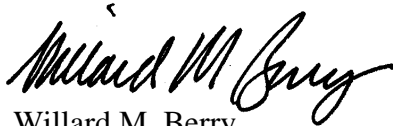
The evidence is clear that the Board's policy is based on simple common sense. There is no legal "loophole" and, what is more, there is no policy justification for tying the hands of the Board with draconian and punitive restrictions that would cost American jobs. The key policy objective of foreign-trade zones is the encouragement of economic activity in the United States that could otherwise be done in other countries. If the Board were to hamstring exports as suggested by the objecting parties, U.S. manufacturers would be harmed and no one would be helped. This is an issue of simple economics. With the current state of employment in the United States, any other policy choice would be damaging in the extreme.

The current regulations strike a balance that considers antidumping and countervailing duty petitioners, importers and U.S. manufacturers. Foreign manufacturers are able to use merchandise in their products that would be subject to antidumping and countervailing duties in the United States, were the objectors to have their way. As the voice of companies and communities desiring more competitive U.S. manufacturing, the NAFTAZ strongly urges the Board to remain faithful to its wise policy choice to promote U.S. export competitiveness. If a non U.S. factory can use these inputs, the Board should retain the ability to permit exporters in the United States to do the same.

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The NAFTAZ appreciates this opportunity to comment on this important matter affecting the U.S. Foreign-Trade Zones program and the NAFTAZ membership.

Sincerely,

A handwritten signature in black ink, appearing to read "Willard M. Berry". The signature is written in a cursive, flowing style.

Willard M. Berry
President