

**PROPOSAL FOR TRADE AGREEMENT PARITY FOR U.S. MANUFACTURERS
FACT SHEET—DISCUSSION DRAFT (JANUARY 2008)**

Under the current practice of the Foreign-Trade Zones Board, when goods are entered in the Customs territory of the United States for consumption, or for exportation to a free trade agreement (FTA) country (e.g., NAFTA, Chile), the duty rate applied to the entered good is the “Column 1” rate of duty, which applies to imports from countries that do not have free trade agreements with the United States.

This practice penalizes U.S. manufacturing operations that compete with imports from FTA countries, where originating goods enter the United States at duty rates lower than the Column 1 rate of duty, or, in many instances, duty-free.

The imposition of duties on U.S.-produced goods higher than those of FTA countries is a competitive burden on U.S. manufacturers. By moving operations to an FTA country and out of the United States, manufacturers can obtain more favorable duty treatment than by staying in the United States. There is little doubt that such relocations are occurring. The Foreign Trade Zones Board’s current practice of limiting duty benefits to Column 1 duty rates maintains this disadvantage for U.S. manufacturers.

This problem can be addressed through an existing program that considers all affected parties. The National Association of Foreign Trade Zones supports legislation to remove this disincentive to U.S. manufacturing by permitting qualified (zone-based) U.S. manufacturers to receive FTA duty rates (including the elimination of duties where appropriate and charges such as the Merchandise Processing Fee) when they produce finished products that qualify under the appropriate FTA rules of origin.

Brief Description of the Proposed Legislation

The proposed legislation would specifically authorize entry of merchandise for consumption in the Customs territory of the United States at rates provided in FTAs, if the appropriate rule of origin under an FTA is met and the Foreign Trade Zones Board determines that this would not be contrary to the public interest, and the zone user meets the appropriate rule of origin under the FTA. Any FTA rule of origin would be permitted to suffice to meet this test, subject to the review of the Foreign Trade Zones Board. The effect of this would be for U.S. manufacturers to obtain the same duty treatment for manufacturing as would be available if the same facility were located in an FTA country.

As is the case with current public interest determinations, the Board would be authorized to approve requests for the use of FTA duty rates unless it concludes that this would be contrary to the public health, safety or interest. A zone user or applicant would be required to submit an application for authority to use FTA rates in a manner similar to that provided for manufacturing approval under current regulations.

The legislation would also allow foreign-trade zone users to obtain FTA duty rates under NAFTA for merchandise entering U.S. Customs territory for consumption, by repealing legislation that restricts that right under the NAFTA implementing legislation.

Reasons for the Change

Since 1950, when manufacturing was first permitted in U.S. foreign trade zones and subzones, a key benefit of FTZs has been the ability of the Foreign Trade Zones Board to eliminate “inverted tariffs,” where the duty rate on finished goods is lower than the rate on imported inputs. Today, with the proliferation of FTAs, U.S. manufacturers face a new kind of inverted tariff problem: imported goods eligible for duty-free or reduced-duty benefits compete with U.S.-produced goods that must pay higher, “Column 1” duties.

Attached is a table showing the growth in imports of products eligible for FTA status, by HTS Chapter number. It shows that duty-free imports of products competing with U.S.-manufactured articles are growing and have reached the point where the disparity created by these imports is very significant and should be addressed. Indeed, duty-free imports under FTAs have increased dramatically in the last ten years. If this problem is not addressed, the U.S. risks driving away domestic manufacturing activity that would otherwise be competitive in the U.S.

We can remove this disincentive to manufacture in the United States that is an unintended consequence of the FTAs without diminishing the value of open trade. The solution is to allow U.S. manufacturers to compete on equal terms with facilities in FTA countries. Reducing the effective duty rate on U.S.-manufactured goods to FTA levels qualifying under appropriate rules of origin would accomplish this goal. It will improve U.S. manufacturing competitiveness by reducing rather than raising trade barriers. The reduction in effective duty rates for zone-based manufacturers would not violate any trade agreement; nor would it act as a unilateral reduction in tariffs by the United States.

The proposal would fully preserve the consideration of the “public interest” by the Foreign Trade Zones Board which exists in current law. Thereby, the Board could avoid unintended consequences to other U.S. industries in specific cases. Each foreign trade zone or subzone user would be required to apply for authorization to employ the FTA duty rate on their zone-produced goods, and such treatment would be limited to those products that meet the requirements of an FTA’s rules of origin.

The procedures for applying for authorization to employ FTA duty rates would be analogous to those used to obtain new manufacturing authority under the Foreign Trade Zones Act and regulations. The process would not require significant new analytical methods or change any existing rules of origin.

Proposed legislative language

- (a) 19 U.S.C. § 81c(a) is amended as follows:

After the words “subject to the laws and regulations of the United States affecting imported merchandise: *Provided*,” insert the following:

“that if foreign merchandise is incorporated into a finished good, or is processed, manipulated or manufactured in a zone, upon entry into the customs territory of the United States, upon authorization under this chapter it shall be dutiable at the rate prescribed in the Harmonized Tariff Schedules of the United States applicable to such merchandise under the rules of origin of any agreement affecting the dutiability of merchandise to which the United States is a party; *Provided further*,”

- (b) 19 U.S.C. § 3332(a)(2)(A) is repealed. 19 U.S.C. § 3332(a)(2) is amended to read as follows:

“(2) Special rule

“For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b) of this section, is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.” 1/

- (c) Effective date

This act shall apply to merchandise entered [or withdrawn from warehouse] for consumption on or after 15 days or later after the date of enactment of this provision.

1/ See Appendix A for background.

Explanation:

These amendments would have the effect of permitting zone-based manufacturers to obtain free-trade agreement treatment (typically duty free) for goods that meet the rules of origin of any FTA to which the United States is a party. They would apply to any good that meets the requirements of one or more FTAs.

Under the Foreign-Trade Zones Act, current law does not prescribe the duty rate that is applicable to imported goods. The statute simply provides that merchandise that enters the U.S. customs territory shall be subject to “the laws and regulations affecting imported merchandise”. Customs and the Foreign Trade Zones Board have traditionally interpreted this provision to apply “Column 1” rates of duty (MFN or NTR rates) to merchandise entered into the customs territory from a zone.

This provision would clarify the law: it would create a presumption that, if the zone-based manufacturer meets the rule of origin requirements of any FTA and applies for the benefit of FTA treatment, it could enter the merchandise under the preferential rate for consumption in the U.S., or for export to the FTA partner. Otherwise, the Column 1 rate would apply.

For example, under NAFTA a product that is made from materials that are the growth or product of one or more NAFTA countries, is made from materials that have undergone the requisite tariff shifts and/or regional value content calculations, and is appropriately certified as an originating good, will be entitled to the rate for that good in the Harmonized Tariff Schedule of the United States applicable to goods from Canada or Mexico.

A zone-based manufacturer would be permitted to invoke the origin rules of any FTA to which the United States is a party. To date, agreements are in effect with the following countries: Canada, Mexico, Israel, Chile, Honduras, Costa Rica, Nicaragua, El Salvador, Belize, the Dominican Republic, Jordan, Morocco, Bahrain, Oman and Peru. However, the Board would be authorized to deny FTA treatment under the rules of origin of an FTA if it determined that allowing the preferential lower duty rates would be contrary to the public interest.

The provision would not apply to goods eligible for duty-free treatment under the Generalized System of Preferences (“GSP”), AGOA, CBI or other unilateral preference program.

Under provisions requiring an entry in the nature of a consumption entry prior to exportation to an FTA country, such as NAFTA and the U.S.-Chile Free Trade Agreement, the requirement for such an entry would be maintained, but the duties would be the FTA-eligible rate, if applicable, in the same manner as an actual consumption entry.

The provision would create a potential difference between foreign trade zones and non-zone producers. This is appropriate under the circumstances, because the zone environment permits control over the origin determination by Customs and full review of the operations and accounting of the zone operator and user. It thus prevents unintended effects that could harm other U.S. industries. Moreover, the zones program would be available to any manufacturer desiring to take advantage of this provision, so long as the applicant meets the public interest criterion under the Act.

The Foreign Trade Zones Board's "public interest" procedures would provide an opportunity for full consideration of any manufacturing issues. If U.S. producers were concerned about the domestic competitive impact of zone-based manufacturers taking advantage of FTA duty rates, they would have the opportunity to object and request the Foreign Trade Zones Board to conduct a public interest review, as is now permitted under current procedures. This proposal would not change those provisions.

The Board would be permitted to restrict any grant of manufacturing authority for public interest reasons, as is the case under current law. This would include the authority to impose Column 1 rates of duty if the FTA duty rate is found to be contrary to the public interest.

Appendix A

19 U.S.C. § 3332. Rules of origin

(a) Originating goods

(1) In general

For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as otherwise provided in this section, a good originates in the territory of a NAFTA country if--

(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;

(B)(i) each nonoriginating material used in the production of the good—

(I) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or

(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and

(ii) the good satisfies all other applicable requirements of this section;

(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or

(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, does not undergo a change in tariff classification because--

(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or

(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or

(II) the subheading for the good provides for and specifically describes both the good itself and its parts.

(2) Special rules

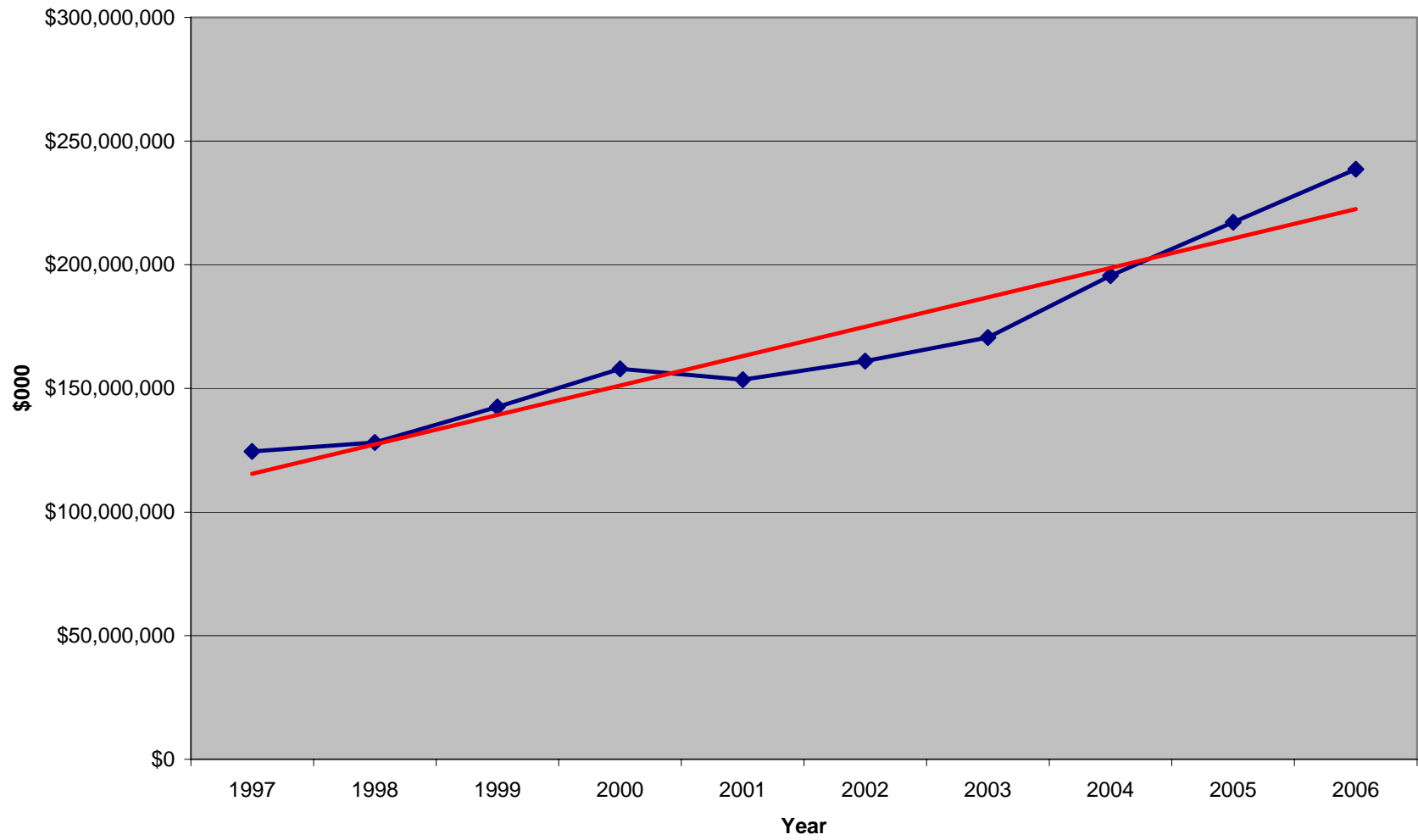
(A) Foreign-trade zones

Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act [19 U.S.C. 81a et seq.]) that is entered for consumption in the customs territory of the United States.

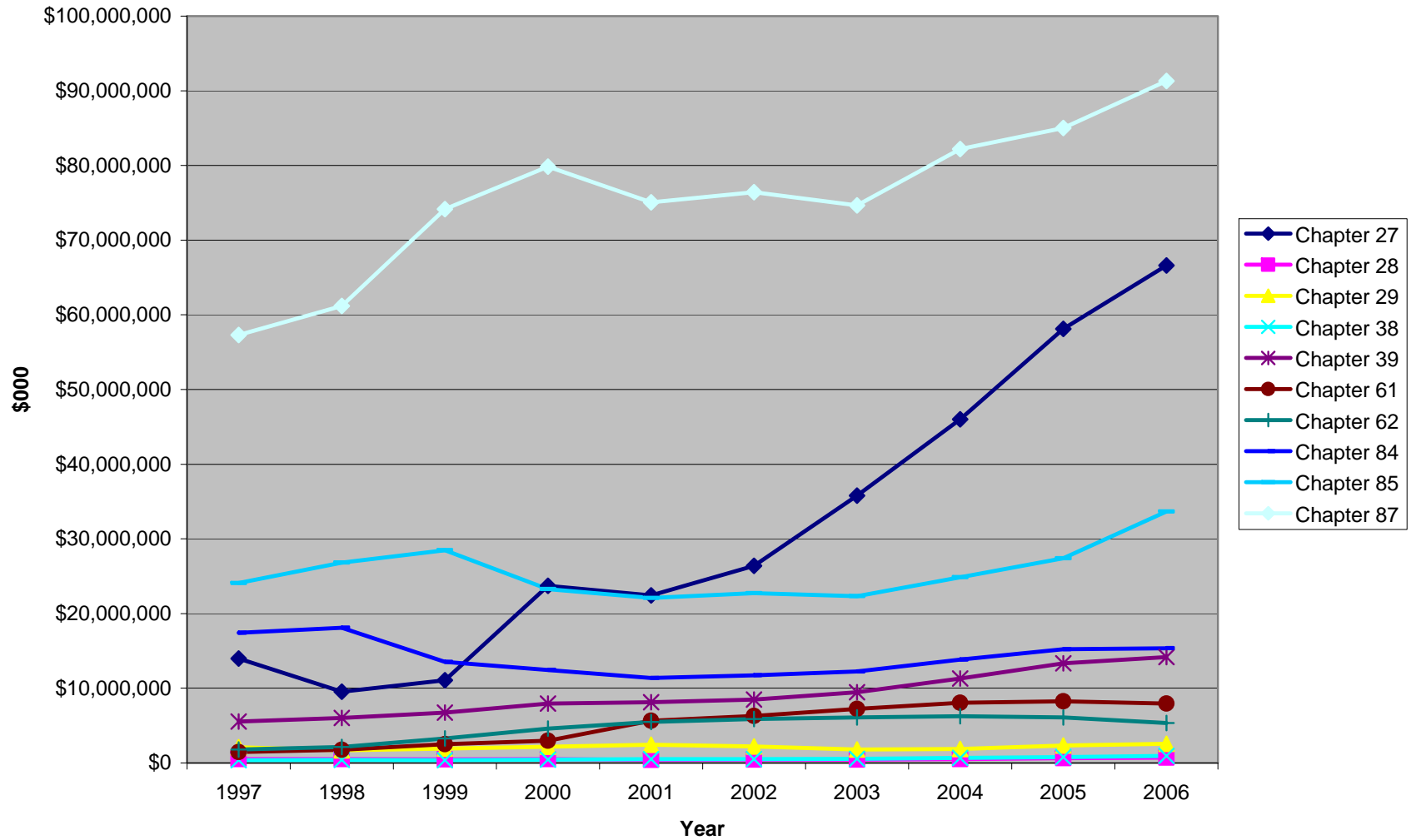
(B) Regional value-content requirement

For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b) of this section, is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.

FTA Imports, 1997-2006
HTS Chapters 27, 28, 29, 38, 39, 61, 62, 84, 85, 87



FTA Imports 1997-2006 by Chapter



**FTA Imports 1997-2006
Percentage Change by Chapter**

