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## **Hearing on Proposed Sec. 301 Action Against Imports from China**

Testimony of Erik Autor, President, National Association of Foreign-Trade Zones (NAFTZ)

My name is Erik Autor, President of the National Association of Foreign-Trade Zones. Congress created the U.S. Foreign-Trade Zones program in 1934 to help U.S.-based companies be more globally competitive; maintain U.S.-based manufacturing and distribution and jobs; attract investment and employment opportunities into American communities; and boost exports through special duty benefits and customs procedures.

A quirk in the Customs-entry process for zone-manufactured merchandise has resulted in the unwarranted assessment of Section 301 duties on some finished products manufactured and substantially transformed into new products in U.S. foreign-trade zones. Consequently, NAFTZ requests an exclusion from Section 301 duties for all such products.

I want to emphasize that this exclusion would in no way affect the liability for Section 301 duties on any subject inputs admitted into an FTZ in Privileged Foreign (PF) zone status, which ensures that applicable duties on subject foreign-origin inputs are paid upon Customs entry.

This exclusion is necessary because some finished products that are manufactured and substantially transformed into different products in U.S. foreign-trade zones, but which correspond to Chinese-origin products listed by HTS line on Section 301 target lists, are inappropriately being assessed additional Section 301 duties even though they are, and should be treated as, products of the United States.

This situation has arisen because, for statistical purposes, existing guidance from U.S. Census and Customs and Border Protection directs FTZ manufacturers to identify on entry documentation the country of origin of their highest-value foreign-status components.

This requirement, combined with the lack of clear guidance from USTR on the treatment of FTZ-produced goods under trade-remedies actions it administers, has inadvertently resulted in products manufactured and substantially transformed in U.S. FTZs being erroneously treated as imports from China if the highest-value component, even by a small margin, happens to be Chinese origin. As a result, some FTZ manufacturers are facing hundreds of thousands of dollars in additional and unexpected duty liability.

Department of Commerce avoided this problem in the Section 232 cases on steel and aluminum by securing Presidential Proclamation language, stating “. . . articles shall not be subject upon

entry for consumption to the duty established in [this] Proclamation . . . merely by reason of manufacture in a U.S. foreign trade zone.”

However, USTR has failed to include similar language in the 301 trade actions. This omission has directly led to the problem described for FTZ-manufactured products.

For the following reasons, we urge USTR to follow the Commerce Department example and correct this problem by exempting all U.S.-origin products manufactured and substantially transformed in U.S. FTZs from Section 301 duties:

- The June 20 and July 17 Federal Register notices specifically describe the Section 301 trade actions as the “imposition of an additional 25 percent *ad valorem* duty on products of China.”
- U.S. manufacturers in an FTZ make goods in the United States, employing American workers, and adding U.S. domestic value in the same manner as U.S. manufacturers producing the same goods outside an FTZ.
- Customs regulations and case law confirm that goods manufactured and substantially transformed into a different product in a U.S. FTZ are U.S.-origin, not foreign-origin products.
- Therefore, in applying trade remedies, goods manufactured and substantially transformed into a different product in a U.S. FTZ should be treated the same as similar goods produced in the United States outside an FTZ and should not be treated as if produced in and imported from a foreign country.
- Collecting trade-remedies duties on U.S.-origin products from an FTZ would have the following unintended, adverse consequences:
  - Penalize U.S.-made products these trade actions are designed to protect;
  - Undermine FTZ-program goals by forcing U.S. companies to leave the program and possibly move production outside the United States, with a loss of American manufacturing jobs;
  - Damage U.S. manufacturers while providing no negotiating leverage against unfair foreign trade practices;
  - Potentially result in the assessment of duties on the value of both: (1) inputs from a target country admitted in the zone in Privileged Foreign (PF) zone status; and (2) all foreign zone status inputs, regardless of origin, that are not the target of the trade remedy.

In conclusion, I want to re-emphasize that while granting this exclusion would ensure additional duties are not inadvertently imposed on final products made in the United States, it would not reduce or avoid the duty liability of any inputs Section 301 duties are intended to cover.

We urge you to act swiftly to remedy this unintended but very harmful situation. Thank you.