

National Association of Foreign-Trade Zones
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August 14, 2018

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 21013
Washington, DC 20230

Dear Mr. McGilvray:

The National Association of Foreign-Trade Zones (NAFTZ) and its members are gravely concerned about the unintended and injurious impact on manufacturers in U.S. foreign-trade zones (FTZs) from assessment of additional duties under Sections 201 and 301 of the Trade Act of 1974 on products manufactured and substantially transformed into different products in U.S. FTZs.

Both Presidential Proclamations in the Section 201 actions in January of this year refer to the targeted products specifically as “imports” of large residential washers and photovoltaic cells and panels.¹ In similar fashion, both the Federal Register notices of June 20 and July 17 specifically describe the trade actions under Sec. 301 as the “imposition of an additional 25 percent *ad valorem* duty on products of China.”² (emphasis added). It has been established in multiple U.S. Customs Headquarters Rulings and the CBP FTZ Manual that goods manufactured and substantially transformed in a U.S. FTZ are, and should be treated as, products of the United States. However, failure by the Office of the U.S. Trade Representative (USTR) to correct inconsistent and confusing administrative guidance has resulted in the assessment of additional duties on such products under Section 201 and 301 as though they are imported products originating outside the United States.

In direct contrast to this serious problem facing FTZ manufacturers in the Sec. 201 and 301 actions, important clarifying language in paragraph 10(5) of Presidential Proclamations 9739 and 9740 in the Section 232 trade actions on imported steel and aluminum, administered by the U.S. Department of Commerce, expressly exempt additional duties on steel and aluminum products manufactured and substantially transformed in U.S. FTZs:

¹ Proclamations 9693, 9694 (Jan. 23, 2018).

² 83 Fed. Reg. 28710 (June 20, 2018); 83 Fed. Reg. 33608 (July 17, 2018).

[A]rticles 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.

To date, USTR has not included similar language in the Section 201 and 301 trade actions. This oversight has created uncertainty on how to treat FTZ-manufactured products in these trade cases and has resulted in the inconsistent treatment described.

We seek a statement of clear and consistent policy from the Administration and USTR that duties imposed under trade-remedy actions are limited solely to foreign-origin imported products, and do not apply to goods that are U.S.-origin by virtue of having undergone a substantial transformation in a U.S. FTZ.

It must be emphasized that this exclusion would not impact the duty liability of any inputs flagged for additional duties through admission into an FTZ in Privileged Foreign (PF) zone status. PF zone status guarantees Section 201, 232, 301, and any other trade-remedies duties are paid upon Customs entry on subject foreign-origin inputs.

The underlying cause of the significant and expanding problem surrounding the adverse tariff treatment of FTZ-manufactured goods under Section 201 and 301 is the issuance of previous guidance from U.S. Census and U.S. Customs and Border Protection (CBP) regarding country reporting on products manufactured in a U.S. foreign trade zone and entered into U.S. commerce. This guidance directs FTZ manufacturers to identify on entry documentation the country of origin of foreign-status components with the greatest aggregate value:

Regardless of marking or other country of origin considerations, the country to be reported in Block 15 is the country of origin of the foreign status merchandise for which entry is required. If components of articles are from more than one country, report the foreign country of the components with the greatest value. U.S. Customs and Border Protection, *Foreign Trade Zones Manual*, Para. 9.7(a)(2). (Emphasis added)

This guidance is specifically intended for statistical purposes only and not for marking or other entry purposes. However, in the absence of clarifying language from USTR, as the Commerce Department secured in the Section 232 actions, this guidance has resulted in FTZ-manufactured and substantially-transformed goods being erroneously treated as foreign-origin and subject to Section 201 and 301 duties.

There are compelling reasons to exempt U.S. origin products substantially transformed in a U.S. FTZ from all trade remedy duties:

- 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.
- 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.

- 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.
- Collecting trade-remedies duties on goods manufactured and substantially transformed into a different product in a U.S. FTZ would have the following unintended, adverse consequences:
 - Penalize U.S.-made products trade actions are designed to protect;
 - Undermine the goals of the FTZ program by forcing U.S. companies to leave the program and possibly move production outside the United States;
 - 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 inputs from a target country admitted in the zone in Privileged Foreign (PF) zone status and all foreign zone status inputs, regardless of origin, that are not the target of the trade remedy.

Absent specific language addressing this issue in Presidential and/or USTR guidance as was done in the Sec. 232 actions on steel and aluminum, a policy providing an explicit and consistent exclusion from any trade-remedies duties for products manufactured and substantially transformed in a U.S. FTZ is the best solution to correct and avoid these problems.

To help illustrate the scope and seriousness of this problem, we have appended to this letter company statements explaining their particular situations resulting from failure to correct this problem, and a description and illustration from a Power Point presentation we have developed to help Members of Congress understand the issue. We will continue to send you such stories from companies as we receive them.

Thank you for your consideration of these important issues. We respectfully request that the Foreign-Trade Zones Board communicate immediately with USTR to help resolve this increasingly-damaging situation for American FTZ manufacturers.

Regards,



Erik O. Autor
President

cc: Timothy Skud, Deputy Ass't Sec. for Tax, Trade and Tariff Policy (U.S. Dept. of Treasury)