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Why Congress Must End Counterproductive Restrictions That Prevent American Manufacturers in U.S. Foreign-Trade Zones from Contributing Fully to America's Economic Recovery

The "FTZs for America Act" Will Spur Manufacturing and Create Jobs Now

Congress established the U.S. Foreign-Trade Zones (FTZ) program in 1934 during the Great Depression and has periodically updated it to advance important national economic policy goals, including: encouraging the location of manufacturing operations in the United States to create and support American jobs; ensuring the U.S. tariff system does not disadvantage U.S.-manufactured goods competing with imported products; and promoting U.S. exports and competitiveness.

Since its creation, the FTZ program has become an effective tool to realize these goals. FTZs now account for a significant portion of total U.S. trade, including 6.7 percent ($112 billion) of U.S. goods exports (2018). Over 3,300 companies operate within the FTZ program, employing over 440,000 American workers in all fifty states and Puerto Rico.

Despite this record of success, companies operating in FTZs face serious challenges preventing them from fully realizing the FTZ program's intended benefits – and achieving greater profitability as the result of 1) classification quirks in the administration of certain trade-remedy tariffs and 2) outmoded restrictions imposed in the 1990s on FTZ firms' exports to Canada, Mexico, and Chile.

Now, as our country faces its greatest economic challenge in nearly a century, Congress should act to remove barriers to lawful commerce, including restrictions that prevent American companies from operating at peak efficiency and profitability – so they can put the greatest number of American workers back to work and help get the economy back on track as quickly as possible. The **"Strengthening FTZs for American Manufacturing, Distribution, and Jobs ("FTZs for America") Act"** will accomplish this goal for FTZ companies by addressing the following problem areas.

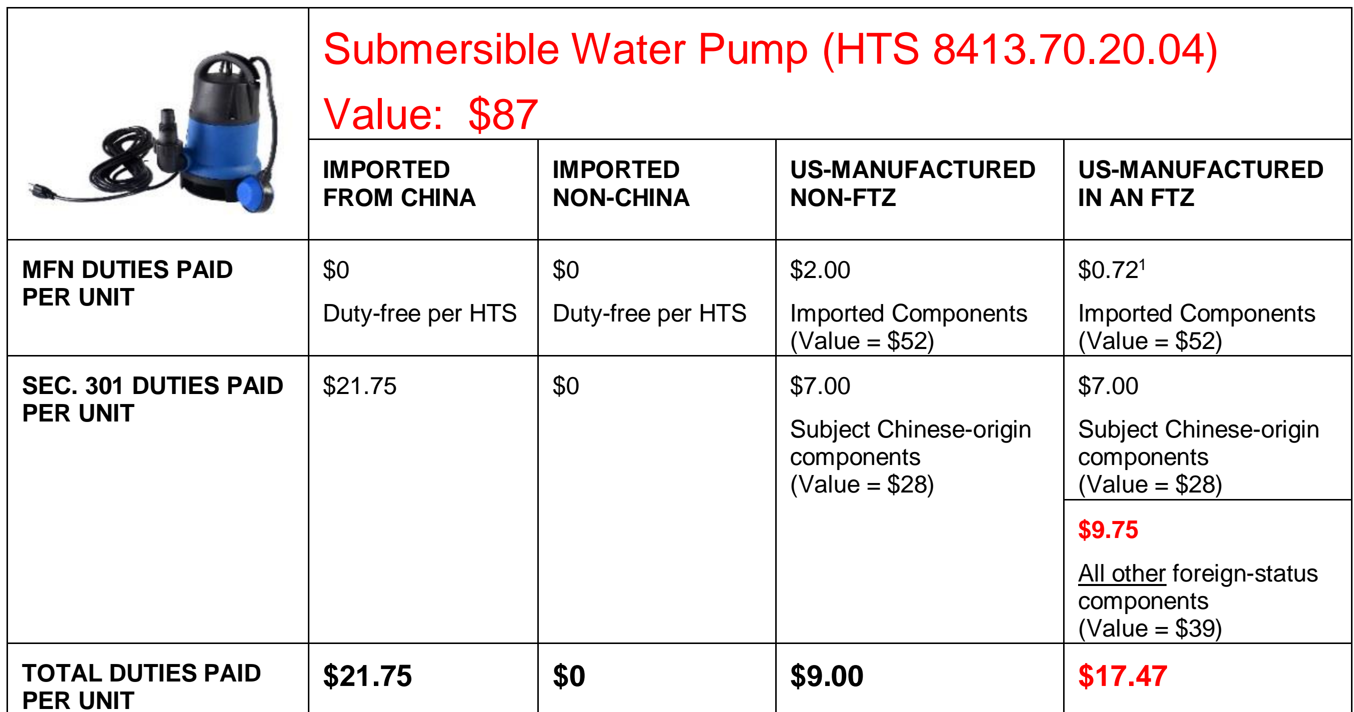
Problem Area #1 – Improper Country-of-Origin Identification of FTZ Merchandise under Trade Actions Imposing Temporary Duties on Imported Products

The U.S. Census Bureau is responsible for ensuring that accurate trade statistics are collected, maintained, and shared with other government agencies and the public. For statistical reporting of articles produced or manufactured in U.S. FTZs, Census directs that FTZ manufacturers declare as the "country of origin" (COO) on their Customs entries the country accounting for the largest foreign-status content by aggregate value.

The unintended result of this guidance is that entire articles produced or manufactured in a U.S. FTZ are being erroneously treated as imported merchandise subject to duties under Chpt. 99 of the Harmonized Tariff Schedule of the United States (HTSUS) imposed under a trade action (*e.g.*, Sections 201 and 301) when: (1) the entered final product falls under a customs classification of an imported product subject to a trade action; and (2) the foreign-status inputs with the greatest aggregate value are from a country subject to the trade action. Consequently, trade-action tariffs under HTSUS Chpt. 99 are being improperly assessed on the value of foreign inputs that are not products of a targeted foreign country or are not on the published list of targeted foreign products.

This situation has resulted in significant disparities between trade-action tariffs assessed on products containing the exact same components, based solely on whether they were manufactured in the U.S. inside or outside an FTZ. For example, for two identical U.S.-made Submersible Water Pumps, each valued at $87 and incorporating the same imported inputs from a mix of countries, including China – the Sec. 301 tariff assessed on the FTZ-manufactured product is $16.75, while the tariff on the non-FTZ product is only $7.00.

Illustration of Issue



	Submersible Water Pump (HTS 8413.70.20.04) Value: $87			
	IMPORTED FROM CHINA	**IMPORTED NON-CHINA**	**US-MANUFACTURED NON-FTZ**	**US-MANUFACTURED IN AN FTZ**
MFN DUTIES PAID PER UNIT	$0 Duty-free per HTS	$0 Duty-free per HTS	$2.00 Imported Components (Value = $52)	$0.72[1] Imported Components (Value = $52)
SEC. 301 DUTIES PAID PER UNIT	$21.75	$0	$7.00 Subject Chinese-origin components (Value = $28)	$7.00 Subject Chinese-origin components (Value = $28) **$9.75** All other foreign-status components (Value = $39)
TOTAL DUTIES PAID PER UNIT	**$21.75**	**$0**	**$9.00**	**$17.47**

The **"FTZs for America Act"** ends this discriminatory tariff treatment by stating that no entered article produced or manufactured in a U.S. FTZ shall be considered foreign merchandise subject to a temporary additional duty under Chpt. 99, regardless of the origin of inputs used in its production or manufacture. This provision does not affect assessment of such additional duties on subject inputs used as components in an article produced or manufactured in a zone.

Problem Area #2 - Proper Duty Treatment of Foreign Merchandise in a U.S. FTZ Subject to a Temporary Duty Following a Change in Duty Status

There is a lack of clear and consistent guidance in the application of HTS Chpt. 99 duties on when and how those duties apply to foreign merchandise admitted into an FTZ in "privileged foreign" (PF) status, which flags that merchandise for U.S. Customs and Border Protection (CBP) as being subject to the duties. Current Customs regulations only address PF status that is elected by the party admitting foreign merchandise into an FTZ, but not when PF status is mandated by a trade action because the foreign merchandise admitted into an FTZ is subject to additional duties under HTSUS Chpt. 99. FTZs also lack clear guidance on what duty should apply to PF-status

[1] Lower HTS tariff treatment due to FTZ inverted-tariff benefit

merchandise when the duty rate a) increases, b) decreases, c) is terminated, d) is no longer in effect, or e) a duty exclusion is granted after the subject merchandise is admitted to a zone.

The **"FTZs for America Act"** clarifies the applicable rules by:

1) Recognizing the distinction between merchandise required to be admitted into an FTZ in PF status by reason of a trade action imposing additional duties on the merchandise under HTSUS Chpt. 99, versus voluntary selection of PF status, and how that distinction and the timing of admission of merchandise into an FTZ impacts the administration of Chpt. 99 duties; and
2) Establishing rules for applying temporary additional duties to merchandise in an FTZ:
    a. When the rate of the duty changes after admission of merchandise to a zone – If the rate subsequently increases, the applicable rate shall be the rate in effect on the date PF status was first applied. If the rate subsequently decreases, the applicable rate shall be the rate, if any, in effect on the date the merchandise is entered into U.S. commerce.
    b. When the temporary duty is terminated or a product exclusion is granted – the PF status of the merchandise shall be terminated retroactive to the date when it was first applied, with any duties paid in the interim refunded by CBP.
    c. When a previously granted product exclusion from a temporary duty expires prior to entry of the merchandise into U.S. commerce – PF status shall be granted to the merchandise upon request by a zone applicant, effective no less than one day prior to the expiration date of the product exclusion, and the rate of duty under Chpt. 99 shall be the date in effect one day prior to the expiration of the product exclusion.

Problem Area #3 – Unfair Restrictions on Products Manufactured in U.S. FTZs and Exported to Canada, Mexico, and Chile

The FTZ program promotes U.S. exports and competitiveness in foreign markets by eliminating payment of U.S. duties on foreign inputs in FTZ-manufactured products destined for export. However, NAFTA and the U.S.-Chile Free Trade Agreement took away this key benefit by imposing unfair and punitive restrictions on the ability of FTZ manufacturers to export their products duty-free to Canada, Mexico, and Chile. NAFTA Article 303, Chile FTA Article 3.8 and the Foreign-Trade Zones Act Sec. 81c(a) on duty deferral treat exports to Canada, Mexico, and Chile of products manufactured in a U.S. FTZ using any non-originating foreign inputs initially as imports into the United States, requiring payment of any applicable U.S. duties on any foreign content before the finished product can be exported, and also make those duties ineligible for refund through duty drawback.

The original intent of this provision was to prevent so-called "platforming" of goods from countries not party to the trade agreement – a concept whereby manufacturers could potentially avoid paying full duties on non-originating content by using a duty-deferral program, such as FTZs. But those concerns have proven to be unfounded, which is why the restriction does not appear in any other U.S. free trade agreements.

This outdated and counter-productive restriction was unfortunately carried over into the U.S.-Mexico-Canada Agreement (USMCA, Article 2.5 (3)), while Canadian and Mexican exporters face no similar requirements from their governments. The result is to impose a significant cost disadvantage on U.S. FTZ manufacturers and discourage locating export production in the U.S. in favor of Canadian and Mexican exports to the United States.

Illustration of Issue

IMPACT OF UNFAIR AND INEQUITABLE RESTRICTIONS ON EXPORTS TO CANADA, MEXICO, AND CHILE OF PRODUCTS MANUFACTURED IN A US FTZ

Example: Flat Screen TVs

	MANUFACTURED IN CANADA, MEXICO, OR CHILE FOR EXPORT TO THE UNITED STATES	**MANUFACTURED IN A US FTZ FOR EXPORT TO CANADA, MEXICO, OR CHILE**	**MANUFACTURED IN A US FTZ FOR EXPORT TO OTHER COUNTRIES**
	➢ CDN, MX, or Chile duty assessed on imported, non-NAFTA/USMCA/Chile FTA components = **$0.00** ➢ If NAFTA/USMCA/Chile FTA Rule of Origin met, US duty assessed = **$0.00**	➢ US Customs entry must be filed prior to export ➢ If NAFTA/USMCA Rule of Origin met: US duty still assessed on imported, non-NAFTA/USMCA components = **rate in effect upon export ($$)** ➢ No duty refund (drawback) allowed	➢ No US Customs entry filed prior to export ➢ US duty assessed on imported components = **$0.00** ➢ Duty refund (drawback) allowed, but not necessary when no duty is paid

Congress should prioritize eliminating this cost disadvantage for companies manufacturing in U.S. FTZs and restoring the export-promotion benefit of the FTZ program through legislation. NAFTZ has suggested legislative language that could be used to accomplish this goal. We recognize, however, that little objective data exists to document the problem. The **"FTZs for America Act"** would direct the U.S. International Trade Commission (ITC) to produce a report to Congress on the export restriction's impact on U.S. commerce and the competitiveness of U.S. manufacturing. We believe this report should provide evidence and the impetus necessary to convince Congress to address this serious issue.

Conclusion

With the economic devastation from the COVID-19 crisis threatening American business in every sector, there could be no better time to remove arbitrary and punitive restrictions that prevent U.S. companies from realizing the efficiencies and profitability that participation in the FTZ program is designed to help them achieve – so they may play a positive and effective role in our needed national economic recovery. The **"FTZs for America Act"** will help to accomplish that goal.