National Association of Foreign-Trade Zones
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NAFTZ
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August 31, 2020

Hon. Chuck Grassley
Hon. Ron Wyden
United States Senate
Washington, DC 20510

Hon. Richard Neal
Hon Kevin Brady
House of Representatives
Washington, DC 20515

RE: Attempt by USTR to Re-Impose Harmful NAFTA Rules-of-Origin Restrictions on Manufacturing Companies in U.S. Foreign-Trade Zones

Dear Chairman Grassley, Ranking Member Wyden,
Chairman Neal and Ranking Member Brady:

As we confront the many challenges arising from the COVID-19 pandemic, rebuilding our country's economy will depend upon the resilience of the private sector and resourcefulness of U.S. industry to produce and compete successfully in the domestic, regional, and global markets. Supporting American industry's contribution in the recovery will require rational government policies to enable businesses to operate effectively and efficiently and the rejection or repeal of policies that are burdensome, ineffective, counterproductive, or conflict with economic-policy goals.

One such ineffective and counterproductive policy was a provision in the 1993 NAFTA Implementation Act [19 U.S.C. §3332(a)(2)(A)] that excluded goods manufactured in U.S. Foreign-Trade Zones (FTZs) from qualifying for NAFTA preferential treatment when entered into the commerce of the United States. Under this restriction a U.S.-based FTZ manufacturer making a product for U.S. consumption that complied with the NAFTA rules of origin was nonetheless required to pay U.S. duty on any non-NAFTA components, whereas those rules allow manufacturers in Canada and Mexico to ship to the U.S. duty free. The consequences of this imbalanced rule was to discourage the location of production in the United States and undermine the core goals of the FTZ program that position U.S. manufacturers to compete effectively on equal tariff terms with imports and promote U.S. exports.

The USMCA Implementation Act repealed this section along with the rest of the 1993 Act, and no comparable provision was included in the USMCA legislation signed into law earlier this year. However, the Office of the United States Trade Representative (USTR) is now attempting to re-instate, through a technical corrections bill, this failed NAFTA provision for reasons that are inexplicable, particularly under our current economic situation.

One explanation proffered by USTR – the need to "maintain the NAFTA status quo," under which U.S. manufacturers would be placed in no worse position than when the NAFTA implementing legislation first came into effect – is particularly unpersuasive given intervening events since 1993. Initially, Canadian and Mexican companies also operated under restrictions similar to the referenced section. But both of those countries subsequently modified their own rules (Mexico's Prosec program and Canada's Duty-Free Manufacturing Tariff Regime) to eliminate or substantially reduce tariff obligations on imported components for their own companies. Canada and Mexico have also negotiated an extensive web of free trade agreements with other nations, including the European Union and Japan. As a result, Mexican- or Canadian-based manufacturers making the same product as a U.S.-based company – with identical components from the same suppliers – can export the product to the United States without paying Mexican/Canadian or U.S. duties on non-NAFTA components. This gives Mexican and Canadian manufacturers a significant cost-competitive advantage over U.S. manufacturers, both inside and outside an FTZ, selling the same product in the U.S. market.

This inequity favoring Mexican and Canadian firms to the detriment of U.S.-based manufacturing companies could be a prime example of why President Trump called NAFTA the "worst trade deal ever," a view shared by many Democrats. Ambassador Lighthizer himself stated that "NAFTA is a seriously flawed trade deal," and included among his renegotiation objectives to "Promote cooperation with NAFTA countries to prevent duty evasion, combat customs offenses, and ensure that goods that meet the rules of origin receive NAFTA benefits" (emphasis added). Indeed, allowing U.S.-based companies to receive USMCA duty benefits for FTZ-manufactured products sold in the U.S. market that meet the rule of origin would actually encourage the use of more, not less, domestic and USMCA-originating content than might otherwise be the case.

In view of both the Administration's stated objectives and the serious economic crisis facing our nation, we do not understand why USTR is so vigorously pursuing reinstatement of the harmful rules-of-origin restriction on FTZ-manufactured products that only undercuts the cost-competitiveness of American-based manufacturers. Rather, we believe Congress and the Administration should consider repeal of Sec. 3332(a)(2)(A) as a victory for American business that has removed the incentive to locate or relocate manufacturing facilities and jobs to Mexico or Canada, rather than the United States.

On behalf of the over 3,300 companies operating within the FTZ program – employing over 440,000 American workers – we urge you to reject USTR's attempt to re-impose the harmful rules-of-origin restriction through a technical corrections bill.

In closing, let me also put to rest a fundamental misunderstanding about the U.S. FTZ program that appears to have influenced how the program is viewed by certain USTR officials. It has been alleged that the FTZ program somehow provides a loophole through which importers can avoid liability for Sec. 301 and other trade-remedy tariffs. This is false. The Section 201 and 232 Presidential Proclamations and the Section 301 USTR Federal Register Notices , and §400.14(e) of regulations governing the FTZ program include the requirement that articles subject to such duties are placed in "privileged foreign (PF) status" when they are admitted to an FTZ. The PF-status designation ensures that applicable duties and taxes will be paid when the merchandise is transferred from the zone for U.S. consumption.

We will be pleased to discuss these issues with you and your staffs at any time.

Thank you for your consideration and best wishes for success in resolving the enormous challenges facing our nation.

Sincerely,

Erik O. Autor
President

cc: The Honorable Nancy Pelosi, Speaker of the House of Representatives
The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Kevin McCarthy, House Minority Leader
The Honorable Charles Schumer, Senate Minority Leader
Members of the House Committee on Ways and Means
Members of the Senate Committee on Finance