National Association of Foreign-Trade Zones
National Press Building
529 14th Street NW, Suite 1071
Washington, DC 20045
202.331.1950

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Mr. Juan Millan
Acting General Counsel
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC, 20508

Mr. Millan:

On behalf of the National Association of Foreign-Trade Zones (NAFTZ) and its members, I am writing in response to the Federal Register Notice of March 7th, 2024, from the Office of the U.S. Trade Representative regarding the Request for Comments on Promoting Supply Chain Resilience (Docket number USTR-2024-0002).

NAFTZ is the collective voice of all constituents of the U.S. Foreign-Trade Zone program, representing grantees, users, operators, and service providers engaged in this program which is a vital component of the U.S. economy. FTZs already support supply chain resilience and in our comments below we suggest additional ways to leverage the FTZ program to further enhance U.S. economic security.

Our comments are organized according to the supply chain resiliency pillars the USTR has presented in the past. We then suggest ways in which the U.S. FTZ program can be enhanced to further support USTR's goals of promoting U.S. supply chain resiliency.

1. FTZs Promote Supply Chain Transparency

Transparency in a supply chain is a delicate balance for any company looking to shield their suppliers and routing from their competitors and those that might use such information for nefarious purposes while at the same time supporting U.S. initiatives for resiliency. The U.S. FTZ program strikes that balance by protecting companies' detailed data and at the same time providing reporting, transactional import data, and even economic benefit data of FTZ operations within a compliant Trade program.

Transparency exists in several layers throughout the FTZ application, activation, and ongoing compliance processes. Each of the FTZ companies must apply for and get approval from the FTZ Board (within the Commerce Department) through an application process that includes providing data about goods and sourcing to be used in the operation. This process involves local economic development entities, referred to as grantees, which are responsible for reviewing the local economic benefit and need for the company's operation in the area. The application is then reviewed by the FTZ Board, made up of members from the Department of Commerce and Department of Treasury. The applications are often opened to public comment to allow industries, government agencies, and the public to comment on any potential detrimental effect of allowing the company to join the FTZ program. The FTZ Board staff reviews each application to ensure that approval would not circumvent trade policy. Once these elements of the operation are vetted, U.S. Customs and Border Protection (CBP) validates the company's operational security and inventory tracking to further ensure the FTZ regulations will be met, appropriate duties will be paid, and unauthorized goods will not be allowed into U.S. commerce.

Once the company's FTZ operations are approved and activated, all merchandise entering the facility is accounted for within an Inventory Control and Recordkeeping System (ICRS). Additionally, all shipments admitted to and withdrawn from the FTZ are reported to CBP. The filings with CBP and the reporting requirements for FTZ operations are controlled more than other goods imported into the U.S. The FTZ ICRS maintains complete information about the material, including its country of origin, manufacturer, applicable tariff, and other detailed information about the commodity. The controls within the FTZ create visibility for all foreign merchandise tracked and accounted for within an FTZ. Such inventory visibility is not available in other importing regimes.

As required, FTZ operations must undergo periodic compliance visits conducted by CBP as well as report back to the FTZ Board, the authorizing entity, on the activity of that operation. Through this reporting, Congress gets an aggregated view of the program's continued success in providing economic growth and U.S. competitiveness.

2. FTZs Promote Supply Chain Diversity

The U.S. FTZ program's participants epitomize supply chain diversity across numerous industries and stakeholders. The FTZ program should serve as a cornerstone of resilience for the USTR and other agencies seeking to fortify supply chains, as it offers a robust framework for ongoing domestic and supply chain investments.

Illustrated by the data found in the FTZ Board's annual report, virtually every sector engaged in import/export activities leverages the FTZ program for its benefits. In the 2022 FTZ Board report to Congress, the FTZ Board reported 29 distinct industry sectors for warehouse/distribution operations and 26 distinct industry sectors for production operations. Championing the FTZ program inherently champions investment and cultivates domestic supply chain diversity across all industries.

Both the FTZ Board's annual reports and the 2023 USITC study[1] underscore the program's adoption by manufacturers and distributors alike. While the bulk of FTZ-related jobs reside in manufacturing, a notable portion of companies solely operate distribution facilities, underscoring the program's versatility and diversity. Furthermore, numerous small- to medium-sized businesses capitalize on the FTZ program to reduce costs, maintain competitiveness, and thrive in global markets.

Geographically, the U.S. FTZ program is active nationally with diverse industries, boasting representation in every U.S. state and Puerto Rico. This level of nationwide coverage is unparalleled among international counterparts. FTZs not only span every state but also encompass a wide array of entry points, including seaports, airports, and land/border-crossing ports.

Moreover, the FTZ program requires stakeholder engagement at a level few other initiatives can rival. Local governments are represented through various grantees, including counties, cities, and economic development entities. At the federal level, oversight is provided by two key agencies: the FTZ Board and CBP. From a transactional standpoint, the program fosters partnerships with a diverse array of entities integral to the supply chain, including importers, freight forwarders, warehouse operators, manufacturing facilities, customs brokers, third-party logistics providers, and ERP/WMS/ICRS providers.

The FTZ program is clearly one of the better trade and investment policy tools that can be deployed to enhance supply chain resilience. Promotion by USTR and other agencies as well as increased funding CBP's program oversight function, would unleash the full potential of domestic benefits for U.S. FTZ operations. A fully functional FTZ program with the right tools from the U.S. government would propel the development of a resilient supply chain.

[1] Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico (Investigation No. 332-588, USITC Publication 5423, April 2023) is available on the USITC's website at https://usitc.gov/publications/332/pub5423.pdf

3. FTZs Promote Supply Chain Security

As a recognized Customs Trade Partnership Against Terrorism (CTPAT) best practice, the security requirements of the U.S. Foreign-Trade Zone program make its participant's supply chains some of the most secure. Before being activated in the U.S. FTZ program, companies are inspected by CBP to validate security measures, inventory control and operational processes for the secure handling of imported merchandise onsite. As opposed to other importing regimes, particularly *de minimis* reporting standards, all foreign merchandise brought into a U.S. FTZ must be validated so that proper accounting of merchandise can be included on the admission. This level of control places the security of U.S. FTZs above a majority of importers moving merchandise into the U.S.

This higher level of security and inventory control is the reason the NAFTZ strongly advocates for the allowance of de minimis entry of goods shipped from an FTZ. The FTZ brings stronger security measures in supply chains and warehousing operations located in the U.S., employing U.S. workers. The level of control for FTZs offer a better level of security than operations located outside the U.S which are currently benefitting from de minimis importations.

U.S. FTZs are subject to regular compliance reviews by CBP, which include site visits to check security and document reviews to ensure inventory and recordkeeping compliance. The compliance review may include unannounced visits and are more regularly required than any other importing scenarios. The FTZ is not a situation where once approved the compliance of the operation is not revisited. The regular reporting and review process by both CBP and the FTZ Board ensures ongoing security and compliance.

U.S. FTZs are on the leading edge as an effective safeguard against inadmissible goods being entered into U.S. commerce. FTZ regulations and security ensure for the secure storage of goods, and subsequent process to be brought up to admissibility standards if possible. The FTZ allows admitted merchandise to also be exported or destroyed to protect admissibility standards. Throughout the storage of this merchandise, it is subject to CBP security checks and remain covered through a multi-layered bonding system that provides multiple penalty opportunities should a violation occur, including CBP's ability to revoke the FTZ program privileges.

4. FTZs Promote Supply Chain Sustainability

The FTZ program is a cornerstone of U.S. policy enhancing the global competitiveness of American enterprises, attracting offshore activities, and fostering the retention of domestic operations. With the provision of specialized customs procedures for FTZ firms, duty expenses are managed or reduced driving cost savings for American consumers. Moreover, FTZs bolster the competitiveness of U.S. manufacturers and distributors against offshore operations benefiting from operating beyond U.S. tariff collections.

Physically located within the U.S., FTZs inherently offer a more sustainable and proximate supply chain for American consumers and other supply chain stakeholders. This proximity minimizes the susceptibility of supply chains to global disruptions, such as port congestion, natural calamities, pandemics, or geopolitical instabilities, thereby ensuring the resilience of our supply networks. By fostering the retention of domestic operations, FTZs actively contribute to the sustainability and resilience of American supply chains.

The benefits accrued from FTZs are akin to those associated with reshoring initiatives, including the promotion of environmentally friendly standards, adherence to higher labor standards, and the adoption of similar sustainable programs. Furthermore, as FTZs mandate robust inventory control and recordkeeping mechanisms, companies operating within them experience heightened operational efficiencies. A transparent inventory control and recordkeeping system minimizes delays and inefficiencies stemming from inventory errors or discrepancies, thereby reinforcing the sustainability of the supply chain ecosystem.

5. Additional ways to leverage the FTZ program for supply chain resilience.

As mentioned above, while a robust FTZ program supports U.S. economic development and supply chain resiliency, there are opportunities for continued improvement of the program.

A. Allow FTZs to utilize the de minimis provision for withdrawals to the U.S.

Goods distributed from U.S. FTZs are not eligible for de minimis entry due to nuanced statutory language put into place in 1938 by an amendment to the Smoot-Hawley Tariff Act. This puts companies operating within a U.S. FTZ at a significant economic disadvantage to warehouses located just over the border in Mexico and Canada, or anywhere outside U.S. borders. U.S. FTZs are unable to offer a level playing field for companies distributing products purchased through e-commerce instead of in-store. The disadvantage is causing companies to close U.S. operations and move offshore. FTZs are not able to easily replace these tenants because the law disincentivizes new investment. Allowing access to de minimis entry for goods shipped to U.S. consumers from an FTZ would provide incentive to keep these warehouses open in the U.S., employing American workers, and including the security measures inherent in the FTZ program to this channel of U.S. importations.

B. Restore competitiveness for FTZs in FTA environments

As reported extensively by the USITC study[2] from 2023, FTZs are disadvantaged relative to similar trade preference programs, particularly in Mexico.

USMCA includes a restriction requiring FTZ manufacturers within the U.S. to provide an additional CBP filing involving a payment of U.S. duties on finished goods exported to Canada and Mexico. This restriction limits one of the primary intended benefits of the FTZ program – promoting U.S. exports. With U.S. FTZ manufacturers required to make domestic duty payments on components of used in production in merchandise subsequently exported, a significant disadvantage is created on U.S. FTZ manufactured merchandise. The governments in Mexico and Canada have successfully eliminated duties on those goods imported to produce USMCA qualifying merchandise for export to the U.S. With this inherent disadvantage to U.S. manufacturers, they have reduced opportunity to service the USMCA market from the U.S.

Additionally, USMCA's implementing legislation prohibits FTZ manufacturers from using the agreement's rules-of-origin provisions. The merchandise is then less competitive with Canadian and Mexican products in USMCA markets. By limiting the ability of FTZ manufacturers to export products duty-free to Canada and Mexico and denying them the benefits of the USMCA's rules-of-origin provisions, there is less incentive to locate an operation in the U.S. if the business model is to service the North American market. These restrictions continue to hinder the ability of U.S. FTZs to achieve their full potential to advance the program's goals and enhance U.S. manufacturing.

C. Establish an "FTZ Promotion Task Force" among multiple government stakeholders

The FTZ program is not actively promoted by any U.S. governmental agency. This stands in stark contrast to other countries' FTZ and similar bonded regime programs, where the programs are aggressively promoted as an economic development tool for the country. We recommend that the government establish an "FTZ Promotion Task Force" charged with promoting FTZs as an economic development and supply chain resiliency tool. This task force should be comprised of representatives from various agencies with visibility into the program: the Department of Commerce, U.S. Customs and Border Protection, and USTR. The NAFTZ is also willing to organize, participate in, and help guide this task force.

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[2] Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico (Investigation No. 332-588, USITC Publication 5423, April 2023) is available on the USITC's website at https://usitc.gov/publications/332/pub5423.pdf

D. Improve the process for obtaining FTZ production authority

Companies who have sought production authority since the 2012 regulatory changes have generally benefitted from the more streamlined notification vs. application process; however, for companies whose inputs are subject to objections of various natures, these companies have encountered an inefficient and often inequitable process for obtaining production authority.

Examples where production authority has been restricted or denied:

1. Arbor Foods Inc.
2. Nexsus Cocoa Services LLC
3. HP International Trading B.V. (Puerto Rico Branch), LLC
4. The Coleman Company, Inc.
5. Gildan Yarns, LLC
6. Claremont Flock
7. SKAPS Industries
8. BWF America, Inc.
9. Mohawk Carpet Distribution, LLC
10. Phillips 66 Company
11. Valero Refining-New Orleans L.L.C.
12. Wacker Polysilicon North America LLC
13. Firth Rixson, Inc.
14. Teijin Carbon Fibers, Inc.
15. Toho Tenax
16. Toray Carbon Fibers America, Inc.
17. Mitsubishi Rayon Carbon Fiber and Composites, Inc.
18. Kravet, Inc.
19. CSI Calendering, Inc.
20. ASO, LLC
21. Black & Decker
22. Flemish Master Weavers
23. Klaussner Home Furnishings
24. Best Chairs, Inc.
25. Bauhaus Furniture Group, LLC
26. H.M. Richards Company, Inc. (HMRI)
27. Lane Home Furniture
28. Morgan Fabrics Corporation
29. Southern Motion, Inc.
30. Max Home, LLC
31. Epson Portland, Inc. (EPI)
32. North American Tapes, LLC

33. REC Silicon
34. Dow Corning Corporation

Our supply chains are more resilient when manufacturing within U.S. FTZs is more accessible. Through this process, we encourage the FTZ Board to significantly accelerate its processing times for production applications and prioritize notifications/applications for authority in priority sectors identified by USTR for supply chain resilience:

- Aerospace and aerospace components.
- Agriculture, forestry, and fisheries.
- Automobiles and automotive parts.
- Call centers, business processing operations, and related services.
- Critical minerals, including for electric vehicle and large-scale energy storage batteries, and related recycling.
- Metals.
- Pharmaceutical and medical goods.
- Semiconductors, microelectronics, and inputs thereto.
- Renewable energy generation, transmission, and storage, including solar and wind technology and inputs thereto.
- Textiles, such as yarns, fabrics, apparel, and other finished goods.

E. Provide CTPAT "fast-track" approval for FTZ Operators

As noted above, FTZs are recognized by CBP as a supply chain security "best practice". Given this recognition, we recommend developing a process whereby CBP could grant "fast-track" CTPAT application approval for existing FTZ operators. FTZs should also be exempt from the periodic CTPAT validation process, given that the facilities are regularly visited and inspected by CBP through the FTZ program.

F. Expand direct delivery for all FTZ operators and users

Direct delivery is a competitive advantage for operators within FTZs, bolstering not only their operational efficiency but also fortifying the resilience of inbound supply chains for those trusted partners. However, it's crucial to note that direct delivery privileges are presently restricted solely to operators who hold ownership or purchasing rights over the goods (refer to 19 CFR 146.39(c)(3)). The expansion of these privileges to encompass any FTZ operator or user would amplify the benefits and incentives associated with utilizing the program. As noted above, it's worth emphasizing that the FTZ program seamlessly aligns with the objectives of enhancing supply chain resilience. Therefore, any extension of its benefits inherently contributes to advancing these resilience goals.

G. Revise the weekly entry process for FDA

The original guidance within the Weekly Entry Filing (WEF) from the FDA aimed to aid companies operating in a Foreign Trade Zone (FTZ) in determining the eligibility of their products/merchandise for the WEF process with the FDA. At that time, the WEF process was more inclusive of Zone operations, with approvals primarily based on the level of risk associated with the merchandise.

However, the current guidance lacks clarity regarding which low-risk merchandise qualifies for the WEF process. Presently, the FDA approval process for WEF can be prolonged, and denials are increasingly common, even for products previously categorized as low risk.

H. Provide CBP the necessary funding and resources to adequately support the FTZ program

CBP frequently says they are challenged by "operational and funding challenges" and lack the personnel needed to support the U.S. FTZ program. This has resulted in a systematic education and operational gap throughout CBP, leading to decisions that chip away at FTZ program benefits and negatively affect the economic benefits Congress envisioned, including:

- Inaccessibility of Site Activation:
  Activation of several new or expanded U.S. FTZ operations is on hold in some ports due to CBP personal limitations. In some cases, CBP withholds support for the creation or expansion of FTZs and is steering activity toward paid user fee services rather than supporting the program as part of its regulatory obligation.

- Modernization:
  Federal regulations governing the U.S. FTZ program (19 CFR Part 146) have not been updated since 1986. NAFTZ has worked with CBP to update the regulations for nearly 10 years, but CBP deferred executing due to a lack of priority. Due to the delay, the completed results would need to be further updated before implementation.

  Despite regulatory requirements, CBP's Automated Commercial Environment ("ACE") system lacks the FTZ processing functionality. For undisclosed reasons, CBP continues to postpone the necessary ACE upgrades to allow full FTZ processing.

- Partner Government Agency Consideration:
  When partner government agencies update their regulations, they often fail to consider how these changes will impact the U.S. FTZ program. This causes implementation challenges and puts FTZs at an unfair advantage.

The NAFTZ welcomes further discussion on these important points. I also look forward to the opportunity to testify at the virtual hearing on May 23rd, and please feel free to contact me with any questions you may have.

Sincerely,

Jeffrey J. Tafel, CAE
President, National Association of Foreign Trade Zones
jtafel@naftz.org
202-331-1950