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International Trade, Customs & Export Law

Using FTZ's to Mitigate Potential Trump Tariffs

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About Scott Taylor, Esq.

SCOTT TAYLOR is a member of Sandler, Travis & Rosenberg, P.A. and leader of our foreign-trade zones practice area, where he represents clients across a variety of industries in the area of international trade, customs, and foreign-trade zone law.

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What is a U.S. Foreign-Trade Zone?

- Foreign-trade zones are restricted-access sites that are considered outside the U.S. Customs territory but located in the United States.
- Companies that operate in foreign-trade zones can defer, reduce, or eliminate Customs duties on foreign products admitted into zones for storage, exhibition, testing, quality control, kitting assembly, processing, and production.
- FTZ's help companies better compete in the global economy
- They create and retain jobs and investment in the United States

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FTZ Statistics

- 302 General-Purpose Zones with Grantee sponsors
  Each of these zones may have dozens of company sites and subzones
- 550,000 JOBS
- 3,400 COMPANIES which includes Operators and Users
- $949 billion in receipts (of which $585 billion is production)
- 68% IS DOMESTIC MATERIAL!
- $149 Billion in Exports!

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Section 301 Tariffs Implemented in 2024

- Customs duties have been increasing on several products, parts and materials imported from China during the last decade. This trend will continue into the future.

- USTR has proposed to maintain all existing Section 301 tariffs on Chinese goods and to add or increase tariffs on the targeted products.

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Section 301 Tariffs Implemented in 2024

Products	USTR Proposed Section 301 Tariffs
Battery parts (non-lithium-ion batteries)	from 7.5 percent to 25 percent in 2024
Electric vehicles	from 25 percent to 100 percent in 2024
Lithium-ion electrical vehicle batteries	from 7.5 percent to 25 percent in 2024
Lithium-ion non-electrical vehicle batteries	from 7.5 percent to 25 percent in 2026
Medical gloves	from 7.5 percent to 25 percent in 2026
Natural graphite	from 0 to 25 percent in 2026
Other critical minerals	from 0 to 25 percent in 2026
Permanent magnets	from 0 to 25 percent in 2026
Personal protective equipment	from 0 - 7.5 percent to 25 percent in 2024
Semiconductors	from 25 percent to 50 percent by 2025
Ship-to-shore cranes	from 0 to 25 percent in 2024
Solar cells (whether or not assembled into modules)	from 25 percent to 50 percent in 2024
Steel and aluminum products	from 0 - 7.5 percent to 25 percent in 2024
Syringes and needles	from 0 to 50 percent in 2024

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Proposed New Tariffs by President Trump

- Several proposals have been made to add more Customs duties including:
  1. A new 10% tariff on all imports from all countries.
  2. A new 10%-60% tariff on imports from China.
  3. A new 25% tariff on all imports from Mexico.
  4. A new 25% tariff on all imports from Canada.
  5. New 100% tariff on BRICS countries including South Africa, Brazil, Russia, India and China.
  6. New tariffs on EU, Russia, and Colombia.

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Proposed New Tariffs by President Trump (Cont'd.)

- New tariffs can all be implemented through declaring a "national economic emergency."
- This can be done through the International Economic Emergency Powers Act (IEEPA).
- A FTZ would allow the deferral of these duties while imported product is held in the FTZ.
- If sold in the U.S. the duty would still be owed but if exported the duty could be avoided by using an FTZ.

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Basic FTZ Savings

- Duty Deferral/Cash Flow
- Inverted Duty ex. – 6.5% → 0% (chemicals), 5% →2.5% (vehicles)
- Exports
- Scrap/Waste/Obsolete Material
- Weekly Entry Savings
  - Merchandise Processing Fee Savings
    - The maximum MPF per entry is $634.62
  - Customs Brokerage Expense Savings
- Trade Remedy Deferral
- Production Equipment Duty Deferral

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Alternative Site Framework (ASF)

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What is ASF?

- The Alternative Site Framework (ASF) is to make it easier and quick for companies to secure FTZ status. 15 CFR 400.2(c).
- FTZ Staff consulted with Grantee organizations and zone stakeholders to develop the ASF.
- Each of the 300 zones had the option of moving into the ASF to provide streamlined benefits for their local companies.
- Over 90% of active zones (at least one FTZ operator) have moved into the ASF.

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What Are the Main Benefits?

- Companies can secure FTZ designation in 30 days or less.
- The FTZ Board staff has ability approve without signoff from several other agencies other than CBP
- A public comment period is not required.
- There is not the old $6,500 U.S. Department of Commerce application filing fee for companies with ASF.

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Key ASF Terms

- “Service Area” is the geographic area where companies benefit from ASF. 15 CFR 400.2(q).
- Service Areas are usually composed of counties.
- Any company within the Service Area eliminates the need for Federal Register notices, public comment periods, and $6,500 filing fee.
- Any company outside the Service Area may still apply under the Traditional Site Framework as a Subzone but all above apply.
- Traditional Subzones require CBP concurrence and 3-5 months to be approved.

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Key ASF Terms (cont'd.)

- "Subzone or Usage-Driven Site" are basically the same and same application used for one company or warehouse operator.
- "Magnet" site is usually a larger industrial park that was originally designated as a whole.
- Any company in the magnet site can be activated.
- "Sunset limits" A company must use it or lose it.
- For Subzone/Usage driven sites it is 3 years and a bona fide use of the zone.
- For Magnet sites it is 5 years and at least one activation approval by a company.

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Subzone or Usage-Driven Site Boundary Modification Streamlined application

- Address. Please provide the address of the facility.
- Acreage. Please provide the total number of acres of the facility, including any outside land that should be included for potential outside storage in a fenced area.
- Activity Description. Please provide a descriptive summary of activities that will occur at the site, including warehousing, packaging, testing, repairs, kitting, manufacturing, and distribution operations and the type of products.
- Type of Land. Is the company located in an industrial park? Yes or No. If yes, please provide the name of the industrial park.

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Subzone or Usage-Driven Site Boundary Modification Streamlined Application (cont'd.)

- Zoning. Please provide the name of the local property zoning designation such as Light Industrial. Agricultural zoned property not ready for zone use.
- Square Footage. Please provide the square feet of each building and outside storage areas if applicable.
- Property Owner. Please provide the name of the property owner or owner corporate entity with ending. A property owner concurrence letter or Operator Right to Use letter will be required.

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Subzone or Usage-Driven Site Boundary Modification Streamlined Application (cont'd.)

- Site Plan. Please provide a site plan of the boundaries of the property that will be designated as a foreign-trade zone. This boundary should be highlighted in a red outline, as required by the Foreign-Trade Zones Board. This site plan should also include sufficient detail to show surrounding street names that are clearly marked. There should also be a north-south-east-west arrow located on the map for reference. Any other reference points are important. The site plan does not have to include any level of detail within the building. The building outline is sufficient for this particular application. The red outlined area should include an acreage total that matches the acreage total provided. If the area is different, please explain the difference.

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FTZ Production Authority

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FTZ Production Authority

- Production Notification (15 CFR 400.37) is streamlined application that can be filed even before the subzone or usage-driven site request
- It should list imported part descriptions, six-digit HTSUS, and duty rates
- If any imported parts are subject to Section 301 from China or Section 232 or ADD/CVD this must be mentioned in the application.
- Second list is for finished product classifications, six-digit HTSUS and duty rates

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FTZ Production Authority (cont'd.)

- Non-controversial applications
  - 40 Day Public Comment Period
  - 120 Day Approval Process Total Exactly to Day
  - Interim approval can be secured with CBP Concurrence in a few days in some cases.
- If negative comments are received a full Production Application may have to be filed.

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Practical FTZ Considerations

- For Trade Remedies such as 301 from China or 232 Steel or Aluminum need to acknowledge if any imported materials could be subject (does not matter whether they apply at time of filing) for example if an imported part would be subject to additional 301 duties if imported from China there needs to be a statement to this effect even if the part is currently imported from Vietnam.

- For new zone projects a Production Notification can be filed before the subzone site is approved. This is important in states such as Texas, Arizona, Kentucky, Louisiana and Mississippi where additional “no objection” tax letters may need to be secured for the subzone application which will require additional time.

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Production Application

Production Application requires more data elements and justification

- Company background
- Product description
- Industry background
- Zone benefits to company
- Public benefits
- Impact on domestic industry
- Use of public zone

Usually, it is known in advance a Production Application will be required.

Sensitive industries such as textiles, silica gel, steel, and others.

It is important to assess the potential opposition before the Production Notification is filed in first place.

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FTZ Board Conducts a Public Benefit Analysis

According to the threshold factors of 15 CFR 400.27(a), the FTZ Board shall deny or restrict authority for proposed or ongoing activity if it determines that:

1) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;
2) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or
3) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

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Economic Factors Considered

If an application meets the basic threshold factors the FTZ Board considers the public benefit based on 15 CFR 400.27(b) including:

1) Overall employment impact;
2) Exports and re-exports;
3) Retention or creation of value-added activity;
4) Extent of value-added activity;
5) Overall effect on import levels of relevant products;

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Economic Factors Considered Cont'd.

6) Extent and nature of foreign competition in relevant products;
7) Impact on related domestic industry, taking into account market conditions; and
8) Other relevant information relating to the public interest and net economic impact considerations, including technology transfers and investment effects.

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Activation of FTZ

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Activation of FTZ

Once a company secures the FTZ designation from the FTZ Board for its property, it must still “activate” the FTZ with approval from the local U.S. Customs and Border Protection office

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Activation Process 19 CFR 146.6

This requires an Application for Activation

- Purpose of activation
- Description of area to be activated
- FTZ bond amount calculation
- FTZ background check information
- Site plan of area to be activated (may be smaller than designated area)

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Activation Process 19 CFR 146.6 (cont'd)

- Grantee concurrence letter
- FTZ Operations Manual
- FTZ Security cargo security survey request
- Zone inventory management method (UIN or Lot)
- Request for Specific Authorities (ability to break and affix Customs seals by the Operator, direct delivery, yearly blanket admission authorization)

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Questions? Contact:

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