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### **Proposed Amended Foreign Trade Zone Regulations and Opportunity to Submit Comments**

The Department of Commerce Foreign Trade Zones Board has published a Proposed Rule in the Federal Register that would change its regulations governing Foreign Trade Zones (FTZs). Comments on the proposed amendments to the regulations are due no later than April 8, 2011.

FTZs are designated locations within the United States where foreign and domestic merchandise may be entered for storage, exhibition, assembly, manufacture, or other processing prior to formal “entry” into the U.S. customs territory. As a result, payment of duties is not required until the merchandise leaves the FTZ and enters the U.S. customs territory for domestic consumption. In many instances, U.S. duties can be reduced or avoided on foreign merchandise released from a FTZ if the merchandise is incorporated into a downstream product that is subject to a reduced or zero duty rate. The Department of Commerce Foreign Trade Zones Board approves applications for FTZ status, and it maintains regulations governing the operation of FTZs. U.S. Customs and Border Protection (CBP) separately approves “activation” of the FTZ, and zone activity remains under the supervision of CBP.

The Proposed Rule, a summary of the key provisions of the Proposed Rule, and a side-by-side comparison of the current and proposed regulations can be found at the following link: <http://ia.ita.doc.gov/ftzpage/letters/regs.html>. The new rules are intended to improve flexibility for U.S.-based operations, particularly for circumstances involving exports; enhance clarity; and strengthen compliance and enforcement. The revisions also would reorganize the regulations in the interest of ease-of-use and transparency.

#### **Key Provisions**

Several key provisions are included in the Proposed Rule. Among them is a revision that pertains to activities in which an imported component is combined with one or more other components to create a different finished product. The current regulations divide

For more information, contact:

**Jeffrey M. Telep**  
+1 202 626 2390  
jtelep@kslaw.com

**J. Michael Taylor**  
+1 202 626 2385  
jmtaylor@kslaw.com

**Mark Wasden**  
+1 202 626 5529  
mwasden@kslaw.com

**King & Spalding**  
**Washington, D.C.**  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)



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these activities into two separate categories, “manufacturing” or “processing” depending on whether the particular activity involves a “substantial transformation” of the component. Currently, different procedures are applied for “manufacturing” activities than for “processing” activities. Under the proposed regulations, the “manufacturing” and “processing” categories are combined into a single unified concept, “production,” and a single set of procedures applies to that activity.

The Proposed Rule would further eliminate the requirement of advance approval from the FTZ Board for the production activities of products that would be exported, except in instances where a production input is subject to an antidumping or countervailing duty (AD/CVD) order, an order of the International Trade Commission pursuant to 19 U.S.C. § 1337 (Section 337), or a quantitative restriction (quota). For production activities concerning products that will be entered into the customs territory of the United States, advance FTZ Board approval is limited to situations in which there is an inverted tariff; a production input is subject to an AD/CVD order, a Section 337 order, or a quota; or the production activity will result in duty avoidance on scrap/waste. For previously approved production activity, advance approval is required if a foreign input is newly subject to an AD/CVD order or a Section 337 order, or if there is a new or increased duty on the foreign input. In circumstances where advance approval is required for specific production activity, the Proposed Rule would allow approval of the activity on an “interim basis” pending completion of the full FTZ Board review, which would significantly decrease the time a company must wait for approval.

For changes in production at previously approved FTZs, the Proposed Rule would permit retrospective notifications of new inputs and new finished products, provided that such new inputs and finished products fall within previously approved Harmonized Tariff Schedule (HTS) categories. The current rule allows for retrospective notice of changes only with respect to new inputs; changes in new finished products currently require advance approval from the FTZ Board. As with the current rule, advanced notice would still be required and public comment would still be allowed when the FTZ Board decides on the broad HTS categories within which such production may occur. In addition, the proposed regulations would provide for a public comment period on all notifications, both advanced and retrospective, submitted to the FTZ Board along with procedures for reviewing any such notifications and for imposing restrictions on notified changes when warranted.

The Proposed Rule also would implement the statutory authority to issue fines for violations of the FTZ Act or the FTZ regulations. It also includes a provision allowing for the “prior disclosure” of violations of the FTZ Act or the FTZ regulations. Disclosure of a violation to the FTZ Board prior to its discovery by the Board would potentially result in the potential fine for the violation being reduced to \$1,000.

For additional information or assistance in submitting comments, please contact Jeff Telep, Mike Taylor, or Mark Wasden at King & Spalding at +1 202 737 0500.

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