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June 27, 2011

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
International Trade Administration
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 2111
Washington, DC 20230

Re: Docket No. ITA-2010-0012, RIN 0625-AA81

Dear Mr. McGilvray:

These rebuttal comments are filed on behalf of Kelley Drye and Warren LLP ("KDW"). KDW has represented numerous companies before the Foreign-Trade Zones Board over the past three decades. Some of the companies have been manufacturers seeking to establish subzones, while others have opposed the applications of competitors. KDW, therefore, has an interest in the fair and efficient operation of the Foreign-Trade zones program, including ensuring that the process and procedures are consistent with Congressional intent and fair to all parties.

In general, we applaud the proposed regulations published in the December 30, 2010 Federal Register at 82,340. The proposal will simplify the approval process for manufacturers wishing to avail themselves of zone procedures with straightforward applications, while at the same time ensuring the opportunity for additional scrutiny for those applications that require the same by the Foreign-Trade Zones Board. In particular, we agree with the proposal in Section 400.14(a) that required advance approval for production activity only if a lower U.S. duty rate will be applied to the component through its incorporation into a downstream product in the FTZ. We also support the proposals that would require advance FTZ Board approval for the list of broad categories of components or finished products, as indicated. The public comment periods proposed for this and all of the other notifications is absolutely necessary to maintain the integrity of the FTZ program. Accordingly, we urge you to reject the suggestions of the National Association of Foreign Trade Zones and others that would effectively eliminate the advance

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approval requirement and could otherwise undercut the ability of the Board to avoid circumvention of the unfair trade laws.

We are writing, additionally, in reply to some of the comments filed by the City of Mobile, FTZ 158 and Mercedes Benz with respect to proposed changes to section 400.43 of the regulations, concerning conflicts of interest. There is no doubt that zone users need a variety of services in order to operate successfully. The proposed rule properly recognizes that when these services are bundled, or there is no clear separation of the services provided, would-be zone users can feel pressured into or in fact be required to use a service or a service provider that is not of their choosing. Subzone operators should have choice in whom they select for a particular service and should not be forced, or feel any implied pressure, to pay for consulting or expert services as a condition of participating in a federal program. Expert consultants' charges should be identified and charged separately, and not be bundled with other zone services. While some of these comments make reference to technical or other services that may be included or bundled into the fees or a commenter may have elected to use a particular technical consultant who also may be an administrator for that zone, that is a choice that the subzone operator should be free to make for itself. There is a real cost for these services and subzone operators should be free to select the expert consultant of their choice and not be required to contract with a particular technical expert in order to be able to operate within a zone.

Similarly, the proposed changes to section 400.42 makes sense in that it reinforces the role and responsibility of the Grantee and makes clear that the Grantee and Zone Project Administrator are separate entities with distinct responsibilities. Although we recognize the administrative convenience of allowing the Zone Project Administrator the flexibility to collect the fees, this arrangement can lead to the distancing of the Grantee from its responsibilities. Indeed, this proposal could encourage grantees to take a more active role in overseeing the Zones, for which they are, in fact, responsible.

Thank you for considering our views.

Sincerely,


Paul C. Rosenthal

PCR:kjd