



September 28, 2016

James Swanson
Director, Cargo Security and Controls
Cargo and Conveyance Security, Office of Field Operations
U.S. Customs & Border Protection
1300 Pennsylvania Ave., NW
Washington, DC 20229

Dear Mr. Swanson,

At your request, I am writing to provide guidance on whether certain customs procedures that apply to merchandise under the U.S. foreign-trade zones (FTZs) program could apply to merchandise that is never physically present in a FTZ. To address this matter, we have examined, in particular, customs procedures authorized by 19 USC 81c ("Exemption from Customs Laws of Merchandise Brought into Foreign Trade Zone") and the customs procedure authorized by 19 USC 1484(i) ("Special Rule for Foreign-Trade Zone Operations" – commonly referred to as the FTZ "weekly entry" procedure).

19 USC 81c authorizes specific customs procedures for merchandise that is "brought into a zone" and subsequently "exported, destroyed, or sent into customs territory of the United States therefrom" – with a "zone" defined in 19 USC 81a(i) as "a foreign-trade zone as provided in this chapter," *i.e.*, as provided in the Foreign-Trade Zones Act (the FTZ Act) (19 USC 81a-81u). 19 USC 1484(i) authorizes the particular customs procedure identified in 19 USC 1484(i)(1) for merchandise that is "withdrawn from a foreign-trade zone" – with 19 USC 1484(i)(4) defining a "foreign-trade zone" as "a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.)."

In addition to authorizing certain special customs procedures applicable to FTZs, the FTZ Act established the Foreign-Trade Zones Board as the agency authorized by Congress to "grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States" (19 USC 81a(b)). The Act sets out requirements for any application submitted to the FTZ Board requesting establishment of a FTZ, including (emphasis added):

§ 81f. Application for establishment and expansion of zone

(a) Application for establishment; requirements

Each application shall state in detail -

(1) The location and qualifications of the area in which it is proposed to establish a zone.

The FTZ Act also sets the standard for the FTZ Board to apply in determining whether to authorize a proposed FTZ, stating (emphasis added):

§ 81g. Granting of application

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

The FTZ Board's regulations implementing the FTZ Act reinforce the statutory structure cited above through the following definitions:

Foreign-trade zone (FTZ or zone) includes one or more restricted-access sites, including subzones, in or adjacent (as defined by Sec. 400.11(b)(2)) to a CBP port of entry, operated as a public utility (within the meaning of Sec. 400.42) under the sponsorship of a zone grantee authorized by the Board, with zone operations under the supervision of CBP. (15 CFR 400.2(h))

And:

Zone site (site) means a physical location of a zone or subzone. A site is composed of one or more generally contiguous parcels of land organized and functioning as an integrated unit, such as all or part of an industrial park or airport facility. (15 CFR 400.2(z))

A significant portion of the FTZ Board's regulations is then devoted to the process and procedures regarding applications to establish or modify FTZ sites and subzones.

In the context of the statutory provisions cited above, as well as the FTZ Board's regulations implementing the FTZ Act, it is clear that a FTZ is inherently comprised of one or more physical locations authorized by the FTZ Board pursuant to the application process established by the FTZ Act. As delineated above, the customs procedures of 19 USC 81c apply only to merchandise that is "brought into a zone" and subsequently "exported, destroyed, or sent into customs territory of the United States therefrom," and the customs procedure of 19 USC 1494(i) applies only to merchandise "withdrawn from a foreign-trade zone." In each of those statutory provisions, "a zone" or "a foreign-trade zone" is a FTZ site(s) authorized by the FTZ Board – *i.e.*, a specific, physical location(s) that the FTZ Board has authorized pursuant to the application process of the FTZ Act.

In sum, our analysis of the applicability of the customs procedures in question finds no basis for the application of the procedures of 19 USC 81c to merchandise that is not "brought into" a specific, physical FTZ site(s) authorized by the FTZ Board and subsequently "exported, destroyed, or sent into customs territory of the United States therefrom" or for the application of 19 USC 1484(i) to merchandise that is not

“withdrawn from” a specific, physical FTZ site(s) authorized by the FTZ Board. If you have any additional questions in this regard, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew McGilvray', with a long horizontal flourish extending to the right.

Andrew McGilvray
Executive Secretary