

**MEMORANDUM**

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SUBJECT: U.S. Foreign-Trade Zone Experience

DATE: January 2008

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The firm provides over thirty-seven (37) years experience in all aspects of the analysis, development, and management of foreign-trade zones and subzones. We have represented and structured approximately four hundred (400) zone projects. A brief description of our background, experience, and activities involving the U.S. Foreign-Trade Zones Program is provided below:

1. In 1968, while a student at the University of Virginia Law School, Marshall V. Miller began research in the U.S. Foreign-Trade Zone Program for an article to be published in the first student Journal of International Law in the United States. Mr. Miller's article, entitled "Foreign-Trade Zone Manufacturing - the Emergence of a Free Trade Instrument," was published in 1969 in the *Virginia Journal of International Law*. Mr. Miller spent over one year researching the subject and reviewing the files of the Foreign-Trade Zones Board in Washington, D.C. regarding every foreign-trade zone project to date. The 35-page article reviewed the history and accomplishments of the U.S. Foreign-Trade Zone Program and centered on the only major lawsuit at that time to ever be filed on the subject, Armco Steel Corporation v. Stans, 303 F. Supp. 262 (S.D.N.Y. 1969); aff'd 431 F2d 779 (2d Cir. 1970). The basic law established by these court decisions continues to provide the primary judicial precedent of the U.S. courts in the foreign-trade zone area.
2. Mr. Miller is a Founder and Past President of the National Association of Foreign-Trade Zones. He has served as General Counsel to the Association since its inception and was elected a Life Member. The firm previously managed the Association. The NAFTAZ is the sole voice of the foreign-trade zone industry. In his capacity, Mr. Miller has participated in all matters involving the U.S. Foreign-Trade Zones Program since the founding of the Association in 1972. Mr. Miller is considered the "Father" of the U.S. Foreign-Trade Zone program.
3. Between 1975 and 1980, Mr. Miller drafted and secured the amendment to Section 146.48(e) of U.S. Customs and Border Protection (hereinafter referred to as "Customs") Foreign-Trade Zone Regulations. Up until that amendment, the value of merchandise produced in a foreign-trade zone included the value of labor, overhead, and profit. The amendment made it clear that the only dutiable

value element was the sum of the value of the foreign nonduty paid materials. Prior to the passage of this regulatory change, there were three subzone manufacturing operations authorized by the Foreign-Trade Zones Board. Today, as a direct result of this change in the Customs Regulations, there are approximately four hundred seventy-eight (478) manufacturing subzone operations.

4. Organization of the management process in foreign-trade zones has been a high priority of the firm. The firm was responsible for the restructuring of all Customs documentation (CBPF 214, CBPF 215, and CBPF 216 forms) involving foreign-trade zones. The original methodology of managing zones with an onsite Customs officer was replaced by a system the firm helped formulate, entitled the "Alternate Inventory Control System (AICS)," that evolved into significant changes to the Customs Regulations in 1986. Foreign-Trade Zone Operations Manuals describing the FTZ operations process were first prepared in the mid-1970s and continue to this date. The firm structured and secured approval for the unique identification number (UIN) inventory method on both a FIFO and FOFI basis, the direct delivery and daily CBPF 214 procedure, the weekly entry program for manufacturing and distribution, the temporary removal procedure, regulations to allow a zone operator to act as a bonded carrier, the FDA/FTZ Weekly Entry procedure, and production machinery assembly and entry. The firm has been directly engaged for over twenty (20) years in the structuring of the automation of the CBPF 214. The firm structured the zone production environment for the motor vehicle, oil refining, shipbuilding, pharmaceutical, and information technology industries among others.
5. As General Counsel to the NAFTAZ, the firm supervised seven investigations and reports on the Foreign-Trade Zone Program by the General Accounting Office and the U.S. International Trade Commission published between 1986 and 1991. The firm was involved in two Congressional Hearings on the program in March 1989 and October 1989. Significant changes were made to the U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement to recognize the use of zones. The firm participated in the total restructuring of the Customs Regulations published in 1986, initial writing and revisions to the Customs Foreign-Trade Zone Manual published in 1981, 1991, 1995, 1996, 2000-2001, 2003, and the total restructuring of the Foreign-Trade Zones Board Regulations in 1991. The relationship with the Food and Drug Administration and the implementation of a weekly entry process was structured. On going support of the 2000 Weekly Entry statute has occurred. All litigation involving the Foreign-Trade Zone Program has been monitored on behalf of the Association. An Amicus Curae Brief was prepared and filed in the case of Goodman Manufacturing L.P. v. United States before the United States Court of Appeals for the Federal Circuit. The transfer of Customs to the Department of Homeland Security and the changed inter-relationships of Treasury, Customs, the Department of Homeland Security, and the Foreign-Trade Zones Board required considerable efforts.
6. As General Counsel to the NAFTAZ, the firm has structured and secured passage of a series of amendments to the Foreign-Trade Zones Act:
  - a. Domestic Denatured Spirits. Pub. L. 99-514 (October 22, 1986); 19 U.S.C. § 81c(c).

- b. U.S.-Canada Free Trade Act. United States-Canada Free-Trade Agreement Implementation Act of 1988 (September 28, 1988); 19 U.S.C. § 81c(a).
  - c. Petroleum Refining. Technical and Miscellaneous Revenue Act of 1988 (November 11, 1988); 81 U.S.C. § 81c(d) .
  - d. Merchandise Processing Fee--Agricultural Products. Pub. L. 101-382 (August 20, 1990); 19 U.S.C. § 58c(b)(8)(D)(v).
  - e. Denatured Spirits. S.2140/H.R. 1594 § 1711 (October 1, 1990).
  - f. North American Free Trade Agreement. Pub. L. 103-82 (December 8, 1993); 19 U.S.C. § 81c(a).
  - g. Merchandise Processing Fee. Pub. L. 104-295 (October 11, 1996); 19 U.S.C. § 58c(b)(8)(D)(vi).
  - h. Production Machinery. Pub. L. 104-295 (October 11, 1996); 19 U.S.C. § 81c(e).
  - i. Automation of CF 214. Pub. L. 106-36 (January 19, 1999); 19 U.S.C. § 1411(c).
  - j. Weekly Entry. Pub. L. 106-200; Trade and Development Act of 2000 Section 410 (May 18, 2000).
7. *A Reference Guide to U.S. Foreign-Trade Zones* is published yearly and is available on CD-ROM. Beginning as an internal reference, the document has grown to over 588 pages providing detailed data (activity/size/contact information/etc.) on every foreign-trade zone and subzone project with a listing of every *Federal Register* notice. Cross reference tables of subzones by business category and various Board actions are included. It is the most comprehensive publication regarding the zone industry.

The firm has participated in the development of a wide range of foreign-trade zone projects in the United States, including Puerto Rico. Legal services provided include: advice and counsel on miscellaneous operations and Customs issues involving zones; the composition of the grantee and operator organizations; preparing contractual operating agreements; assisting in the determination of target industries and conferring with potential zone users; presenting seminars; preparing, filing, and seeking prompt action on Applications, Manufacturing Authorizations, Boundary Modifications, and other Administrative Actions at the Foreign-Trade Zones Board. Besides providing practical legal advice, the firm provides necessary guidance on exactly how to structure zone management systems so as to comply with Customs requirements and negotiating same with Customs officials. A detailed FTZ System Design document is produced after evaluation of the existing operations and computer management systems. Every effort is made to provide exact instructions on how to modify existing systems to manage zone processes. Alternately, we work with clients in implementing "bolt-on" management packages. The firm has extensive databases to develop in ISO format necessary Foreign-Trade Zone Operations Manual that must be submitted to Customs and a more detailed internal procedure manual. The firm also prepares necessary Foreign-Trade Zone Schedules, etc. The firm has developed a computerized library containing necessary legal and procedural requirements for all aspects of zone activities (Applications, Foreign-Trade Zone management systems, Operations Manuals, Zone Schedules, etc.). Indexed copies of all *Federal Register* notices, Board Orders, Customs Headquarters Rulings, and Board Annual Reports are maintained. The firm has developed detailed self-audit documents and conducts on-site audits of zone projects. Annually, we conduct no charge seminars on topics of special interest exclusively for our clients at our headquarters. Finally, as firms, products, and goals change, the firm provides the necessary guidance to change zone activity.