

U.S. FOREIGN-TRADE ZONE EXPERIENCE

The firm provides over forty-one (41) years experience in all aspects of the analysis, development, and management of foreign-trade zones and subzones. We have represented and structured more than six hundred (600) zone projects. A brief description of our background, experience, and activities involving the U.S. Foreign-Trade Zones Program is provided herein.

In 1968, while a student at the University of Virginia Law School, the Firm's principal 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. The 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 a year researching the subject and reviewing the files of the Foreign-Trade Zones Board in Washington, D.C. regarding all foreign-trade zone projects in existence. 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 F.2d 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.

Mr. Miller is a Founder and Past President of the National Association of Foreign-Trade Zones. The NAFTAZ is the sole voice of the foreign-trade zone industry. He has served as General Counsel since its inception and was elected a Life Member. The firm previously managed the Association. 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.

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 five hundred six (506) manufacturing subzone operations.

Organization of the management process in foreign-trade zones has been a high priority of our 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. We have assisted in the preparation of Foreign-Trade Zone Operations Manuals describing the FTZ operations process since 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 alternate of cycle counts as opposed to a required annual physical inventory, 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 Filing procedure, and production machinery assembly and entry. We have been directly engaged for over twenty (20) years in the structuring of the automation of the e-214. The firm structured the zone production environment for the motor vehicle, oil refining, shipbuilding, pharmaceutical, and information technology industries among others.

As General Counsel to the NAFTAZ, our 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. We were 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 updated in 2009. The firm was also involved in the total restructuring of the Foreign-Trade Zones Board Regulations in 1991. The firm was involved in the amendment to the Foreign-Trade Zone Act that established a zone exemption for state and local ad valorem tangible personal property tax. The relationship with the Food and Drug Administration and the implementation of a weekly entry process was structured. The firm structured the Weekly Entry statute in 2000. 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.

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 Produce ability. 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).

A Reference Guide to U.S. Foreign-Trade Zones is published yearly and is available on our website. The Guide is provided free of charge to firm clients and government officials.

The firm has participated in the development of a wide range of foreign-trade zone projects identifying the feasibility of potential zone and subzone 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 an automated collection of necessary legal and procedural requirements and documentation for all aspects of zone activities (Foreign-Trade Zone Applications, Management Systems, Operations Manuals, Zone Schedules, etc.). The firm maintains an exclusive compilation of all Customs Headquarters Rulings, Directives and FTZ Manuals issued on the Foreign-Trade Zone program. Indexed copies of all *Federal Register* FTZ Board Application Filing Notices, FTZ Board Orders, and FTZ Board Annual Reports are also maintained in our firm library.

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 in Kansas City, Missouri. Finally, as companies, products, and goals change, the firm provides the necessary guidance to change zone activity accordingly.