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## NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW

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Volume 2 | Number 1

Article 1

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1977

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Mark Fogel

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#### Recommended Citation

Mark Fogel, *Foreign-Trade Zones: An Opportunity for North Carolina*, 2 N.C. J. INT'L L. 1 (1977).

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# Foreign-Trade Zones: An Opportunity for North Carolina

Mark Fogel\*

On June 12, 1975, the United States Foreign-Trade Zone Board<sup>1</sup> (FTZ Board) issued Foreign-Trade Zones Board Order No. 106<sup>2</sup>, which approved an application of the South Carolina Ports Authority for a foreign trade zone in Dorchester County, South Carolina. Approximately two months earlier, the FTZ Board had issued Foreign-Trade Zones Board Order No. 105<sup>3</sup>, which had approved an application of the Virginia Ports Authority for a foreign trade zone in Portsmouth, Virginia. As a consequence of these FTZ Board orders, North Carolina's two sister states, both of which are in keen economic competition with North Carolina in the area of industrial development, gained a key advantage. Since imports can be landed and stored in a foreign trade zone without being subjected to full customs formalities, the establishment of these zones will aid South Carolina and Virginia in attracting industry and thereby diverting it from North Carolina ports. Specifically, in a foreign trade zone, no duty is paid until imported goods leave the zone and enter into the Customs Territory of the United States.

In response to the two FTZ Board orders, North Carolina community and government leaders began to seek information on how North Carolina could obtain one or more foreign trade zones. Many leaders realized the specific benefits which could accrue from the procurement of such zones. Moreover, even those who possessed only a general awareness of the possible benefits understood that the existence of foreign trade zones was at least symbolic of a state's effort to strengthen her industrial development.

The federal Foreign-Trade Zone Act provided that before a private corporation can apply for a federal license to build and operate a foreign trade zone, legislation must be enacted by the state specifically permitting private corporations to establish such a facility. There is no such condition precedent applicable to public corporations.<sup>4</sup> The General Assembly of North Carolina enacted such legislation at its first

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\*Member, North Carolina Bar; B.E. 1965, Cooper Union Institute of Technology; M.S.E.E. 1967, J.D. 1974, University of North Carolina at Chapel Hill. Mr. Fogel was Special Assistant to the Secretary of Natural and Economic Resources of N.C. and is now in private practice in Raleigh, N.C.

<sup>1</sup> The Foreign-Trade Zone Board was established by the Foreign-Trade Zone Act of 1934. 19 U.S.C. §§ 81a-81u (1970).

<sup>2</sup> 37TH ANNUAL REPORT OF THE FOREIGN-TRADE ZONE BOARD TO THE CONGRESS OF THE UNITED STATES 66 (1975).

<sup>3</sup> *Id.* at 64.

<sup>4</sup> 19 U.S.C. § 81a(f) (1970).

opportunity. The Act is reproduced below in its entirety.<sup>5</sup> The General Statutes of North Carolina are amended by adding a new Chapter 55C to read as follows:

**"CHAPTER 55C. FOREIGN-TRADE ZONES.**

55C-1. *Public corporations authorized to apply for privilege of establishing a foreign trade zone.* – Any public corporation of the State of North Carolina, as that term is hereinafter defined is hereby authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with an Act of Congress approved June 18, 1934, entitled, "An Act to Provide for the Establishment, Operation and Maintenance of Foreign Trade Zones in Ports of Entry of the United States," to expedite and encourage foreign commerce, and for other purposes.

55C-2. *Public corporation defined.* – The term "public corporation", for the purpose of this Chapter, means the State of North Carolina or any political subdivision thereof, or any public agency of this State or any political subdivision thereof, or any public board, bureau, commission or authority created by the General Assembly.

55C-3. *Private corporations authorized to apply for privilege of establishing a foreign trade zone.* – Any private corporation hereafter organized under the laws of this State for the specific purpose of establishing, operating and maintaining a foreign trade zone in accordance with the Act of Congress referred to in G.S. 55C-1 is likewise authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the said Act of Congress.

55C-4. *Public or private corporation establishing foreign trade zone to be governed by federal law.* – Any public or private corporation authorized by this Chapter to make application for the privilege of establishing, operating and maintaining said foreign trade zone, whose application is granted pursuant to the terms of the aforementioned Act of Congress is hereby authorized to establish such foreign trade zone and to operate and maintain the same subject to the conditions and restrictions of the said Act of Congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by said Act of Congress to carry out the provisions of such Act. Any other provision of law notwithstanding, property which is located in a foreign trade zone established pursuant to this chapter shall be subject to ad valorem taxes."

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<sup>5</sup> N.C. GEN. STAT. § 55C-1 to -4 (1976 Interim Supp.).

With North Carolina preparing to join her two sister states and a number of other states as the site of one or more foreign trade zones<sup>6</sup>, this article will explain the concept of foreign trade zones, their economic significance and the process by which foreign trade zone status is obtained.

### *History of Foreign-Trade Zones*

A brief review of the history of foreign trade zones is of value and interest.<sup>7</sup> The first "free trade zone" has been identified as the city of Hamburg, which was granted exemption from the payment of customs duties in 1189 by Frederick I.<sup>8</sup> During the next 600 to 700 years, a great number of commercial centers established free trade zones or free ports in order to assist local merchants in their handling of goods in transit. The most notable of these centers were the cities of the Hanseatic League. These cities received a special status which placed them outside the customs territories of their governments. In time, the size of the duty-free sites was reduced, such reduction leading to the so-called "duty free zone" as distinguished from duty-free ports.<sup>9</sup>

In the United States, the level of tariff barriers has been a lively issue since the earliest days of the republic.<sup>10</sup> The Smoot-Hawley Tariff Act of 1930<sup>11</sup>, with its highly protectionistic duties, hindered the United States from taking a vigorous role in international business and commerce. Apparently recognizing the obstacles to international trade created by the tariffs, Congress passed the Foreign-Trade Zone Act in 1934.<sup>12</sup> The Act established a Foreign-Trade Zone Board consisting of the Secretaries of Commerce, Treasury, and the Army.<sup>13</sup> The Board was authorized to grant to applicants, consisting of both public and private corporations<sup>14</sup>, the right to build and operate foreign trade zones. The Board was authorized, in addition, to prescribe rules governing the administration of zones.<sup>15</sup> It is interesting to note that the original Act did not permit the use of foreign goods in manufactur-

<sup>6</sup> Theoretically a state may have as many zones as there are ports of entry. 19 U.S.C. § 81b(b) (1970).

<sup>7</sup> For readers interested in pursuing this material, see either LOMAX, *THE FOREIGN-TRADE ZONES* (1947), or R. THOMAN, *FREE PORTS AND FOREIGN-TRADE ZONES* (1956).

<sup>8</sup> LOMAX, *supra* note 7.

<sup>9</sup> For a discussion of the historical development of the duty free zone, see R. THOMAN, *supra* at 10-12.

<sup>10</sup> See generally P. KENEN, *GIANT AMONG NATIONS* (1960).

<sup>11</sup> Tariff Act of 1930, ch. 497, §§ 1-654, 46 Stat. 590, as amended by Pub. L. No. 87-456, §§ 101-501, 76 Stat. 72 (1962) (codified in 19 U.S.C. §§ 1202-1654 (1970)).

<sup>12</sup> 19 U.S.C. §§ 81a-81u (1970).

<sup>13</sup> *Id.* § 81a(b).

<sup>14</sup> *Id.* § 81b(a) (1970).

<sup>15</sup> *Id.* § 81h.

ing processes conducted within the zone. It was not until 1950 that this restriction was erased.<sup>16</sup>

### *Foreign-Trade Zones Generally*

The Foreign-Trade Zone Board has defined a foreign trade zone as follows:

A foreign trade zone in the United States is an isolated, enclosed, and policed area, in or adjacent to a port of entry, operated as a public utility by a public or private corporation where foreign and domestic merchandise of every description, except such as prohibited by law, may, without being subject to the customs and laws of the United States, be brought and may be stored, sold, exhibited, broken up, repacked, assembled, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured and be exported, destroyed, or sent therefrom into the customs territory of the United States in the original package or otherwise.<sup>17</sup>

Physically, a zone is segregated from the adjacent customs territory by a metal fencing at least 10 feet high. The zone grantee must provide living quarters and administrative facilities for United States Customs Service officers. A zone may consist of just a few buildings where foreign goods are stored prior to importation into the customs territory of the United States. Or its size may be expanded to encompass major manufacturing facilities. The latter arrangement is the trend today.

The Foreign-Trade Zone Act requires that each zone be operated as a public utility, that all rates and charges be fair and reasonable for all services and privileges within the zone and that the grantee afford uniform treatment to all who apply for use of the zone's facilities.<sup>18</sup> Of course, the very term "public utility" implies a use and service to the public as a matter of right. As a licensed public utility, all rates and charges levied by the grantee against users are subject to the approval of the Foreign-Trade Zone Board.<sup>19</sup>

At present, there are seventeen port communities with approved zone facilities.<sup>20</sup> Eleven of these communities have zones in active operation.<sup>21</sup> In addition, there are three subzones in operation: a

<sup>16</sup> Act of June 17, 1950, Pub. L. No. 566, § 3, 64 Stat. 246.

<sup>17</sup> 19TH ANNUAL REPORT OF THE FOREIGN-TRADE ZONES BOARD TO THE CONGRESS OF THE UNITED STATES 957 (1957).

<sup>18</sup> 19 U.S.C. § 81n (1970).

<sup>19</sup> 15 C.F.R. § 400.1003(b) (1976).

<sup>20</sup> 37TH ANNUAL REPORT OF THE FOREIGN-TRADE ZONES BOARD TO THE CONGRESS OF THE UNITED STATES 1 (1975).

<sup>21</sup> *Id.* at 7. These are: New York, New Orleans, San Francisco, Mayaguez (Puerto Rico), Toledo, Honolulu, Bay City (Michigan), McAllen (Texas), Kansas City (Kansas).

subzone in San Francisco engaged in the initial handling of foreign fabric; an oil refinery subzone and a synthetic natural gas plant subzone in Ewa, Oahu, Hawaii.<sup>22</sup>

As stated in the definition, foreign trade zones must be located in or adjacent to a port of entry.<sup>23</sup> North Carolina currently has six ports of entry; these are: Wilmington (including townships of Northwest, Wilmington, and Cape Fear), Beaufort-Morehead City, Charlotte, Durham, Reidsville, and Winston Salem.<sup>24</sup>

### *Economic Impact of Foreign-Trade Zones*

Normally, United States Customs requires that foreign goods be entered with customs officials and that their duties actually be paid within five days after the arrival of the goods in the United States. This creates serious economic hardship for American importers who must pay the duties well before the time they resell the goods or incorporate them in the manufacture of other goods. This cash flow problem inherent in our tariff system accounts for the trend of American firms to locate their manufacturing plants abroad when foreign goods comprise a significant part of a final product.<sup>25</sup> For the manufacturer, the cash flow problem is thereby averted since proceeds from the sale are available immediately after importation for payment of the customs duties. However, with regard to American economic policy, this trend of locating manufacturing facilities abroad has a negative impact. Jobs and other economic benefits are lost when industrial expansion is diverted to foreign countries.

The underlying cash flow problem is non-existent, however, where foreign trade zones have been established. The key phrase in

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<sup>22</sup> Subzones are authorized by the section of the Foreign-Trade Zone Act which provides in pertinent part that "zones, in addition to those to which a port of entry is entitled, shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce." The Board by regulation has put life into that section by the following regulation:

#### ZONES FOR SPECIALIZED PURPOSES

The establishment of a zone or sub-zone in an area separate from an existing zone, for one or more of the *specialized* purposes of storing manipulating, manufacturing, or exhibiting goods, may be authorized if the Board finds that existing or authorized zones will not serve adequately the convenience of commerce with respect to the proposed purposes. 19 C.F.R. § 400.304 (1976) (emphasis added).

<sup>23</sup> The definition does not appear exactly to track the statutory language, which states: "Each port of entry is entitled to at least one zone . . . Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce." 19 U.S.C. § 81(b) (1970). The use of the term "adjacent to" in the definition is the issue this author is raising. At this time all foreign trade zones are within the geographic boundaries of the port of entry.

<sup>24</sup> 19 C.F.R. § 1.2 (1976).

<sup>25</sup> See generally W. DYMZA, FOREIGN-TRADE ZONES AND INTERNATIONAL BUSINESS (1964).

the definition of a foreign trade zone is probably "without being subject to the customs laws of the United States". Quite simply, this phrase means that customs duties do not fall due as long as the foreign goods remain in the zone. Where such zones are available, American manufacturers may store or assemble imported goods, may incorporate imported components into domestic goods and may defer payment of duties until the product is brought into the customs territory of the United States.

Another significant problem attributable to our tariff system is the difficulty of attracting reverse investment. The cash flow problems which are caused by subjecting foreign goods to payment of duties almost immediately upon their arrival in this country have discouraged many foreign manufacturers from investing their funds in the construction of manufacturing operations in the United States. Other than the duty payment factor, this country is viewed as a serious contender for the location of manufacturing operations. The United States provides several major incentives for firms returning to the United States, staying in the United States, or coming to the United States:

(1) When fringe benefits provided to labor in foreign countries are taken into account, United States wage rates are lower than the wage rates in some other industrialized nations.

(2) The United States has an ample supply of skilled labor, whereas some European Countries must import their labor.

(3) The United States has ample land available to industry.

(4) The United States has relatively more energy for industry than do other industrialized countries.

(5) The United States political system is more stable than that found in some countries.

(6) The United States inflation rates are lower than those of most industrialized countries.<sup>26</sup>

Given these factors, a foreign trade zone provides additional incentive for goods to be manufactured or assembled in this country rather than in the exporting country. Thus domestic labor, equipment, and goods can be used in the manufacture of items which might otherwise have been imported as finished goods for sale.

The effect which foreign trade zones could have on state and local economies is significant since the type of manufacturing prevalent in foreign trade zones involves high wage, environmentally attractive operations. Many commentators have also stressed the favorable impact which manufacturing operations conducted within a foreign trade zone can have on our balance of payments. Because foreign trade zones induce American industry to process or manufacture *for export* goods which contain both domestic and foreign components, the

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<sup>26</sup> TRENDS, May, 1974, at 4.

existence of such zones could lead to increased American exports and consequently to a more favorable balance of payments. Another major benefit is that foreign trade zones can be used simply to store goods without the payment of duties until the goods are sent into the United States Customs territory<sup>27</sup> or until they are re-exported.<sup>28</sup> The ability to store goods duty-free is particularly important in light of the concomitant ability to bring quota restricted material into foreign trade zones. Quota restricted materials, such as zinc, may be purchased abroad at low prices, stored, and, when domestic quotas are favorable, "imported" into the United States Customs territory at significant profits. This arrangement works because zones are not considered to be within the customs territory of the United States; therefore, the arrangement is not violative of American buyers' quota limitations.

Finally — and this is important in North Carolina where businessmen purchase significant foreign production equipment — foreign trade zones permit the exhibition of such equipment in the zone without payment of duties by the foreign equipment manufacturer.<sup>29</sup> It would seem that the incentive to freely exhibit one's wares in North Carolina would permit businessmen to be fully aware, at all times, of advances in production technology.

#### *Alternatives to Foreign-Trade Zones*

The Congress has given businessmen several methods, other than foreign trade zones, of avoiding or mitigating the effect of the tariff barriers.<sup>30</sup> A brief summary here might be useful. The two main alternatives to foreign trade zones are bonded warehouses and the drawback. There are two types of bonded warehouses: the storage bonded warehouse and the bonded manufacturing warehouse. With respect to the former,<sup>31</sup> goods may be stored, sorted, and/or cleaned under customs approval and without the payment of customs duties for a period of up to three years.<sup>32</sup> In order to avail himself of this benefit, the importer must post a bond in the amount of double the estimated duty on the goods concerned.<sup>33</sup> In this type of warehouse, unlike the foreign trade zone, the importer must expend funds to obtain the necessary bond. Also, unlike the foreign trade zone, no

<sup>27</sup> The customs territory of the United States includes the states, the District of Columbia, and Puerto Rico. 19 U.S.C. § 1202(2) (Supp. 1976). The textual statement is, of course, equally true for products manufactured in a Foreign-Trade Zone which contains imported goods.

<sup>28</sup> 19 U.S.C.A. § 81C (1976).

<sup>29</sup> *Id.*

<sup>30</sup> For a thorough description of each alternative and a comparison with foreign trade zones, see the generally excellent Comment, *Foreign-Trade Zones*, 29 U. PITT L. REV. 89 (1967).

<sup>31</sup> 19 U.S.C.A. § 1555 (1976); 19 C.F.R. 19.3 (1976).

<sup>32</sup> 19 U.S.C. § 1557(a) (1970).

<sup>33</sup> 19 C.F.R. § 113.14(j) (1976).



manufacturing incorporating the imported goods may take place in a storage bonded warehouse.

In bonded manufacturing warehouses,<sup>34</sup> imported materials may be used in the manufacture of goods; however, such manufacturing is permitted only if the finished goods are intended for export.<sup>35</sup> Also, manipulation of the goods is allowed only to a limited extent and only under a permit and strict customs supervision. The fact that the goods from manufacturing warehouses cannot enter the United States Customs territory will possibly make such warehouses economically unfeasible. In addition, the paper work involved in bonded operations is generally described as complex.

Under the Drawback Act,<sup>36</sup> businessmen may "drawback" (i.e., reclaim) the duty paid on foreign goods which are re-exported. The problem of course is that duties must be paid upon entry into the customs territory of the United States while the drawback cannot be obtained until export. This presents cash flow problems. It is important to note that entry into a foreign trade zone is equivalent to export as far as obtaining the drawback is concerned.

From the above it can be seen that no alternative provides the benefits of a foreign trade zone. These benefits include the ability to bring foreign goods into the geographic area of the United States without the immediate payment of duties and without the payment of a bond, and the ability to use foreign goods in the manufacture of products and to then introduce the product into the customs territory of the United States.

#### *Obtaining Foreign-Trade Zone Status*

The first step in obtaining foreign trade zone status in a port of entry is the submission of an application by an eligible corporation.<sup>37</sup> It is important to note that in granting applications, preference is given by the Board to public corporations.<sup>38</sup>

The application procedure includes the preparation and submission of a substantial number of exhibits which will be considered by the staff and members of the Foreign-Trade Zone Board.<sup>39</sup> The following list describes some of the more important exhibits required by the Foreign-Trade Zone Board:

(1) Exhibit No. 1 must indicate the location and qualifications of the area proposed as the foreign trade zone.

<sup>34</sup> 19 U.S.C.A. § 1311 (1976); 19 C.F.R. §§ 19.13—19.15 (1976).

<sup>35</sup> 19 U.S.C.A. § 1311 (1976); 19 C.F.R. § 19.15(a).

<sup>36</sup> 19 U.S.C. § 1313(a) (1970).

<sup>37</sup> 15 C.F.R. §§ 400.500—400.609 (1976).

<sup>38</sup> *Id.* § 400.503.

<sup>39</sup> *Id.* § 400.603.

(2) Exhibit No. 4 must indicate the method of financing the project and present proof of the ability of the applicant to finance and construct the project.

(3) Exhibit No. 5, possibly the most important evidence to be introduced, must present an economic survey showing in detail the potential commerce and revenue of the proposed zone and showing the impact of the zone on United States balance of payments and balance of trade. This economic survey is a key factor because the zone can be justified to the Board only in terms of its potential for expediting and encouraging foreign commerce in a manner inuring to the benefit of the United States.

(4) Exhibit No. 6 must physically describe the proposed project.

(5) Exhibit No. 7 must give preliminary cost estimates of the proposed project.

(6) Exhibit No. 8 must give a statement as to when construction of the project will begin and end and when zone operation will begin.

(7) Exhibit No. 11 must produce satisfactory evidence of the state's Enabling Act, as well as certain other evidence if the applicant is a private corporation.

It should be obvious that a complete application cannot be processed hastily because of the great volume of evidence which must be considered.<sup>40</sup> During zone application preparation, guidance and technical information are readily provided by the office of the Foreign-Trade Zone Board's Executive Secretary.

Serious consideration will not be given to any application unless there are firm commitments from prospective tenants in the zone.<sup>41</sup> The Foreign-Trade Zone Board wishes to insure that zone users have been identified, that there is at least some potential for manufacturing operations to be conducted within the zone, and that zone users intend to avail themselves of zone facilities once they become available. In addition, the Board requires indications of support of the proposed zone from officials of local and state government.

The rules of procedure which guide the handling of all zone applications are of course spelled out in detail in the regulations of the Board.<sup>42</sup> However, a summary of administrative procedure may be useful. Upon receipt of an application, an examiner determines whether the application is complete on its face. If so, an Examiners Committee is constituted, including the Regional Commissioner of Customs, or his designee, and the District Army Engineer.<sup>43</sup> The Examiners Committee is empowered to hold whatever hearings are

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<sup>40</sup> Personal interview with John Da Ponte, Jr., Executive Secretary of the Foreign-Trade Zone Board.

<sup>41</sup> *Id.*

<sup>42</sup> 15 C.F.R. § 400.1307—400.1312 (1976).

<sup>43</sup> *Id.* § 400.1308.

necessary to develop a complete record on the application. The Committee may compel parties to the application to present additional testimony or documentary evidence. The Committee is also empowered to hold local hearings for the purpose of providing all interested parties an opportunity to present relevant testimony. Regulations promulgated by the Board carefully explain notice requirements and detailed procedures to be followed at any hearing. If the recommendation of the Committee is unfavorable, the applicant will be given the opportunity to appear before the Board prior to its final decision. At that time, the application can present any further relevant evidence.

If the Board approves the application, construction of a foreign trade zone will begin subject to supervision by the Secretary of the Army. In actual practice, such supervision is exercised by the District Engineer, who will enforce the terms of the grant.

#### *Admission, Transfer and Handling of Goods Within the Zone*

All foreign and domestic merchandise, except such as the law expressly excludes, may be brought into the zone.<sup>44</sup> Once in the zone, goods may be stored, manipulated, exhibited or used in manufacture;<sup>45</sup> however, the District Director of Customs must expressly permit zone users to perform the latter three acts. Possibly the key administrative determination to be made with respect to goods entered into a zone is the determination of their zone status.<sup>46</sup> This determination is made by the District Customs Officer. The criteria upon which the determination is to be made are found in the regulations of the United States Customs Service.<sup>47</sup> The classification scheme and the relation between status type and the procedures for transferring goods from a zone into the customs territory of the United States are significant enough to warrant further discussion.

There are five potential zone status classifications:

(1) *Privileged foreign merchandise*<sup>48</sup>—Privileged foreign merchandise status may be received, upon application, for foreign merchandise which has not been manipulated or manufactured. Such application may be made at the time of entry into the zone or at any time before the merchandise has been manipulated or manufactured in a manner which might change its tariff classification.<sup>49</sup> Privileged foreign merchandise may immediately be transferred into the customs territory of the United States upon payment of the liquidated duties and deter-

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<sup>44</sup> 19 U.S.C.A. § 81C (1976); 15 C.F.R. § 400.801 (1976).

<sup>45</sup> 19 U.S.C.A. § 81C (1976); 15 C.F.R. § 400.803 (1976).

<sup>46</sup> 15 C.F.R. § 400.804(a) (1976).

<sup>47</sup> 19 C.F.R. § 146.21—146.25 (1976).

<sup>48</sup> Foreign merchandise is imported merchandise which has not been properly released from customs custody in customs territory. 19 C.F.R. § 146.1(e)(2) (1976).

<sup>49</sup> *Id.* § 146.21(b).

mined taxes.<sup>50</sup> It is important to note that the status cannot be abandoned and the duties remain applicable, except for recoverable waste.<sup>51</sup>

(2) *Privileged domestic merchandise*<sup>52</sup>—Privileged domestic merchandise status is granted, upon application, to (a) products manufactured in the United States on which all internal revenue taxes, if applicable, have been paid; (b) previously imported merchandise on which duty and/or tax has been paid; and (c) merchandise previously admitted free of duty and tax. Privileged domestic merchandise may re-enter the customs territory without any payment of duties or taxes.<sup>53</sup>

(3) *Non-privileged foreign merchandise*<sup>54</sup>—Non-privileged foreign merchandise is (a) foreign merchandise which does not have privileged status; (b) waste recovered from manipulation or manufacture of privileged foreign merchandise; (c) domestic merchandise which for any reason has not obtained privileged domestic status. Non-privileged foreign merchandise may enter the customs territory of the United States after tariff classification and appraisal. It is important to note that appraisal takes place at the time of entry into the customs territory rather than at the time of entry into the zone.<sup>55</sup> This can of course result in significant savings where there has been breakage, spoilation or other loss of value while the goods are in the zone. Actually, this form of savings is also applicable to privileged foreign merchandise since the duties of this status of merchandise can take into account recoverable waste in situations where the merchandise has been manipulated or used in manufacture.<sup>56</sup>

(4) *Non-privileged domestic merchandise*—Non-privileged domestic merchandise is all merchandise which could have obtained the status of privileged domestic merchandise but for which the application has not been approved. This type of merchandise is treated in the same manner as non-privileged foreign merchandise.<sup>57</sup>

(5) *Zone-restricted merchandise*—Zone-restricted merchandise status is given to articles taken into the zone for exportation, destruction or storage.<sup>58</sup> Such merchandise may not be returned to the customs territory of the United States unless the Foreign-Trade Zone Board

<sup>50</sup> *Id.* § 146.45(4).

<sup>51</sup> *Id.* § 146.21(d).

<sup>52</sup> Domestic merchandise is that merchandise which has been (i) produced in the United States and not exported therefrom, or (ii) previously imported into customs territory and properly released from customs custody. *Id.* § 146.1(e)(1).

<sup>53</sup> *Id.* § 146.22(d).

<sup>54</sup> *Id.* § 146.48(e).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* § 146.21(d).

<sup>57</sup> *Id.* § 146.23(c).

<sup>58</sup> *Id.* § 146.25(a).

finds that such return is in the public interest.<sup>59</sup> Zone-restricted status gives an "exported" status for the purposes of the drawback.

The above discussion should serve to apprise the reader generally of the handling of goods in zones. However, a close reading of all applicable customs and zone regulations is strongly advised before entering into any zone transactions.

### *Outstanding Legal Issues*

North Carolina's Enabling Act may present the most significant legal issue relating to foreign trade zones to date. The provision in question states that "... Any other provision of law notwithstanding, property which is located in a foreign trade zone established pursuant to this chapter shall be subject to ad valorem taxes." The broad legal issue is simply this: whether or not goods or merchandise located in a foreign trade zone can constitutionally be subject to a local ad valorem tax. The United States Constitution provides: "No state shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports . . ."<sup>60</sup> It seems that the broad issue, however, must be further refined into subissues relating to the particular zone status of the goods or merchandise. It would seem that the zone status could affect the legal question of whether or not a certain good remains an import or export as those terms have been judicially defined. However, an analysis of this issue is well beyond the stated purpose of this article. It seems to this author that the provision in question puts a substantial cloud on any possibility of North Carolina possessing one or more foreign trade zones. It is hoped that scholarly analysis pointing out the potential constitutional infirmity of the act as well as the adverse economic consequences of not implementing foreign trade zones in North Carolina because of the ad valorem tax provision would convince the legislature to amend the Foreign Trade Zone Enabling Act by deleting the language in question.

### *Conclusion*

The emergence of North Carolina into the growing number of states which have passed Foreign-Trade Zone enabling legislation presents important opportunities for the state. The licensing, construction and operation of foreign trade zones will provide the state with the means to attract sophisticated manufacturing facilities which would not come into North Carolina without the availability of a zone. These facilities should be relatively high-paying and environmentally sound. In addition, each new foreign trade zone should improve North Carolina's ability to attract reverse investment and, as a possible corollary, to increase her foreign trade.

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<sup>59</sup> *Id.* § 146.47(a).

<sup>60</sup> U.S. CONST. art. I, § 10, cl. 2.