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North Carolina Foreign-Trade Zones: Problems and Prospects

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North Carolina Foreign-Trade Zones: Problems and Prospects

In 1975, the North Carolina General Assembly passed legislation permitting the establishment of a foreign-trade zone by any public or private corporation.[1] Since that time there has been a steady growth of interest in the subject and significant progress toward the establishment of North Carolina's first foreign-trade zone.[2] With the assistance of the North Carolina Department of Commerce, an application was submitted to the federal government seeking authorization for a foreign-trade zone in Charlotte, North Carolina,[3] and the application has been recently approved.[4] In addition, considerable work has been done toward establishing a foreign-trade zone for the Wilmington port of entry, and interested groups have begun studying the possibility of a foreign-trade zone in the Raleigh-Durham area.[5] Because of the movement toward foreign-trade zone development in North Carolina, this Note examines some of the benefits that foreign-trade zones will bring to the state (*e.g.*, the attraction of new industry), as well as some of the more important legal issues in the area of foreign-trade zones and the effect those issues might have on the new North Carolina zone.

The federal Foreign-Trade Zones Act of 1934 authorizes the Foreign-Trade Zones Board[6] to grant permission to a state or a political subdivision of a state to establish a foreign-trade zone.[7] A private corporation which has been organized for the purpose of establishing and operating a foreign-trade zone may also receive Board approval if the state has passed special legislation allowing such a corporation to be chartered.[8] Whether the zone is operated by a private corporation or a public entity, it must be operated as a public utility with fair and reasonable rates and equal access to all who apply for use of the foreign-trade

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[1] North Carolina Foreign Trade Zone Act, 1975 N.C. Sess. Laws c. 983, § 132 (codified as amended at N.C. Gen. Stat. §§ 55C-1 to 55C-4 (Cum. Supp. 1979)).

[2] Interview with G. Jackson Burney, Economic Development Manager, Greater Charlotte Chamber of Commerce, in Charlotte, North Carolina (Oct. 26, 1979); Interview with John P. Stewart, Jr., Assistant Director of Economic Development, North Carolina Department of Commerce, in Raleigh, North Carolina (Nov. 2, 1979).

[3] 45 Fed. Reg. 3093 (1980).

[4] *Id.* at 30,466 (1980).

[5] *Burney*, *supra* note 2; *Stewart*, *supra* note 2.

[6] The Board is comprised of the Secretary of Commerce (Chairperson) and the Secretaries of the Treasury and Army. 19 U.S.C. § 81a(b) (1976).

[7] 19 U.S.C. §§ 81a(d)-(e), 81b(a) (1976).

[8] *Id.* §§ 81a(d), (f), 81b(a).

zone.[9] The Board will grant permission to establish a foreign-trade zone only after an elaborate application has been submitted and processed.[10]

A foreign-trade zone may be broadly defined as an enclosed area located within the territory of the United States which for customs purposes is treated as if it were outside the United States. The Foreign-Trade Zone Board Regulations more specifically state that "[t]he term . . . 'foreign-trade zone' . . . is an isolated, enclosed and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unlading, handling, storing, manipulating, manufacturing and exhibiting goods, and for reshipping them by land, water or air . . . . The merchandise may be exported, destroyed, or sent into the customs territory from the zone, in the original package or otherwise. It is subject to customs duties if sent into customs territory, but not if reshipped to foreign points."[11] As of September 17, 1980 there were fifty-nine authorized trade zones in the United States and its territories and applications were pending for nine more.[12] In fiscal year 1978 goods valued at $806 million were received in these zones.[13]

Trade Zone Benefits to Businessmen and the Community[14]

Because goods held in foreign-trade zones are in a type of customs limbo, foreign-trade zones offer numerous advantages to importers and other businessmen, one of the most important of which is an improved cash flow. A brief comparison with the three other ways that an importer may obtain some relief from the payment of customs duties will serve to demonstrate the greater benefits offered by foreign-trade zones.

An importer may store, manipulate or manufacture goods in a bonded warehouse, but a bond must be paid for both the warehouse and the imported goods.[15] Imported goods may be processed outside a warehouse through the use of a temporary importation bond. However, the goods must be exported after processing, and of course a bond is still

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[9] *Id.* § 81n (1976).

[10] 15 C.F.R. §§ 400.600-.609 (1980).

[11] *Id.* § 400.101 (1980).

[12] Telephone Interview with Foreign Trade Zone official, Foreign Trade Zone Board Office, Washington, D.C. (Sept. 17, 1980).

[13] FOREIGN TRADE ZONES BOARD 40th ANN. REP. TO THE CONGRESS 1 (1978).

[14] The limited scope of this article permits discussion of only a few of the more important trade zone procedures and benefits. For a more detailed analysis of this subject, *see generally* W. DIAMOND & D. DIAMOND, TAX-FREE TRADE ZONES OF THE WORLD (1979); W. DYMSZA, FOREIGN-TRADE ZONES AND INTERNATIONAL BUSINESS (1964); Atkins, Doyle & Schwidetzky, *Foreign-Trade Zones: Sub-Zones, State Taxation, and State Legislation*, 8 DEN. J. INT'L L. & POL. 445 (1979); Fogel, *Foreign-Trade Zones: An Opportunity for North Carolina*, 2 N.C.J. INT'L L. & COM. REG. 1 (1977); Landy & McGinnis, *Foreign Business Interests*, 10 LAW. AM. 141 (1978); Note, *Foreign Trade Holes in the Tariff Wall or Incentives for Development?*, 2 LAW & POL'Y INT'L BUS. 190 (1970); Comment, *Foreign-Trade Zones: A Means By Which the Businessman May Avoid Import Duties*, 29 U. PITT. L. REV. 89 (1967); Note, *Foreign-Trade Zones—International Business Incentives*, 7 GA. J. INT'L & COMP. L. 669 (1977). In addition, the Foreign-Trade Zones Board issues an annual report to the Congress.

[15] 19 U.S.C. §§ 1311, 1555 (1976).

required.[16] Finally, goods may be imported and the duty paid. If the goods are later exported, the merchant can receive a "drawback" of up to ninety-nine percent of the duty originally paid.[17] In each of these methods of obtaining customs duty relief the importer is required to make some form of capital outlay, whereas under the foreign-trade zone procedure no bond is required and no duty is paid until the merchandise actually enters the United States customs territory.[18] No duty is ever paid on goods that are reshipped to foreign ports[19] or on goods lost to spoilage or breakage.[20] Capital that would normally be tied up in the payment of bonds can be diverted to other uses.

Other benefits include the opportunity to liquidate duties on foreign merchandise which has not been manipulated or manufactured.[21] If inflation or market demand subsequently increases the value of the merchandise, the amount of duty payable remains fixed.[22] This status once obtained, however, cannot be abandoned if the value of the merchandise subsequently declines.[23] Also, goods which are subject to tariff-rate import quotas must have applicable duties liquidated at the higher (non-quota) rate,[24] whether the quota is then in effect or not.

Quota restricted goods may be brought into zones in any amount.[25] Goods may be held in the zone indefinitely while awaiting the availability of quota allocations or a stronger market.[26] While held, goods may be inspected, manufactured, remarked, repacked, altered to meet U.S. standards or processed in a number of other ways.[27] Waste from the manufacturing or other processes may be destroyed or exported without payment of any duty, and if imported, such waste is assessed at its reduced value.[28] Goods may be displayed, sampled and sold in trade zones;[29] retail sale of imported goods, however, is prohibited.[30] Goods benefit from tight security measures provided by customs agents,[31] and simplified customs procedures make transshipment of goods more effi-

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[16] *Id.* § 1202, subch. 8, pt. 5, subpt. C, item 864.05 (1976).

[17] 19 U.S.C. § 1313 (1976).

[18] 15 C.F.R. § 400.101 (1980).

[19] *See id.*

[20] *See* Comment, *supra* note 14, at 100-01.

[21] 19 C.F.R. § 146.45(4) (1979).

[22] An importer can apply for "privileged foreign merchandise" status with regard to foreign merchandise not manipulated or manufactured under 19 C.F.R. § 146.21(a) (1979) when he files for admission of the merchandise into the zone or thereafter under specified circumstances. *Id.* § 146.21(b). Upon acceptance of the entry, the district director has the merchandise appraised, classified, taxes determined, and duties liquidated promptly. *Id.* § 146.21(c)(3).

[23] *Id.* § 146.21(d).

[24] *Id.* § 146.21(c)(3)(IV); *see also* Inter-marine Forewarding Co. v. United States, 192 F. Supp. 631 (Cust. Ct. 1961).

[25] 19 C.F.R. § 146.11.

[26] Landy & McGinnis, *supra* note 14, at 43.

[27] 15 C.F.R. § 400.101 (1980).

[28] Comment, *supra* note 14, at 100.

[29] 19 U.S.C. § 81c (1976).

[30] 15 C.F.R. § 400.808 (1980).

[31] 19 U.S.C. § 81d (1976).

cient.[32] Imported goods that have had value added by manufacture in the foreign-trade zone may be assessed either at their value as component parts[33] or as an entire finished product as if it had been imported directly from a foreign country.[34]

In addition to the substantial benefits to importers and operators of foreign-trade zones, such zones provide important benefits to the communities in which they are located. The chief benefit to the community, of course, is the possibility of attracting new industry to the area. The foreign-trade zone potential for attracting investment from foreign sources and domestic sources which may be migrating to the South was considered the most important reason for establishing a foreign-trade zone by promoters of the Charlotte project.[35] Expanding foreign investment is also the chief goal of the North Carolina Department of Commerce in its efforts to assist development of North Carolina foreign-trade zones.[36] The impact of the foreign-trade zone planned for the Charlotte area may even extend beyond the industries that actually use the zone facilities. Many foreign companies will not consider making any investment in an area that does not have a trade zone, even if they have no specific plan to use it.[37]

North Carolina *Ad Valorem* Tax Exemption

Until the 1976 U.S. Supreme Court case of *Michelin Tire Corp. v. Wages*,[38] goods in foreign-trade zones had generally been considered exempt from state personal property taxes under the Commerce Clause[39] of the United States Constitution.[40] Although *Michelin* did not deal specifically with foreign-trade zones or the Commerce Clause, recent actions by some states relying on the *Michelin* decision have raised serious doubts about the continuation of this foreign-trade zone tax exemption.[41]

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[32] Note, *supra* note 14, at 676.

[33] 19 U.S.C. § 81c (1976); 19 C.F.R. § 146.21(c)(3)(d) (1979).

[34] 19 U.S.C. § 81c (1976); 19 C.F.R. § 146.48(e) (1979). Such foreign-trade zone procedures can result in substantial savings to businessmen in a number of ways. For example, given a duty rate of 5% and an interest rate of 10%, delay of duty payments would result in a savings of $.42 per $1,000 value per month. Given $100 of typewriter parts at 9 ½% duty, the cost of bringing the parts into United States customs territory would be $9.50. Assembled typewriters on the other hand might enter duty free. Assembly in a foreign-trade zone would result in a savings of $9.50 per $100 less duty on labor value added. Given $100 of raw material used in trade zone manufacturing at a duty rate of 10%, if 5% of the raw material becomes scrap which is exported and 2% of the raw material is lost in production, then importation of the finished product would result in a savings of $.70 per $100 of raw material. The above figures are summarized from "What are the Advantages of Working from a Foreign Trade Zone" (publication of the Greater Charlotte Chamber of Commerce, March 7, 1979).

[35] Burney, *supra* note 2.

[36] Stewart, *supra* note 2.

[37] Burney, *supra* note 2.

[38] 423 U.S. 276 (1976).

[39] U.S. CONST. art. 1, § 8, cl. 3.

[40] FOREIGN TRADE ZONES BOARD 39TH ANN. REP. TO THE CONGRESS 11 (1977).

[41] *Id. See also* Landy & McGinnis, *supra* note 14, at 47 n.36.

It is not entirely clear that the Commerce Clause was ever actually a valid basis for the exemption of goods held in trade zones from state personal property taxes.[42] The most significant case in the area prior to *Michelin* is not directly on point. In this case, *McGolderick v. Gulf Oil Corp.*,[43] the Supreme Court held that a state could not levy a sales tax on oil located in a New York bonded warehouse. The oil had been shipped to the warehouse from abroad and was sold exclusively to foreign bound vessels. It was exempted by federal legislation from United States taxation in order to encourage the import and re-export of oil. The Court held that this was a valid exercise of Congress' power to regulate foreign commerce and that the state tax was an infringement of this congressional power.[44] Besides the fact that this case deals with a sales tax, not an *ad valorem* property tax, the case must be read as holding only that state taxation is invalid where it adversely affects an express congressional policy regarding commerce.[45]

Whether the Commerce Clause was previously a valid basis for exemption of goods held in trade zones from state *ad valorem* taxes or not, the *Michelin* case significantly undercuts any constitutional basis for prohibiting any such tax, as long as the tax is applied without discrimination between imported and domestic goods. The Supreme Court held in *Michelin* that a nondiscriminatory *ad valorem* property tax on imported goods stored in bonded warehouses when those goods were no longer "in transit" was not prohibited by the Import-Export Clause.[46] *Michelin* overturned *Low v. Austin*,[47] a 19th century case which held that so long as imported goods retained their character as imports, nondiscriminatory *ad valorem* property taxes levied on them by states constituted "imposts" or "duties" in violation of the Import-Export Clause. The *Michelin* decision shifted the inquiry from whether goods retained their "import character" to whether they remained "in transit."[48] Goods in transit through a state are clearly exempt from the imposition of taxes by that state under the Import-Export Clause.[49] The *Michelin* opinion may be interpreted to permit a state to assess a nondiscriminatory *ad valorem* tax on merchandise held in a foreign-trade zone on the basis that the Import-Export

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[42] Landy & McGinnis, *supra* note 14, at 47.

[43] 309 U.S. 414 (1940).

[44] *Id.* at 427.

[45] Landy & McGinnis, *supra* note 14, at 48.

[46] U.S. CONST. art. I, § 10, cl. 2. "No state shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws; and the net Product of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress." The Supreme Court has recently distinguished the Commerce Clause from the Import-Export Clause. "[T]he Import-Export Clause states an absolute ban, whereas the Commerce Clause merely grants power to Congress." Washington Rev. Dept. v. Stevedorning Assn., 435 U.S. 734, 751 (1978).

[47] 80 U.S. 29 (1871).

[48] 423 U.S. at 302.

[49] Minnesota v. Blasius, 290 U.S. 1 (1933).

Clause does not prohibit such action.[50] On the other hand, since *Michelin* dealt with goods stored in bonded warehouses, arguments can be made, based on the policies of the Foreign-Trade Zones Act[51] and assessment of the "in transit" status of goods held in zones, that foreign-trade zones should not be affected by the *Michelin* decision.[52] The effect of *Michelin* on goods held in foreign-trade zones was put at issue when a county tax assessor in California began taxing goods in the state's two trade zones;[53] the issue is presently unresolved.

Some states, to avoid this controversy, have considered legislation to make the exemption explicit.[54] North Carolina enacted such legislation in 1977 in the form of an amendment to the 1975 Act enabling the establishment of trade zones in North Carolina.[55] The 1975 Act originally contained a provision which would have made property located in a zone "subject to *ad valorem* taxes."[56] At the urging of North Carolina community and government leaders,[57] the legislature subsequently passed an amendment to "clarify" the North Carolina Foreign-Trade Zones Act.[58] The phrase which would have made trade zone goods subject to *ad valorem* taxes was deleted.[59] In addition, a new subsection was added specifically exempting from the tax base tangible personal property held in a foreign-trade zone for importation into the United States customs territory or for export.[60]

This legislation achieved two goals: it gave a substantial boost to the establishment of North Carolina foreign-trade zones by making them more attractive to business,[61] and it removed a significant constitutional cloud over the original enabling act.[62] Relief from personal property taxes on merchandise will undoubtedly make foreign-trade zones more attractive to business. The constitutional question for the time being is also apparently avoided. Whether the *Michelin* decision is interpreted to permit a state to impose nondiscriminatory *ad valorem* taxes on merchandise in trade zones or not will be irrelevant since North Carolina has clearly stated its intent not to do so.

Nevertheless, the North Carolina exemption statute may itself come

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50 Atkins, Doyle & Schwidetzky, *supra* note 14, at 457.

51 19 U.S.C. §§ 81a-81u (1976).

52 Atkins, Doyle & Schwidetzky, *supra* note 14, at 456-60.

53 FOREIGN-TRADE ZONES BOARD, *supra* note 40.

54 *Id.*

55 An Act to Clarify the North Carolina Foreign Trade Zone Act, 1977 N.C. Sess. Laws c. 782 (codified at N.C. GEN. STAT. §§ 55C-4, 105-275(23) (Cum. Supp. 1979)).

56 *See* 1975 N.C. Sess. Laws c. 983, sec. 132, § 55C-4; *see also* N.C. GEN. STAT. § 55C-4, Editors Note (Cum. Supp. 1979).

57 Burney, *supra* note 2.

58 An Act to Clarify the North Carolina Foreign Trade Zone Act, 1977 N.C. Sess. Laws c. 782 (codified at N.C. GEN. STAT. §§ 55C-4, 105-275(23) (Cum. Supp. 1979)).

59 *Id.* § 1, N.C. GEN. STAT. § 55C-4.

60 *Id.* § 2, N.C. GEN. STAT. § 105-275(23).

61 Burney, *supra* note 2.

62 Fogel, *supra* note 14, at 12.

under attack as violating the Commerce Clause of the U.S. Constitution. The U.S. Supreme Court has recently granted *certiorari* in a California Court of Appeals case, *Zee Toys, Inc. v. County of Los Angeles*,[63] and the outcome may have serious implications for North Carolina legislation designed to encourage foreign trade, including the *ad valorem* tax exemption for goods held in foreign-trade zones.

The case involved a California statute[64] which exempted from taxation goods imported into California if they were to be re-exported or transshipped to another state. The California Court of Appeals noted that as a result of *Michelin* these goods were now subject to non-discriminatory *ad valorem* taxation by the state since they were no longer "in transit." The court then held that this exemption resulted in a discriminatory tax which favored one class of commerce over another in that such an exemption gave foreign goods a competitive advantage over interstate goods. This, the court said, usurped Congress' power to regulate interstate and foreign commerce in violation of the Commerce Clause.[65]

The implication of this holding, and one of the issues presented to the U.S. Supreme Court, is that as a result of *Michelin*, state taxation laws must now treat interstate commerce and foreign commerce with meticulous equality.[66] This raises a further issue concerning state taxation of goods in foreign-trade zones. If *Michelin* is interpreted as allowing a state to impose a nondiscriminatory *ad valorem* tax on goods held in a foreign-trade zone (as noted earlier, this issue is yet to be resolved), then must the Commerce Clause be read, under the rationale put forward by the California court in the *Zee Toys* case, as requiring the state to impose such a tax if to refrain from doing so would result in a discrimination between foreign and interstate commerce? If so, then North Carolina's exemption of goods held in trade zones from *ad valorem* taxes might be unconstitutional. The North Carolina exemption would give goods of foreign origin a competitive advantage over interstate goods and thus interfere with Congress' power.

An example offered by the California court illustrates the potential for interference with congressional powers. Congress, to protect domestic industry, might impose a tariff on a particular imported product. Because of the tariff, similar domestic products would be given a competitive advantage. However, the imported products, while stored in a North Carolina foreign-trade zone, would be exempted from *ad valorem* taxation; similar domestic products stored in conventional warehouses

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[63] 85 Cal. App. 3d 763, 149 Cal. Rptr. 750 (1978), *cert. granted sub nom.* Sears, Roebuck & Co. v. County of Los Angeles, 444 U.S. 823 (1979).

[64] CAL. REV. & TAX. CODE § 225 (West Cum. Supp. 1980); *see* 1975 Cal. Stats. c. 1126, § 2 (formerly codified at CAL. REV. & TAX CODE § 225.1 (repealed 1977)), which provided alternate methods for claiming the transshipment exemption under § 225. Current methods for claiming the exemption are codified at CAL. REV. & TAX CODE § 253.10 (West Cum. Supp. 1980).

[65] U.S. CONST. art. I, § 8, cl. 3.

[66] 48 U.S.L.W. 3101 (1979).

would receive no such benefit. The foreign product, as a result of the state exemption, would thus receive a competitive advantage over the domestic products, reducing the protection of the tariff.

The legitimacy of state taxation of goods held in foreign-trade zones is still unsettled,[67] and North Carolina's statutory exemption may never be challenged.[68] However, an affirmance of *Zee Toys, Inc. v. County of Los Angeles* by the U.S. Supreme Court could bring into question the constitutionality of the North Carolina enactment and jeopardize this method of encouraging foreign trade in the state.

The "Public Interest" Question

Section 810(c) of the federal Foreign-Trade Zones Act provides that "the Board may at any time order the exclusion from the zone of any goods or process of treatment that *in its judgment* is detrimental to the public interest, health, or safety."[69] This provision gives the Board very wide discretion to reject zone activities. Such Board decisions are judicially reviewable to determine their reasonableness and compliance with the purpose of the Foreign-Trade Zones Act that a zone further the nation's interests in foreign trade.[70] The practice of the courts is to grant great deference to the judgment of the Board.[71] Section 810(c) of the Act[72] and the corresponding Board regulation[73] have been rarely invoked[74] and there has apparently never been an investigative hearing held by the Board.[75] There also appears to be no reported case specifically applying 810(c). However, 810(c) is potentially important since it may be used to challenge foreign-trade zone activities at any time, even if those activities have previously received Board approval. Furthermore, the term "public interest, health and safety" is broad enough to encompass virtually any objection that could be made against foreign-trade zone activities. This raises the possibility that challenges could be initiated by U.S. competitors of imported goods if processing in a foreign-trade zone offset the protection afforded by tariffs and quotas. Such a challenge could be based on a perceived harm to the economic public interest.

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67 149 Cal. Rptr. at 758.

68 In a North Carolina Supreme Court case, Appeal of Martin, 286 N.C. 66, 209 S.E.2d 766 (1974), it was held that a local government did not have standing to challenge a statute similar to the California statute as being unconstitutional under the North Carolina Constitution.

69 19 U.S.C. § 810(c) (1976) (emphasis added).

70 Hawaiian Independent Refinery v. United States, 460 F. Supp. 1249, 1257 (Cust. Ct. 1978).

71 *Id. See also* Armco Steel Corp. v. Stans, 303 F. Supp. 262 (S.D.N.Y. 1969), *aff'd*, 431 F.2d 779 (2d Cir. 1970).

72 19 U.S.C. § 810(c) (1976).

73 15 C.F.R. § 400.807 (1980).

74 FOREIGN TRADE ZONES BOARD, *supra* note 40.

75 The first such investigative hearing was announced by the Board at 41 Fed. Reg. 35,047 (1976), but this hearing was not held and there has apparently been none since that time.

At least one such challenge has been made in recent years. The U.S. Department of Agriculture invoked 810(c) in an attempt to block certain foreign-trade zone activities.[76] This 810(c) challenge was directed at an application by the Port of New Orleans for two special-purpose meat processing facilities. The Agriculture Department also challenged similar facilities already in operation in the Mayaguez, Puerto Rico foreign-trade zone.[77] The results of this controversy were inconclusive. Although an investigation was commenced by the Foreign-Trade Zones Board, it was terminated at the request of the Department of Agriculture.[78] The initial investigation does demonstrate, however, that an 810(c) challenge may cause the Board to not only closely examine proposed foreign-trade zone activities, but to also re-examine an ongoing operation that has received prior Board approval.

It is not entirely clear what factors the Board would consider in evaluating a challenge based on an alleged economic detriment to the public interest, but in the event of an 810(c) challenge, whether to an application or to an ongoing operation, the Board would probably apply the same balancing of economic benefits that it uses when reviewing the normal application for zone or sub-zone status. As a prerequisite for Foreign-Trade Zone status, an applicant must submit an economic survey which demonstrates that the proposed facilities and activities will promote foreign commerce.[79] An important factor in the Board's consideration of this economic impact survey is the zone's effect on the U.S. balance of payments.[80] Essentially the same economic impact showing is required for foreign trade sub-zones.[81] The Board will not approve an application unless the overall economic impact is favorable; the Board would not approve an application, for example, if jobs would be lost to foreign countries with no offsetting domestic benefit.[82]

Although Board decisions are judicially reviewable, as noted earlier

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[76] FOREIGN TRADE ZONES BOARD, *supra* note 40.

[77] *Id.*

[78] *Id.* at 12. A favorable Board determination may not always guarantee a manufacturer that he can use a foreign-trade zone to relieve the effects of quota restrictions and tariffs. The Agriculture Department dropped its complaint against the Mayaguez meat processing operations and the New Orleans application because it had found a more efficient remedy. The Department simply amended its regulations so that meats which would be included in the definition of quota items but for processing in foreign-trade zones were counted in determining the trigger for imposition of quotas. 7 C.F.R. § 16.2 (1979). After this amendment to the Agriculture Department regulations, New Orleans withdrew its application and meat processing operations in Mayaguez were terminated. FOREIGN TRADE ZONES BOARD, *supra* note 40, at 12.

[79] 15 C.F.R. § 400.400 (1980).

[80] *Id.*

[81] A company which cannot relocate to an existing general-purpose foreign-trade zone or cannot take advantage of general-purpose trade zone facilities may obtain sub-zone status for its plant or warehouse. 20 C.F.R. § 400.304 (1980). Application procedures are similar to those of the general-purpose zones with the additional requirement that the sub-zone meet a special "public benefit" test. Atkins, Doyle & Schwidetzky, *supra* note 14, at 451-52.

[82] Atkins, Doyle & Schwidetzky, *supra* note 14, at 454. *See also* Armco Steel Corp. v. Stans, 303 F. Supp. 262 (S.D.N.Y. 1969), *aff'd* 431 F.2d 779 (2d Cir. 1970).

the courts usually defer to the decision of the Board.[83] As an alternative, an aggrieved party may petition the Board to re-examine its prior approval of zone activities, since the Board has manifested a general willingness to do so.[84] The Board is free to exercise the full sweep of its discretion in reversing a prior determination that zone activities were not detrimental to the public interest. Thus a party demonstrating that zone activities are detrimental to some recognized public interest may be able to successfully mount an 810(c) challenge.

Fortunately, the zone usage presently contemplated for the Charlotte foreign-trade zone should not raise the possibility of an 810(c) challenge.[85] However, both the language of 810(c), that "any goods or processes . . . detrimental to the public interest"[86] may be excluded, and the Board's discretion in such matters are sufficiently broad that any possible "detriment to the public interest" should be considered before substantial investments are made in foreign-trade zone activities.

Conclusion

Since the Foreign-Trade Zones Act was passed in 1934, there has been very little litigation involving foreign-trade zones. However, in light of the rapid expansion of foreign-trade zones in recent years and the likelihood that this trend will continue, it is reasonable to anticipate an increase in litigation in the field. This Note has attempted to identify some of the areas that are likely to generate litigation in the future. However, these potential legal problems are by no means serious. The *ad valorem* personal property tax controversy is, for the time being at least, mooted in North Carolina by the statutory exemption of trade zone goods from taxation. The prospect of an 810(c) challenge, at most, calls for slightly more careful scrutiny of possible detriment to the public interest before making large investments in foreign-trade zone activities. Trade zones currently offer substantial benefits which greatly outweigh those potential legal problems; and given the level of interest in the for-

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[83] The courts are unlikely to substitute their judgment in the complex field of international trade for that of the Board, especially when the controversy requires a balancing of numerous economic factors. *See, e.g.*, Armco Steel Corp. v. Stans, 303 F. Supp. 262 (S.D.N.Y. 1969), *aff'd* 431 F.2d 779 (2d Cir. 1970). Armco Steel Corporation sought a declaratory judgment in federal district court to set aside a Foreign-Trade Zones Board authorization of a manufacturing subzone in New Orleans. The manufacturer, Equitable-Higgins Shipyard, Inc., intended to manufacture light barges from steel plates imported from Japan. The steel plates were subject to import duties but completed barges could be imported duty free. Equitable-Higgins could thus avoid any duty payment on the steel plates if they were manufactured into barges within the foreign-trade zone. The U.S. District Court upheld the Board's determination that this process was permissible and the Second Circuit Court of Appeals affirmed.

[84] FOREIGN TRADE ZONES BOARD, *supra* note 40, at 11-12.

[85] Burney, *supra* note 2.

[86] 19 U.S.C. § 810(c) (1976).

eign-trade zone concept today, trade zones can be expected to play an important role in developing foreign trade in North Carolina.

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