



Foreign Trade Zones and Counterfeit Drugs

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The December 17, 2007 New York Times newspaper front page article entitled “Free Trade Zones Ease Passage of Counterfeit Drugs to the U.S.” was misleading. As a Customs and International Trade attorney for the past 19 years, and as a former attorney for U.S. Customs, I am surprised at the author’s statement that “there is minimal regulatory oversight” of foreign trade zones around the world, including in the United States. The Foreign Trade Zones Act of 1934, 19 U.S.C. sections 81a-81u, and its implementing regulations by the U.S. Foreign Trade Zones Board (FTZB) at 15 CFR Part 400, along with the U.S. Customs regulations at 19 CFR Part 146, are comprehensive in describing what and how merchandise may be admitted into a foreign trade zone (“FTZ”), what may be done to the merchandise once in the FTZ, and when and how the merchandise may be withdrawn from an FTZ into the commerce of the United States. Detailed records must be maintained by the FTZ operator, and are regularly reviewed by U.S. Customs and Border Protection officials within the U.S. Department of Homeland Security.

The customs laws are still applicable to prevent prohibited merchandise from entering an FTZ. FTZ laws are relatively uniform around the world. All FTZs in the United States are administered by U.S. Customs and Border Protection. Counterfeit drugs in an FTZ located in the U.S. or any other FTZ around the world, are still a prohibited item and subject to seizure and destruction by the customs authorities administering the FTZ. Moreover, under U.S. laws, companies and persons connected with introducing, or attempting to introduce, the counterfeit drugs into an FTZ in the United States are subject to criminal prosecution and

severe monetary penalties. The New York Times’ author’s statement that “shipments [in FTZs] do not officially enter the country” where the FTZ is located may mislead the reader. Of course, the merchandise physically enters the country where the FTZ is located, and there are numerous records describing the source, type, and quantify of the merchandise which are required to be presented to the FTZ operator and the customs authorities. The special benefit of the FTZ is that no customs duties or taxes are paid on the merchandise while it remains in the FTZ.

The Annual Report to Congress by the FTZB describes the success of FTZs in promoting international trade. Yet, the article would have the reader believe that FTZs are merely means for persons and companies to conduct criminal activity. The author failed to quote a single FTZ operator or U.S. Customs official or private sector customs and international trade attorney familiar with the administration and operations of an FTZ in the United States. The author ignored the benefits of hundreds of billions of dollars of legitimate merchandise annually transiting U.S. FTZs, and focused instead on a very, very small percentage of cargo.

The belief that FTZs somehow are locations where nefarious activity takes place is not limited to the Times author of the above article. On November 8, 2006, the Anti-Counterfeiting & Enforcement Committee of the International Trademark Association issued a “Request for Action”. It stated, in part:

“Goods passing through FTZ’s and transshipped through multiple ports, creates opportunities for counterfeiters to disguise the true country

of origin of goods...The Anti-Counterfeiting & Enforcement Committee believes that the unrestricted regimes for transshipment and transit of goods through FTZ's significantly contribute to the development and extension of the scale of trafficking of counterfeit goods around the world.”

Today, worldwide trade in counterfeit merchandise is billions of dollars. The source of most counterfeit merchandise seized by U.S. Customs authorities continues to be China, Hong Kong, and Taiwan. Most of the counterfeit merchandise continues to be footwear and clothing. The importation into the United States of counterfeit pharmaceuticals is a serious matter, however, in terms of percentage of value or quantities of counterfeit merchandise imported, it is negligible.

Similarly, the percentage of counterfeit merchandise going into and out of FTZs are similarly likely negligible, especially when compared to seizures of counterfeit merchandise by law enforcement authorities, working with private investigators from pharmaceutical companies, outside of FTZs.

In conclusion, FTZs are no better, and no worse, as a means of introducing counterfeit merchandise into the United States. There are numerous laws and regulations, enforced by law enforcement officials with U.S. Customs and the U.S. Food and Drug Administration (FDA) to prevent the introduction of counterfeit drugs, or any other prohibited items, from being admitted into an FTZ or entering the commerce of the United States. The author's thesis that FTZs “ease” passage of counterfeit drugs to the United States is misleading, and inaccurate. ■

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