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Customs Classification and the Use of Foreign Trade Zones

Thomas G. Travis

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I. INTRODUCTION

The businessman or attorney unacquainted with the classification and valuation systems of the United States Customs laws will find these laws to be archaic. The archaic nature of these laws adds greatly to the complexity of their application. As an aid to the practitioner who is unfamiliar with these laws, I shall describe and discuss the factors that should be considered when advising a client on the classification or rate of duty for imported merchandise under the Tariff Schedules of the United States (TSUS). My law partner, Gilbert Lee Sandler, will thereafter discuss the appraisement or valuation of imported merchandise.

II. CUSTOMS CLASSIFICATION

A. *Tariff Schedule Structure*

The United States Customs Service (Customs) is responsible for assessing duties on imported merchandise.[1] Assessing duties is a two-step process. First, the merchandise is classified and a rate of duty is established through the use of the revised Tariff Schedules of the United States (TSUS).[2] The second step is to determine the value of the merchandise, and if the tariff is based upon an *ad valorem* rate, Customs will then apply that rate of duty to the value of the merchandise.

The rates of duty imposed on imported merchandise appear in the Revised Tariff Schedules. These tariff schedules have undergone

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1. 19 C.F.R. § 161.1 (1978). This section provides for general supervision to enforce the customs laws.

2. Address by Edward D. Re, International Bar Association Conference, Atlanta, Georgia (November 3, 1977) *printed in* 19 U.S.C.A. at XVII, XIX. The revised U.S. Tariff Schedules are found in 19 U.S.C.A. § 1202 (1978).

many changes since the first tariffs were enacted in 1789.[3] The disparities in rates which frequently appear are often rooted in history. The strength of various domestic industries has coincided with their relative abilities to increase or decrease duty rates.

For example, in the 1920s, the United States was trying to protect its coal tar chemical manufacturers. In an effort to protect the industry, Congress enacted the benzenoid chemicals tariff provisions which subject the affected merchandise to very rigid import restrictions and very high rates of duty.[4]

In addition to protecting certain domestic industries, the TSUS serve a variety of other purposes, including the development of U.S. industry, the protection of the U.S. labor force, the collection of federal revenue, and even the encouragement of industry growth in certain foreign countries.[5]

Because the tariff schedules may be used for various purposes depending upon the particular situation, it is necessary that imports be classified under a broad range of categories.[6] These categories include:

1) general descriptive provisions, *e.g.*, "an illuminating article;"[7]
2) *Eo nomine* provisions which name items specifically, *e.g.*, "mirror" or "bicycle;"[8]

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3. F. TAUSRIG, THE TARIFF HISTORY OF THE UNITED STATES 14-15 (8th ed. 1931). The first tariff act, that of 1789, was protective in intention and spirit. The Congress of the Confederation had framed a plan for a general five percent duty with a few specific duties on articles like tea, coffee, and sugar; a plan whose failure was one of the most important events leading to the adoption of the Constitution. The general duty of five percent was retained on all goods not otherwise enumerated. On certain articles of luxury, higher *ad valorem* rates were fixed, the highest, on carriages, being fifteen percent. Specific duties were imposed on some selected articles, such as hemp, cordage, nails, manufactures of iron, and glass. These articles were selected, and made subject to the specific duties, with the clear intent of stimulating domestic production. The general range of duties was by no means such as would have been thought protective in later days; but the intention to protect was there.

Under the U.S. Constitution, the Congress is empowered to enact duties. U.S. CONST., art. I, §§ 8, 10.

4. 19 U.S.C. § 1201 (401.02-409.00) (1970).

5. A low U.S. tariff on a certain product would encourage foreign producers to increase their exports of that product to the United States.

6. General Headnotes and Rules of Interpretation § 10, 19 U.S.C. § 1202 (1970).

7. For rates of duty on illuminating articles *see* 19 U.S.C.A. § 1202 (653.30-.39), (545.53-.67) (1978).

8. For rates of duty on bicycles *see* 19 U.S.C.A. § 1202 (732.02-.26) (1978). For rates of duty on mirrors *see* 19 U.S.C.A. § 1202 (544.51-.55) (1978).

3) classification by use, either chief use, *e.g.*, "household items,"[9] or actual use, *e.g.*, "yachts or pleasure boats;"[10]
4) classification by the composition of the component material of chief value, *e.g.*, wearing apparel of wool, man-made fibers, cotton, or other material;[11]
5) parts provisions, *e.g.*, "parts of bicycles;"[12]
6) pre-existing material doctrine provisions, *e.g.*, the pre-existing material of a mirror may be glass or metal;[13] and
7) a provision for benzenoid chemicals.[14]

In order to enumerate the various types of products which may be imported, the tariff schedules are organized into groups. Schedules One through Seven proceed from animals to vegetables to certain specified products.[15] Schedule Eight has special provisions for such things as exported goods returned to the United States.[16] The appendix (Schedule Nine) includes special duty-free and quota provisions.[17]

Each enumerated tariff item is followed by two columns posting different rates of duty. The rates in Column Two are generally much higher than the rates in Column One.[18] The statutory rules accompanying the schedules indicate which countries' products are classified under Column One and which are classified under Column Two.[19] Generally speaking, products of countries which have not been granted most-favored-nation status are assessed at the duty rates stated in Column Two.[20]

Practically speaking, most imported merchandise is assessed at the duty rates found in Column One. However, the origin of imported merchandise is not always the country from which the product

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9. For rates of duty on household items *see, e.g.*, 19 U.S.C.A. § 1202 (546.11-.59) (1978).
10. For rates of duty on yachts or pleasure boats *see* 19 U.S.C.A. § 1202 (696.05-.10) (1978).
11. *See, e.g.*, 19 U.S.C.A. § 1202 (380.00-382.87) (1978).
12. For rates of duty on parts of bicycles *see* 19 U.S.C.A. § 1202 (732.30-.36) (1978).
13. *See, e.g.*, 19 U.S.C.A. § 1202 (652.70), (544.51), (1978).
14. *See, e.g.*, 19 U.S.C.A. § 1202 (401.02-409.00) (1978).
15. 19 U.S.C. § 1202, Schedules 1-7 (1970).
16. 19 U.S.C. § 1202, Schedule 8 (1970).
17. 19 U.S.C. § 1202, Appendix (1970).
18. General Headnotes and Rules of Interpretation § 3, 19 U.S.C.A. § 1202 (1978).
19. *Id.*
20. *Id.*

was exported. For example, an item exported from Hong Kong would be dutiable at rates found in Column One. However, if Customs discovers that the item originated in the People's Republic of China, rates in Column Two would be applicable.

B. The Practitioner and the Tariff Schedules

When advising a client who seeks to import goods into the United States, the attorney should first determine the product's classification and rate of duty in the tariff schedules. In order to do this, the attorney must consider every provision which seems to describe the imported merchandise in some way. For example, consider a lighted make-up mirror of the type used for shaving or applying make-up. There are three broad provisions under which this mirror might reasonably be classified: mirrors, illuminating articles, and household items. The rates of duty under these provisions range from five and one-half percent *ad valorem* to nineteen percent *ad valorem*.[21]

Once the practitioner has established the potentially applicable product classifications, he must pinpoint the exact provision. In so doing, the practitioner must learn to use and rely on the tariff schedules and accompanying statutory directives (headnotes) contained in the schedules. For example, there is a headnote under the wheel goods provision which covers bicycles.[22] This headnote states: "For the purposes of classifying bicycles under the provisions therefor, in this subpart, the diameter of each wheel is the diameter measured to the outer circumference of the tire . . . ."[23] If an imported bicycle has wheels with a diameter of nineteen inches or less, the bicycle will have one rate of duty.[24] If its wheels have a diameter of over nineteen inches, it will have a different rate of duty.[25] The headnote instructs the practitioner to include the rubber tire in calculating the diameter of the wheel,[26] an aspect of the wheel's diameter which can be manipulated. Therefore, the headnote

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21. 19 U.S.C.A. § 1202 (544.51), (544.54), (653.35), (653.37), (653.39), (653.94), (654.00), (654.05) (1978).

22. 19 U.S.C. § 1202, Schedule 7, Pt. 5, Subpart C, headnote (1970).

23. *Id.*

24. 19 U.S.C. § 1202 (732.02-.06) (1970).

25. 19 U.S.C. § 1202 (732.08-.18) (1970).

26. *See* note 25 *supra*. Since the rubber tire may be inflated, deflated, attached, or separate, the diameter of the wheel may be altered. This, in turn, would alter the rate of duty for the bicycle.

indicates directly how one may manipulate the product so that it will be classified and assessed a particular duty rate.

To further illustrate how the tariff headnotes and schedules help in classifying imported merchandise, consider the classification of imported tennis racket strings (of man-made fibers). The sporting goods provisions do not tell us where the racket strings should be classified,[27] but the textile provision states that these strings will not be classified as textile products as long as they are packaged for resale.[28] (Textile products are subject to high rates of duty.)[29] Packaged racket strings are classified under the "lawn tennis and parts thereof" provision at a very low rate of duty, four and one-half percent *ad valorem*.[30] Therefore, it would be to the importer's advantage to avoid the high-duty textile provision by importing tennis racket strings packaged directly for retail sale.

Unfortunately, there is not always a clear Congressional statutory directive to help determine the classification of imported merchandise. In the absence of such statutory guidelines, one must look to the rules of construction in the general headnotes.[31] A rule of construction can be illustrated by considering a small mirror of the type that may be used on a bicycle. There are provisions entitled "bicycles," "parts of bicycles,"[32] and "mirrors."[33] How should this particular mirror be classified? It is obviously both a mirror and a part of a bicycle. The general headnotes dictate that when a provision specifically describes an article,[34] that provision will prevail over a general parts provision. Thus, this mirror will be classified under the mirror provision since the description as "mirror" is more specific than that of "bicycle part."

When Congress enacted the tariff schedules, it could not have anticipated every type of article that might be imported. One such

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27. 19 U.S.C. § 1202, Schedule 7, Pt. 5, Subpart D (1970).

28. 19 U.S.C. § 1202, Schedule 3, Pt. 1, Subpart E, Headnote 1 (ix) (1970) states that the subpart does not apply to racket strings packaged for resale. The subpart does cover other racket strings. Lyons Export and Import, Inc. v. United States, 65 Cust. Ct. 394 (1970), *aff'd.*, 461 F.2d 830 (C.C.P.A. 1972).

29. 19 U.S.C. § 1202, Schedule 3 (1970).

30. 19 U.S.C.A. § 1202 (734.88) (1978).

31. General Headnotes and Rules of Interpretation § 10, 19 U.S.C. § 1202 (1970).

32. 19 U.S.C.A. § 1202 (732.02-.26), (732.30-.36) (1978). These are the provisions for bicycles and parts of bicycles, respectively.

33. 19 U.S.C.A. § 1202 (544.51-.55) (1978).

34. *See* note 31 *supra*, at § 10(i).

item is the lighted make-up mirror previously mentioned. In determining the classification of this make-up mirror, we must choose the provision that most specifically describes the article.[35]

This article cannot simply be classified under the mirror provisions,[36] because these provisions do not specifically describe the make-up mirror. It could be classified according to the material of chief value;[37] it may be that the metal in the product is worth more than the plastic frame. This provision, however, is also not applicable.

In attempting to classify the lighted make-up mirror, one should consider its prime purpose. As merely a mirror, it is not very valuable, but people are willing to pay twenty dollars or more for this product. Why? Certainly, part of the product's appeal is that it contains a light, but one would hardly say that the light is the most important part of the product. These two functions—that of a mirror and that of a light—combine into one article. Thus, the product is neither a mirror nor an illuminating article. This lighted make-up mirror should be classified as an electrical article,[38] since this provision most specifically describes the merchandise. Further, the twelve percent advantage in the rate of duty realized by classifying the make-up mirror as an electrical article, as opposed to a mirror under one square foot in area, will make the mirror's resale more profitable.

The method of classification demonstrated above is based on a doctrine known as the "more-than" doctrine.[39] The make-up mirror is "more-than" a mirror because it includes a significant illuminating feature; it is also "more-than" an illuminating article because it contains the mirror function.

To further illustrate the use of the "more-than" doctrine, consider the case of a bicycle mirror with a reflector on the back. This article could be a mirror or it could be a part of a bicycle. Because of the presence of the reflector, however, it may lose its mirror classifi-

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35. *Id.* at § 10(c).

36. *See* note 31 *supra*. These provisions contain classifications for "mirrors not over one square foot in reflecting area" and "mirrors over one square foot in reflecting area." This is a mirror with one square foot in reflecting area, each on two sides of the product, but the areas of the two mirrors cannot be combined for classification purposes. New York Merchandise Co., Inc. v. United States, 65 Cust. Ct. 146 (1970), *aff'd.*, 459 F.2d 104 (C.C.P.A. 1972). If the product was classified as a mirror, it would be assessed the duty at the rate of 17 percent *ad valorem*.

37. *See* note 31 *supra*, at § 10 (f).

38. Englishtown Corp. v. United States, 409 F. Supp. 764 (Cust. Ct. 1976).

39. Irving W. Rice & Co., Inc. v. United States, 65 Cust. Ct. 125 (1970); United States v. Bonwit, Teller & Co., 17 C.C.P.A. 96, 100 (1929).

cation. At night the reflector has the function of warning oncoming traffic that the bicycle is on the road. The question then becomes whether the addition of a small reflector takes the mirror out of the high-tariff mirror provision and into the low-tariff parts of bicycles provision.

Another statutory rule of construction affecting classification concerns whether an article is imported in its finished or unfinished state.[40] Compare the difference between a completely assembled leather handbag and a plastic package containing the constituent parts of a handbag, excluding the straps and zipper. The key question is whether the parts of the handbag in the plastic bag will be classified as a handbag or as a leather article. The rate of duty on handbags is ten percent *ad valorem*,[41] and the rate of duty on leather articles is four percent *ad valorem*.[42] Of course, these "separate" parts do not constitute a completed handbag, but the principles of customs law dictate that if all of the necessary parts are together in one place, the article will be deemed to be finished and will be classified as if the parts were assembled. The specific test used here is whether the article lacks a *substantial and essential* part.[43] If an article does not meet this test, then it will not be classified as though it were an assembled product. In the handbag case, the issue is whether the missing straps and zipper are *substantial and essential* parts of the handbag.

The handbag issue has not been resolved, but a similar case has been adjudicated. An importer dealing in electric toothbrushes reasoned that since toothbrushes have a very high rate of duty,[44] the article's classification could be changed and the rate of duty lowered by importing the electrical component alone without the toothbrush. The apparatus could conceivably be classified as an electrical article, machine, or toothbrush.[45] The court classified the product as a toothbrush and said that the five-cent missing toothbrush was *essential* but not *substantial*. Even though the article had no toothbrush, it was still classified as a toothbrush.[46]

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40. *See* note 31 *supra*, at § 10(h).
41. 19 U.S.C.A. § 1202 (706.08) (1978).
42. *Id.* at (791.90).
43. Authentic Furniture Products, Inc. v. United States, 486 F.2d 1062 (C.C.P.A. 1973).
44. 19 U.S.C.A. § 1202 (750.40) (1978). Their rate of duty is 0.4 ¢ each plus 8.5% *ad valorem*.
45. 19 U.S.C.A. § 1202 (688.40) (1978) with a rate of duty of 8% *ad valorem*.
46. E.R. Squibb & Sons, Inc. v. United States, 576 F.2d 921 (C.C.P.A. 1978).

Frequently, tariff classifications are determined on the basis of the component of chief value.[47] For example, a man's suit would obviously be classified as wearing apparel for men or boys.[48] The subclassification of the suit, however, depends on the predominant fiber, that is, the fiber of chief value. If the suit has a mixed fiber content, special statutory directives and principles of case law will apply in determining the predominant fiber by value.[49]

The tariff schedules also make a distinction between ornamented and non-ornamented clothing.[50] Decorated garments are classified differently and are dutiable at rates distinct from those applied to undecorated garments. The "plain pocket" jeans is not ornamented. If, however, a row of nonfunctional stitching is sewn on the pocket before the jeans are imported, this merchandise will be classified as an ornamented article.[51] Higher rates of duty are imposed upon ornamented garments because the garment workers' unions have succeeded in lobbying for such rates on those items which indicate that decorative, nonfunctional sewing has occurred abroad. A decorative logo which does no more than indicate the manufacturer's identity has been held to be a decoration, making the product upon which it appears an ornamented garment.[52] Therefore, an importer would only sew such a logo on the garment after it has been imported.

There is no real black letter law dealing with ornamentation, but three examples will illustrate the frustrating aspects of this issue. The first example is the tuxedo. No one would argue that a tuxedo is a non-ornamented suit. Yet, Customs has held that tuxedo pants are ornamented garments by virtue of the satin seam sewn down their side.

The second example is the jogging suit, characterized by white stripes along the side of the sleeves and pants. If the white stripes are sewn on top of the pant legs, they would be classified as decorated garments. However, if the pieces of the pant legs are connected by the white stripes, making each stripe a part of the unit, the stripe is not considered to be an ornamentation. In this case, the stripes are functional components of the pants: without the stripes, the garment would fall apart.

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47. *See* note 31 *supra*, at § 10(f).
48. 19 U.S.C. § 1202, Schedule 3, Pt. 6 (1970).
49. N. Erlanger Blumgart Co., Inc., v. United States, 295 F. Supp. 278 (Cust. Ct. 1969).
50. 19 U.S.C.A. § 1202, Schedule 3, Pt. 6 (1978).
51. Colonial Corp. of America v. United States, 62 Cust. Ct. 502 (1962).
52. C.S.D. 79-160, 13 CUST. BULL. ___ (1979).

The third example is that of the Western-style shirts, characterized by "frills" and a great deal of design in general. These shirts are classified under the men's and boy's lace and net wearing apparel provision. This classification suggests that Customs somehow considers this garment to be a special shirt, a part of our American heritage as it were. But when an importer attempted to import short-sleeved Western-style shirts, Customs did not classify these garments under the general provision, apparently reasoning that only long-sleeved Western shirts were part of the American heritage; these short-sleeved shirts were held to be ornamented.

Having discussed how articles are classified, I will demonstrate the affirmative use of the tariff schedules. A practitioner can use the schedules when counselling a prospective importer on the mechanics of importing a particular item. He can determine the slight variations able to be made in the merchandise, whether inside or outside the United States, which will affect the classification of the merchandise and thus the rate of duty to be assessed on the particular article. For example, by sewing the designer label on an imported tie after it has entered the United States, an importer or foreign producer will be able to avoid paying the duty for an ornamented article.

Sometimes it is advantageous to import merchandise at a high rate of duty because that particular classification is not subject to a quota. For example, the importer may want to avoid a textile quota for a classification which does not differentiate between ornamented and non-ornamented goods, even to the point of importing ornamented goods which are not subject to a quota and then removing the ornamentation after importation.

III. Conclusion

The present system of classifying imported merchandise for purposes of duty assessment is indeed archaic. Though the headnotes and statutory directives give some indication as to how goods should be classified, the fact that imported goods may serve multiple purposes and the fact that the classification system involves multiple criteria have left Customs law practitioners "in the dark" as to how Customs will ultimately classify certain goods. Consequently, attorneys and importers have had to be innovative in their planning. These tactics have been scrutinized by the courts, and the practitioner must glean, from both statutes and case law, those plans and changes for the goods which will render classifications advantageous to the importer and acceptable to the Customs Service.

IV. Foreign Trade Zones

A. Definition and Administration

In the last two years much attention has been focused in Florida and in the rest of the nation on the establishment of foreign trade zones. I would like to explain the concept of the foreign trade zone, show how the zone differs from a bonded facility or an in-bond procedure, and outline the advantages available to importers, exporters, and manufacturers as a result of the utilization of a foreign trade zone.

There is no such thing in the United States as a *free* trade zone; it is statutorily labelled a *foreign* trade zone.[53] A foreign trade zone is an isolated and policed area within, or adjacent to, a port of entry wherein foreign merchandise may be landed, stored, repackaged, sorted, mixed with foreign or domestic merchandise, manipulated, exhibited, destroyed, and exported with minimum Customs control and without a Customs bond.[54] If such merchandise is later brought into the United States, it is subject to all applicable United States Customs laws and regulations. A foreign trade zone is merely a Customs antiseptic area; most Customs laws are not enforced for the duration of the merchandise's sojourn in the zone.

However, other rules, enacted as part of the U.S. Foreign Trade Zone Act, are enforced in the zones.[55] Each port of entry may establish at least one foreign trade zone.[56] Normally, only a non-profit organization will apply to operate a zone and subsequently obtain a grant from the government.[57] The organization will then either hire someone to operate the zone, as in the case of Miami, or a local governmental authority will administer the zone's operations, as in the case of Port Everglades.

Foreign trade zones are administered by the Foreign Trade Zone Board in cooperation with the state and municipality in which the zone is located and the U.S. Customs Service.[58] The Board can control who may use the foreign trade zone and can determine whether a proposed operation is in the public interest.[59] The Board has indicated that the Customs Service should rule on the more technical

53. 19 U.S.C.A. § 81 (1978).
54. *Id.* at § 81(c).
55. *Id.* at § 81(h).
56. *Id.* at § 81(b)(6).
57. *Id.* at § 81(b), (f), (g).
58. *Id.* at § 81 (i), (j).
59. *Id.* at § 81(m).

aspects of zone procedure, such as the proposed use of zones for storing over-quota merchandise. Decisions of the Foreign Trade Zone Board may be appealed to the Secretary of Commerce,[60] but there have not been many appeals of this nature since most disputes arise after the merchandise has been removed from the zone and the duty has already been assessed.

B. Functions of the Foreign Trade Zone

The main function of the foreign trade zone is the promotion of the import and export trade. For example, if one wants to ship ball bearings from Germany to Latin America and there is no direct air route, one could warehouse the goods in a U.S. foreign trade zone while awaiting a connecting flight.

Consider the following hypothetical: A manufacturer who exports almost all of his merchandise makes the best domestic U.S. bicycle. In the country that imports these bicycles, the public wants bicycles with mirrors either because bicycle mirrors are popular there or because they are required by law. The U.S. manufacturer has to import these mirrors. How can he avoid paying a seventeen and one-half percent *ad valorem* duty on the mirrors?[61] He can set up a manufacturing operation in a foreign trade zone; bring in the domestic bicycles; import the mirrors into the zone; attach the mirrors to the bicycles; and export the finished product without having to pay a penny of duty. This is a significant saving for the manufacturer who deals in great quantities of bicycles.

In addition, many people prefer to store their goods in the United States for financial, political, and other reasons. Thus, these individuals too can store goods in foreign trade zones without paying any duty.

There are, however, other alternatives which achieve the same result as that of the foreign trade zone. Merchandise may be brought into a bonded warehouse, where it may be manufactured and assembled solely for export.[62] The manufacturer located where there are no foreign trade zones can create a bonded warehouse out of a part of

60. For the rules of practice and procedure of the Foreign Trade Zone Board *see* 15 C.F.R. §§ 400.1300-.1321 (1979).

61. *See* note 36 *supra*.

62. 19 U.S.C. §§ 1555-1559 (1970).

his factory. Failing this, the manufacturer can use a procedure called the "drawback."[63] The drawback entitles an importer to receive a refund of ninety-nine percent of duties paid on imported merchandise, provided he can show the government that he has exported the merchandise.[64]

Although a less prominent feature of the zone, the reverse function, namely, exportation, is also important. For example, a company may import heavy machinery which turns out to be defective, or they may import a product under bond for testing purposes only. Such merchandise may be imported under bond, but that merchandise must in turn be exported within a certain period of time, normally three years.[65] The act of moving the item into a foreign trade zone, even though the article is still within the United States, is considered an act of exportation for the purposes of the drawback and in-bond procedures.[66]

Despite these alternative methods, there are advantages to using a foreign trade zone. One can manipulate the character of imported merchandise in the zone so as to change its classification and thus lower the rate of duty to be assessed. For example, if a bicycle manufacturer has a foreign *and* domestic market for his product and both markets demand imported mirrors, it would be to his advantage to use the foreign trade zone. By so doing, he may request that Customs value the imported merchandise either as it enters the zone or as it leaves the zone. Thus, if the bike manufacturer attaches the mirror to the bike in the zone and the duty is assessed as the assembled article leaves the zone, the manufacturer will pay the rate of duty applicable to bicycles only and not the rate applicable to mirrors.

The same principle can be applied to the case of imported typewriters. Some typewriters are imported duty-free,[67] but *parts* of typewriters are dutiable. Olivetti of Italy imported typewriter parts to be assembled in the United States. While the company wished to have the typewriters assembled in the United States, it also sought to avoid having to pay the nine and one half percent rate of duty imposed on imported typewriter parts. The company's strategy was to place all crates containing parts on the same ship so that these "pack-

63. 19 U.S.C. § 1313(a) (1970).
64. *Id.*
65. 19 U.S.C. § 1559 (1970).
66. 19 U.S.C.A. § 81(c) (1978).
67. 19 U.S.C.A. § 1202 (676.05) (1978) allows nonautomatic, hand operated typewriters to enter duty-free. Parts of typewriters do not enter duty-free. 19 U.S.C.A. § 1202 (676.50) (1978).

ages" would be classified as finished products. In order to succeed, Olivetti had to be sure that all parts were coordinated and entered the United States together. Unfortunately, workers in Italy went on strike and not all shipments were properly coordinated. Olivetti then sent the parts into a foreign trade zone and stored them there until enough parts had arrived so that a number of typewriters could be assembled. Once this process was complete, finished typewriters left the zone duty-free.[68]

Merchandise in a foreign trade zone is not technically "in" the United States. When merchandise is withdrawn from a zone into the Customs territory of the United States, Customs must ascertain the value of the imported merchandise in order that a rate of duty may be applied. Customs has taken the position that all U.S. labor occurring in the zone is a part of the value of the goods; the theory is to add the American general expenses and overhead in the zone to the value of the goods. This position is unfavorable to the importer because it makes American labor dutiable, a theory contrary to the Congressional intent that foreign trade zones operate as antiseptic areas. An importer can change the rate of duty by manipulation in the trade zone, but that savings may not offset the adverse effect of the policy of including U.S. expenses in the valuation of the imported goods. A number of American automotive producers who have recently established operations in foreign trade zones have argued the absurdity of this practice with the result that Customs is now reconsidering, although a final decision has not yet been reached.[69]

C. Conclusion

Regardless of whether Customs decides to continue making American labor in foreign trade zones dutiable, the zones may be of great value to importers. An importer may lower the rate of duty charged and sometimes avoid any duty by using the zone. He may use the zone as a storage area for goods in transit from one foreign country to another without paying duty or going through the drawback procedure. He may also be able to change the classification and

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68. Since all substantial and essential parts entered the Customs area of the United States as a group, they are deemed to be completed typewriters. *See* text *supra*, at 325.

69. Customs has proposed a rule to amend 19 C.F.R. § 146.48(e) which would eliminate the duty on U.S. labor and materials used in the zones.

lower the rate of duty on imported goods by assembling, manufacturing, or altering them in the zone. Thus, foreign trade zones encourage the export trade and the use of foreign components in the zone because of the possibility that the import duty may be lowered or altogether eliminated.