

**Tribal Economic Development Principles-at-a-Glance Series**

# Native American Foreign Trade Zones



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### **Native American Foreign Trade Zones**

*This is the tenth in a series of economic development primers produced by the Division of Economic Development (DED), Indian Affairs Office of Indian Energy and Economic Development (IEED), to offer answers to fundamental questions about creating jobs and expanding economies in Native communities. It was prepared in cooperation with the United States Foreign Trade Zone Board.*

*If you would like to discuss in more detail ways to obtain capital, please contact the DED at (202) 219-0740.*

#### **What is a Foreign Trade Zone and why should tribes care about it?**

A U.S. Foreign Trade Zone (FTZ) is a designated geographical area where foreign and domestic goods are treated, for tax and tariff purposes, as if they had never entered the United States.

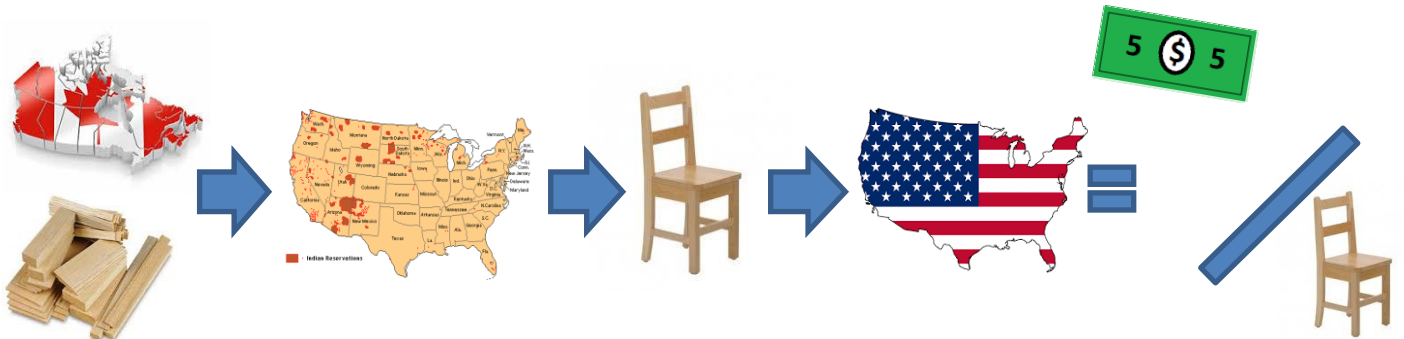
If a tribe decides to create a tribal corporation, the corporation is eligible to establish a Foreign Trade Zone. For information on creating a corporation, please visit:

<https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/bia/pdf/idc1-032807.pdf>.

Establishing an FTZ presents major cost savings to tribes through several different avenues. For example, merchandise may be held and stored in an FTZ on U.S. soil without being subject to U.S. Customs duties, also known as tariffs. Think of a duty and a tariff as a tax. If the goods shipped into the FTZ are then shipped to another FTZ or another country, a U.S. duty will not be assessed on the merchandise. If the goods enter the U.S., a duty will be applied. However, by utilizing an FTZ the duty may be significantly reduced.

A tribal corporation/company can avoid paying a higher duty if it manufactures a product within its FTZ and then imports it into the U.S. market, rather than importing the raw materials directly into the U.S. market. This means that the duty applied on a fully assembled product – for example, a maple chair – is less than the duty applied on the raw materials that would have been used to make the chair, i.e., a bundle of maple wood. If the duty on the maple wood needed to assemble the chair is \$10 when it enters the U.S. market, but the duty on a fully-assembled chair made of the same amount of maple wood is only \$5 when it enters the U.S. market, the tribal firm would save \$5 per chair that it imports into the U.S. by utilizing an FTZ. Imagine the savings when that \$5 savings is multiplied by hundreds of chairs!

## MOST COST EFFICIENT OPTION <sup>1</sup>

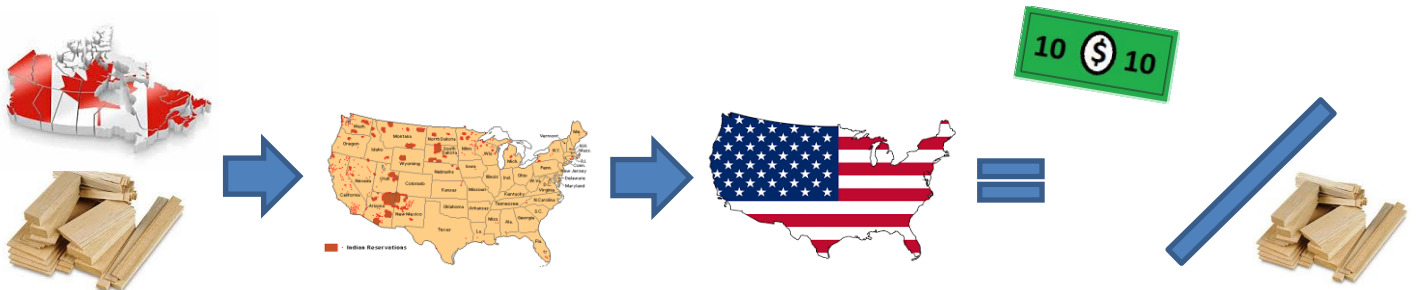


*A bundle of Canadian maple wood imported to an FTZ*

*Maple wood is manufactured into a chair within FTZ*

*When imported from FTZ to U.S. Market, a duty of only \$5/chair will be assessed*

## LEAST COST EFFICIENT



*A bundle of Canadian maple wood imported to an FTZ*

*When imported from FTZ to U.S. market, a duty of \$10/bundle of maple wood will be assessed*

<sup>1</sup> Bundle of Wood Image: <http://www.utrechtart.com/Midwest-Micro-Cut-Balsa-Project-Wood-Sheets--3--MP-33301-010-i1032317.utrecht>

Canada Image: <https://www.pinterest.com/explore/sean-casey/?lp=true>

Native American Reservation Map Image: <https://twitter.com/johngramlich>

U.S. Flag Image: <https://www.desktopbackground.org/wallpaper/united-states-flag-map-wallpaper-654063>

Chair Image: <http://michaelolaf.com/store/03environment.html>

\$5 and \$10 Bill Images: Created by IEED using Microsoft 7 Paint Program

## **Are there any cautions to consider before deciding to establish an FTZ?**

Yes. The U.S. Customs and Border Protection (CBP), which oversees FTZs, requires companies to adhere to detailed security and operational requirements. Thus, before deciding whether or not to establish an FTZ, you should calculate whether the potential duty or tariff savings will outweigh the costs you will incur to comply with CBP's security and operational requirements.

In addition, items manufactured in an FTZ must first be approved by the U.S. Foreign Trade Zone Board (FTZ Board) on a case-specific basis. The FTZ Board considers whether there are potential negative effects on other U.S. companies resulting from FTZ manufacturing. For example, if U.S. producers of maple wood opposed a request to set up an FTZ to manufacture chairs using imported maple wood, the FTZ Board might not approve the request.

## **Which industries and products are most commonly utilized by FTZs?**

By value, most FTZ activity occurs within the petroleum industry. Beyond petroleum, however, many companies in the automotive, consumer electronics, and pharmaceutical industries also use FTZs.<sup>2</sup> Below is a list of various other FTZ industry examples:<sup>3</sup>

- **Conair Corporation** – small electric appliances
- **BP Products, CITGO, Chevron, ConocoPhillips, Equistar Chemicals, Exxon, NuStar, Shell Oil, Tesoro, Valero, etc.** – gasoline/jet fuel
- **General Electric** – refrigerators, stoves, dishwashers, and washing machines
- **Kodak** – digital products
- **Intel** – computer chips
- **Kawasaki** – jet skis and ATV's
- **Airstream, Thor, Winnebago** – motor homes
- **BMW, Chrysler, Ford, GM, Honda, Hyundai, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Smith Electric, Toyota, Volkswagen, etc.** – motor vehicles
- **Abbott, Astra Zeneca, BMS, Eli Lilly, Merck, Pfizer, etc.** – pharmaceutical products
- **Ricoh** – photocopiers
- **Skechers** – shoes
- **STIHL** – chain saws
- **Sony** – digital products
- **Canon, HP, Minolta, Ricoh, etc.** – toner cartridges

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<sup>2</sup> <http://enforcement.trade.gov/ftzpage/info/products.html>

<sup>3</sup> <http://www.millarco.com/Update/Website/Pages/FTZOverview.html#ApplicationProcess>

## **Which items are prohibited in an FTZ?**

Even though FTZs are treated for customs purposes as if they are outside the customs territory of the United States, they are still a part of the U.S. For that reason, goods and activities in FTZs are subject to federal, state and local laws and regulations. Items prohibited by law or that violate copyright, trademark or patent laws, are not allowed to enter FTZs.<sup>4</sup>

## **Are there different types of Foreign Trade Zones?**

Yes, there are essentially two types of FTZ sites: “General Purpose” or “Magnet” sites – each of which is intended to serve multiple companies; and “Subzone” or “Usage-Driven” sites – each of which is intended to serve the needs of a single company that uses the site.

Grantees may organize their zones under the Traditional Site Framework (TSF) or the Alternative Site Framework (ASF). Under either TSF or ASF, the grantee may sponsor General Purpose (TSF) or Magnet (ASF) sites and Subzone (TSF or ASF) and/or Usage-Driven (ASF) sites. The key difference is that under the ASF, the grantee obtains approval from the FTZ Board to serve an overall geographic “Service Area” (such as one or more specific counties) in a way that enables designation of Subzone/Usage-Driven sites when a company’s FTZ needs materialize. Within an ASF service area, a Subzone or Usage-Driven site can be designated in 30 days or less. Otherwise, the process to designate Subzone sites requires up to three or five months (depending on the circumstances).

## **What are the various ways a tribal corporation can take advantage of an FTZ?**

There are three major ways in which a tribe/tribal corporation can profit from establishing an FTZ, and tribes may utilize one or all of these options:

### **1. Move goods from a foreign country into the U.S.**

To take advantage of an FTZ’s lower duties, tribal corporations should consider importing parts that they can assemble into products. Items like furniture or cars are good examples. Tribal corporations should think about which items they can feasibly manufacture within an FTZ. To determine which items are most advantageous to import, they should utilize the Harmonized Tariff Schedule<sup>5</sup> to research duties on components used to make those items, and also conduct research on whether components are available from domestic sources. The Harmonized Tariff Schedule can be used to look up the import duty on every item imported into the U.S.

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<sup>4</sup> <http://ftz9.org/about-us/who-and-what-is-a-foreign-trade-zone/>

<sup>5</sup> <https://www.usitc.gov/tata/hts/index.htm>

Returning to the maple wood chair example, the duty applied on maple wood imported from Canada can be searched using the Harmonized Tariff Schedule, as well as the duty applied to Canadian maple wood chairs. Remember that if the duty applied to the assembled Canadian maple wood chair is less than the duty applied to the maple wood -- the raw material -- the maple wood would be a good item to import and assemble in an FTZ. For more information on how to use the Harmonized Tariff Schedule, please see the “Resources” section at the end of this primer.

## **2. Move goods from one foreign country to another foreign country**

Tribal corporations should research the cost of importing different materials and the price at which they can re-sell those materials in various other countries to make the most profit. By moving goods from one foreign country to another through an FTZ, it is like the product never entered the U.S. because a U.S. duty will not be imposed on the product.

## **3. Leasing/Equity Option**

Tribal corporations can establish an FTZ, and lease or “rent out” different portions of their FTZ to other companies. Companies will pay to rent a portion of the FTZ to take advantage of the FTZ benefits. Tribal corporations gain revenue from leasing portions of their FTZ and can also ask for equity in the company that is the lessee, meaning they could own a portion of that company.

However, it is worth noting that the quick, simple processes available to bring FTZ designation to a company’s own facilities may limit its willingness to pay fees to lease FTZ space elsewhere. Also, if the tribal corporation is the grantee of the FTZ, the FTZ Board’s regulations requiring that the grantee operate the FTZ as a public utility, could limit the revenue that the tribe would be allowed to derive from its FTZ facility(ies).

## **How many FTZs exist in the United States? Which tribes have experience with FTZs?**

Overall, there are about 250 FTZ grantees serving locations in all 50 states and Puerto Rico, with many of those grantees serving multiple sites (including subzones).<sup>6</sup> A complete list of FTZ grantees can be found on the FTZ Board’s website at:

<http://enforcement.trade.gov/ftzpage/letters/ftzlist-map.html>. Actual FTZ use tends to occur at locations that have competitive transport costs and infrastructure. As a result, FTZ activity tends to take place at locations near major airports, seaports, rail lines and interstate highways.

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<sup>6</sup> <http://enforcement.trade.gov/ftzpage/info/zonestats.html> and <http://ita-web.ita.doc.gov/FTZ/OFISLogin.nsf>

Since the creation of the FTZ program in 1934, the tribes listed below have sought FTZ approval for tribal locations. The tribes are listed in order from the most recent requests to the oldest. The list also includes information on actual use of the tribal FTZ locations based on the annual report records available on the FTZ Board’s website (which currently cover 2000 through 2015)<sup>7</sup>:

- **Citizen Potawatomi Nation (Oklahoma)** – Sought to add an addition of a tribal industrial park to the pre-existing FTZ sponsored by the Port Authority of the Greater Oklahoma City Area. The nation’s request was approved in 2015.
- **Cabazon Band of Mission Indians, Torres Martinez Desert Cahuilla Indians, and Twenty-Nine Palms Band of Mission Indians (California)** – These three tribes formed the Four Winds Foreign-Trade Zone Corporation and applied for a new FTZ in 2014. As of September 2017, the application is on hold to allow the applicant to engage CBP on matters pertaining to meeting the adjacency requirement (distance/driving time to a POE).
- **Puyallup Tribe of Indians (Washington)** – Sought to create a new FTZ to serve a tribal site, which was approved in 1996; however no actual FTZ use is on record for the years 2000-2015.
- **Oneida Nation (Wisconsin)** – Sought to include a tribal site within the FTZ proposed by the government of Brown County, Wisconsin, which was approved in 1990; however no actual FTZ use is on record for the years 2000-2015.
- **Lummi Nation (Washington)** – Sought to create a new FTZ to serve a tribal site, which was approved in 1986; however no actual FTZ use is on record for the years 2000-2015.

It is important to note the two tribes that have obtained approval as FTZ grantees, as well as the tribal coalition that has a pending application requesting designation as an FTZ grantee, applied through tribal corporations, that is, corporations established under tribal law.

## How are FTZs established?

Under the federal FTZ Board’s laws and regulations, the federal FTZ Board may grant authority to organizations (“grantees”) to sponsor FTZ sites at locations “adjacent” to a CBP port of entry (POE).<sup>8</sup> (Adjacent generally means within 60 miles/90 minutes’ driving time of a POE; the

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<sup>7</sup> The information about the tribal applications has been provided by the FTZ Board. The FTZ Board annual reports are available at <http://enforcement.trade.gov/ftzpage/annual-report.html>

<sup>8</sup> For purposes of the adjacency requirement, ports of entry include CBP user-fee airports authorized under 19 U.S.C. 58b and listed in 19 CFR part 122.

exception is subzones proposed by pre-existing grantees, for which there is no mileage/driving time limitation.) Under the law, each POE is “entitled” to one FTZ (grantee). An application to establish an additional FTZ/grantee to serve a POE may only be authorized if the applicant demonstrates that the pre-existing FTZ(s)/grantee(s) is not adequately serving the “convenience of commerce.” The FTZ law and regulations also require that each grantee operate its FTZ as a “public utility” – which basically means the grantee may charge fees for use of the FTZ only to the extent that the fee revenue covers the grantee’s FTZ-related costs.

The FTZ Board has made major changes to the program over the last ten years that make it much quicker and simpler for existing grantees to expand their FTZs to serve needs at a company’s facility. Companies have learned that, in general, it is fairly easy for them to have FTZ designation brought to whichever facility they choose (so they generally do not see a need to locate at a facility simply because the facility already has FTZ designation). The FTZ Board’s improved procedures can make it easier for existing grantees to serve a business’s needs, which can affect whether the creation of additional FTZs (grantees) could be justified under the “convenience of commerce” legal standard.

### **How can my tribe apply to benefit from an FTZ?**

For a location within 60 miles/90 minutes’ driving time from a POE, there are two primary approaches for pursuing FTZ designation for a tribal site:

1) Propose the authorization of a new FTZ grantee to sponsor the tribal site. Under this option, if the POE for which the tribe claims “adjacency” is already served by one or more existing FTZs (grantees), the tribe would face the uncertainty of whether it would be able to meet the legal standard for approval of a new FTZ (to demonstrate that the existing FTZs are not adequately serving the “convenience of commerce”). The Four Winds Foreign-Trade Zone Corporation (mentioned above) chose to propose a new FTZ to serve certain tribal locations.<sup>9</sup>

2) Obtain the sponsorship of a pre-existing FTZ grantee. Under this option, the tribe would not face the uncertainty of whether the tribe would be able to meet the legal standard for approval of a new FTZ. The Citizen Potawatomi Nation chose to work with an existing FTZ grantee for the application for FTZ designation at the tribe’s industrial park. The FTZ Board began processing the application in August 2014 and approved the application in April 2015.

For a location beyond 60 miles/90 minutes’ driving time from a POE, the only approach would be to pursue sponsorship as a “subzone” from a pre-existing grantee in the same state.

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<sup>9</sup> The FTZ Board began processing the application in April 2014. As of September 2017, the application was on hold for the applicant to address the adjacency requirement.



## Is a tribal corporation eligible to apply to establish an FTZ?

A tribal corporation is a public corporation and thus is eligible to apply to establish an FTZ per FTZ Regulations. Section 400.12 (Eligible Applicants) outlines in paragraph (b) that public corporations and private non-profit corporations are eligible to apply for grants of authority to establish foreign trade zones. Paragraph (a) of the section requires that the FTZ Board give preference to FTZs formed by public corporations.<sup>10</sup>

## What does our tribe need to do in order to apply for an FTZ?

For guidance on how your tribal corporation can apply to establish an FTZ, visit this link: <http://enforcement.trade.gov/ftzpage/formats/newzone.html>. There you will find a document containing step-by-step instructions on how to apply under both frameworks, ASF and TSF. For application examples, please visit: <http://enforcement.trade.gov/ftzpage/index.html>

- Click “Online FTZ Information System (OFIS) on the left hand side of the page
- Click “Federal Register Notices”
- Select “Company”
- Select a Native American FTZ application (like “Four Winds Foreign Trade Zone Corporation,” for example).

As a part of the application, you will need to submit proof that your tribal corporation has the legal authority to apply for an FTZ. Normally, a corporation must provide:

1. A copy of its state’s enabling legislation that verifies any public corporation is eligible to create an FTZ.
2. A copy of the corporation’s charter supporting the creation of an FTZ.
3. A certified copy of a resolution authorizing the corporation official to sign the application letter.

However, to apply for an FTZ, a tribal corporation need only satisfy criterion two and three. It does not need to secure permission from the state in which it is located. It need only explain that it is a subsidiary of a sovereign nation (the Tribe) with a government-to-government relationship with the government of the United States (not individual states).

You will also need to provide:

- An application letter including an executive summary at the beginning.
- A description of the positive economic impact your FTZ will provide.

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<sup>10</sup> <http://enforcement.trade.gov/ftzpage/grantee/regs.html#400.12>

- Support letters from local organizations and jurisdictions expressing support for your FTZ.
- Information about proposed general purpose/magnet sites if you plan to establish such sites, and maps of the proposed sites' locations, if applicable.
- A description of the Customs and Border Protection (CBP) port of entry (POE) for the proposed zone including:
  - A description of the site's location regarding how the proposed FTZ meets the adjacency requirement.
  - If that CBP port of entry is already served by one or more FTZs, you will need to explain why the existing zone will not adequately serve the needs of potential users.

If you have any trouble, please call the FTZ Staff at (202) 482-2862. In addition, you may visit the following link to find your regional staff contact and additional points of contact:

<http://ia.ita.doc.gov/ftzpage/grantee/subjectlist.html>.

### **How can my tribe seek an FTZ designation through an existing grantee?**

You can start by contacting the FTZ grantee closest to your tribe. The list of existing grantees and their contact information is available on the FTZ Board's website at:

<http://enforcement.trade.gov/ftzpage/letters/ftzlist-map.html>.

Specific application formats, including application instructions for adding one or more sites under the sponsorship of an existing grantee (subzone, expansion/reorganization of existing FTZ, ASF or non-ASF) are available on the FTZ Board's website as follows:

Subzone/Usage-Driven site under ASF (if proposed site is with an existing grantee's ASF Service Area): <http://enforcement.trade.gov/ftzpage/formats/ASFmbm.html>

Subzone (non-ASF, if proposed site is not within an existing grantee's ASF Service Area): <http://enforcement.trade.gov/ftzpage/formats/sz-application.html>

An application for a Subzone/Usage-Driven Site would need to include the address, acreage and map for the proposed location(s). ASF Subzone/Usage-Driven applications are ordinarily processed within 30 days. Non-ASF Subzone applications most commonly are processed within three months.

Expansion (reorganization) of FTZ (ASF):

<http://enforcement.trade.gov/ftzpage/formats/ASFreorg.html>

Expansion (reorganization) of FTZ (non-ASF):

<https://enforcement.trade.gov/ftzpage/formats/majorexp.html>

An application for an expansion of an existing FTZ would need to include the address, acreage and map for the proposed location(s) and reason why the additional FTZ site is needed. Applications for expansions of FTZs are usually processed within ten months.

The FTZ Board staff is also available to provide guidance to you. Their contact information by region (lists of states handled by each staff member) is on the FTZ Board's website at:

<http://enforcement.trade.gov/ftzpage/grantee/staffbyregion.html>

## Resources

- FTZ Regulations: <http://enforcement.trade.gov/ftzpage/grantee/regs.html>.
- FTZ Application: <http://enforcement.trade.gov/ftzpage/formats/newzone.html>.
- List of FTZs: <http://enforcement.trade.gov/ftzpage/letters/ftzlist-map.html>.
- Glossary of FTZ Terms: <http://enforcement.trade.gov/ftzpage/grantee/glossary.html>.
- Port of Entry Locator: <https://www.cbp.gov/contact/ports>.
- Module on the Harmonized Tariff Schedule: <https://www.usitc.gov/elearning/hts/menu/>.
- Previously Submitted Applications: <http://enforcement.trade.gov/ftzpage/index.html>
  - Click “Online FTZ Information System (OFIS) on the left hand side of the page
  - Click “Federal Register Notices”
  - Under “Display Information By”, Select “Company”
  - Select a Native American FTZ application like “Four Winds Foreign Trade Zone Corporation”, for example.
  - Click “Search”
- State Enabling Legislation: <http://enforcement.trade.gov/ftzpage/ftznew/stateenabling.html>
- Contact Information:
  - FTZ Staff Phone Number: (202) 482-2862
  - Regional Staff Contact: <http://ia.ita.doc.gov/ftzpage/grantee/subjectlist.html>