



November 2018

FOREIGN-TRADE ZONES

Board Should Document Consideration of All Required Criteria When Evaluating Applications

Accessible Version

GAO Highlights

Highlights of [GAO-19-91](#), a report to congressional requesters

Why GAO Did This Study

FTZs allow companies to reduce, eliminate, or defer duty payments on foreign goods imported into FTZs for distribution or as components of other products before transferring the finished goods into U.S. commerce or exporting them overseas. The value of foreign and domestic goods admitted to FTZs in 2016 exceeded \$610 billion. Responsibilities of the Board, consisting of officials from the Departments of Commerce (Commerce) and the Treasury, include evaluating production notifications and applications on the basis of factors such as the proposed activity's net effect on the U.S. economy. Federal regulations set forth requirements, pursuant to the Foreign-Trade Zones Act of 1934, for these evaluations.

GAO was asked to review the Board's evaluation processes. This report examines the extent to which the Board has established and followed procedures aligned with regulations for evaluating (1) notifications and (2) applications. GAO analyzed the Board's regulations and procedures and interviewed Commerce, Treasury, and U.S. Customs and Border Protection officials. GAO also analyzed a nongeneralizable sample of 59 of 293 notifications the Board evaluated from April 2012 through September 2017, which GAO selected to include a range of Board decisions and exclude pending decisions. GAO also analyzed all three applications the Board issued decisions on during that period.

What GAO Recommends

Commerce should require Board staff to document consideration of all criteria required in the regulations when evaluating production applications. Commerce concurred with this recommendation.

View [GAO-19-91](#). For more information, contact Kimberly Gianopoulos (202) 512-8612 or Gianopoulosk@gao.gov.

November 2018

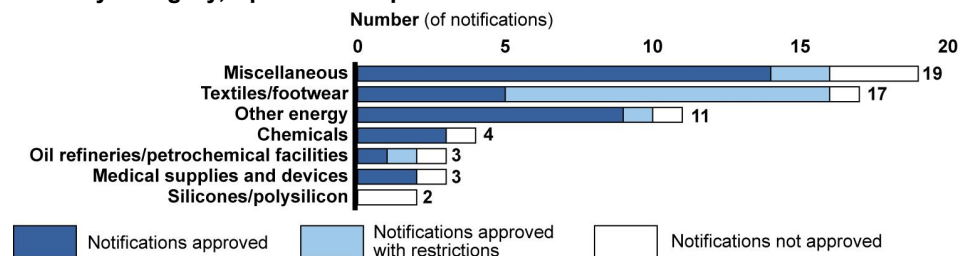
FOREIGN-TRADE ZONES

Board Should Document Consideration of All Required Criteria When Evaluating Applications

What GAO Found

The U.S. Foreign-Trade Zones Board (the Board) has procedures that generally align with its regulations for evaluating production notifications and followed these procedures for all 59 notifications GAO reviewed. Notifications are filed by companies proposing to bring foreign components into a foreign-trade zone (FTZ) for use in manufacturing finished products, among other purposes. GAO found, for example, that, following Board procedures, Board staff evaluating the notifications collected and considered comments from the general public, industry specialists, and U.S. Customs and Border Protection and recommended to the Board whether to authorize companies' proposed activities. Of the 59 notifications GAO reviewed for seven industry categories, 49 notifications either were approved or were approved with restrictions—for example, the proposed activity was authorized for a limited time period or certain duty benefits were denied for one or more foreign components. Ten notifications were denied for reasons such as new or complex policy issues that required further review.

FTZ Board Authorization Decisions for Selected Production Notifications, by Industry Category, April 2012–September 2017



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

Note: The industry categories included in "miscellaneous" are carbon fiber and explosive components, and the industry categories included in "other energy" are solar and renewable energy.

The Board also has procedures that generally align with its regulations for evaluating production applications and followed these procedures for the three applications GAO reviewed. The applications were submitted by three of the companies whose notifications were denied. According to Board staff, if a notification is not approved or is approved with restrictions, a company may submit an application with additional details. Following Board procedures, Board staff, for example, collected and considered comments and recommended to the Board whether to authorize the proposed activities. Two of the applications were approved with restrictions, and the third was not approved. While the regulations require consideration of a number of criteria—for example, consistency with U.S. trade and tariff law—Board staff did not document consideration of all required criteria for two of the three applications, and the procedures do not require such documentation. Board staff said they document only the most relevant criteria in their reports. *Standards for Internal Control in the Federal Government* states that management should document its rationale for determining a criterion is not relevant and make this documentation readily available for examination. Without such documentation, the Board lacks an institutional record that all required criteria were considered and also lacks assurance that its decisions comply with U.S. trade and tariff law and public policy.

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Abbreviations

CBP	U. S. Customs and Border Protection
Commerce	Department of Commerce
FTZ	foreign-trade zones

OTEXA
the Board
Treasury

Office of Textiles and Apparel
Foreign-Trade Zones Board
Department of the Treasury

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November 27, 2018

The Honorable Amy Klobuchar
Ranking Member
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Committee on Judiciary
United States Senate

The Honorable Cory S. Gardner
United States Senate

The Honorable Pat Roberts
United States Senate

The Honorable Tom Emmer
House of Representatives

Foreign-trade zones (FTZ) are secure areas throughout the United States that, for the purpose of customs entry procedures—including payment of duties—are generally treated as being outside U.S. customs territory. Congress authorized the Foreign-Trade Zones program in 1934 to expedite and encourage foreign commerce.¹ Companies authorized to operate in FTZs are able to import foreign-source components for use in manufacturing finished goods without paying customs duties or fees until the goods are transferred from the FTZs into U.S. commerce.² Under the program, authorized companies operating in FTZs may be allowed, in certain circumstances, to reduce, eliminate, or defer payment of customs duties or fees for goods manufactured or stored in FTZs and pay no duties or fees for goods exported directly from the FTZs to other countries. In 2016, the value of foreign- and domestic-source components admitted into FTZs exceeded \$610 billion, of which \$108 billion—almost 18 percent—represented foreign components to be used in the production of finished goods in the zone. The value of goods exported from FTZs to other countries in 2016 was approximately \$76 billion.

¹Act of June 18, 1934, ch. 590, § 3, 48 Stat. 999 (codified as amended at 19 U.S.C. §§ 81a – 81u).

²Retail trade is generally prohibited in FTZs. See 19 U.S.C. § 81o(d).

The U.S. Foreign-Trade Zones Board (the Board), consisting of the Secretaries of Commerce and the Treasury, is responsible for, among other things, authorizing the establishment of FTZs and reviewing companies' production notifications and applications. A company seeking production authority—that is, permission to conduct proposed production activities in an FTZ—must first file a production notification with the Board that summarizes the proposed activity.³ If the notification is approved with restrictions or not approved, the company may choose to file a more detailed production application to provide additional evidence for the Board's consideration. In reviewing production notifications and applications, the Board is responsible for taking into account a range of criteria that include the net economic effect on the U.S. economy, such as U.S. employment. The Department of Homeland Security's Customs and Border Protection (CBP) is responsible for oversight and enforcement in FTZs, including collecting revenue and assessing risk of noncompliance with U.S. laws and regulations. According to Board officials, the Board issued updated and modified regulations for FTZs in February 2012 to simplify the application process and expedite the review of applications when possible.

You asked us to review the Board's processes for evaluating production notifications and applications. This report examines (1) the extent to which the Board has established and followed procedures aligned with its regulations for evaluating production notifications and (2) the extent to which the Board has established and followed procedures aligned with its regulations for evaluating production applications.

To examine the extent to which the Board has established procedures aligned with its regulations for evaluating production notifications and applications, we analyzed the Board's regulations and procedures and interviewed cognizant officials of the Department of Commerce (Commerce), the Department of the Treasury (Treasury), and CBP. To determine the extent to which the Board has followed any procedures it established, we selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications submitted to the

³The Board defines production activity as activity involving the substantial transformation of a foreign article or involving a change in the article's condition that results in a change in its customs classification or its eligibility for entry for consumption. Production authority allows a company to make transformations or changes to goods admitted to an FTZ.

Board from April 2012 through September 2017.⁴ We also analyzed the three applications that the Board reviewed and rendered final decisions on during this period.⁵ We determined that these case records, which we obtained from the Board's case tracking system, were sufficiently reliable for our purposes of understanding the universe of notifications and applications submitted for production authority and reviewing a sample from that universe. To make this determination, we took steps that included reviewing related guidance for the Board's case records tracking system; interviewing knowledgeable agency officials; and reviewing a sample of cases with a data collection instrument, which confirmed information included in the case tracking system data.

The 59 notifications we reviewed comprised all notifications submitted during this period for the following seven industry categories⁶—silicones/polysilicon, textiles/footwear, oil refineries/petrochemical facilities, other energy,⁷ chemicals, medical supplies and devices, and miscellaneous.⁸ We selected these industry categories because the notifications that the Board did not approve were all submitted by

⁴We reviewed case records containing documents that companies provided when they filed their notifications and applications. The case records also contained documents prepared by the Board staff, including other comments from staff at Commerce and other agencies and Board staff's analyses and recommendations. The size of our sample does not allow us to generalize or extrapolate findings to all notifications and applications submitted to the Board from April 2012 through September 2017.

⁵We selected this time period to ensure that our sample of notifications reflected Board staff's activities from April 2012—when, according to staff, the Board began implementing regulations that it had modified in February 2012—through the end of fiscal year 2017.

⁶Industry categories do not necessarily indicate the type of component named in the notification or application. For example, in one notification, a company in the medical supplies and devices industry category that had previously been granted authority to produce plastic adhesive bandages requested an expansion of this authority to include the production of fabric adhesive bandages using a foreign-source component. In this example, the industry category was medical supplies and devices, but the component was a textile.

⁷The types of industries for which companies submitted notifications in the "other energy" category include solar and renewable energy, among others.

⁸The types of industries for which companies submitted notifications in the "miscellaneous" category include carbon fiber, explosive components, and mass spectrometers and related analytical equipment, among others.

companies in these categories.⁹ The 59 notifications we reviewed included 34 that were approved, 15 that were approved with restrictions, and 10 that were not approved, and they excluded any notifications for which the Board's decisions were pending as of September 2017. The three applications we reviewed were submitted, respectively, by three companies that had each submitted 1 of the 59 notifications in our sample. See appendix I for additional information about our objectives, scope, and methodology.

We conducted this performance audit from July 2017 to November 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁹The Board did not approve 13 notifications (representing 7 industry categories) among the 293 notifications (representing 25 industry categories) submitted from April 2012 through September 2017. We did not select 3 of the notifications that were not approved, because the companies that submitted those 3 notifications subsequently submitted production applications and the Board's decisions about those 3 applications were pending when we made our selection.

Background

FTZ Benefits

Example of Foreign-Trade Zones (FTZ) Benefits

The FTZ Board might authorize an automobile manufacturer that imports foreign-source components, such as engines and transmissions into an FTZ, to pay the customs duty rate on the value of the finished vehicles (2.5 percent) instead of the sum of the duties owed for certain imported components. Duty rates for those components generally range from 0 percent to approximately 10 percent.

As a result, the company would pay lower custom duties to manufacture automobiles in an FTZ than it would pay outside the FTZ.

Source: GAO. | GAO-19-91

To encourage companies to maintain and expand their operations in the United States, the FTZ program offers a range of benefits, including the possible reduction or elimination of duties on certain imported goods. For example, a company operating in an FTZ that manufactures products using foreign materials or components can pay lower overall duties by electing to pay the duty rate for the finished product rather than for the product's imported foreign component parts, which may have a higher duty rate (see sidebar).¹⁰ This benefit provides an incentive to companies to manufacture in the United States rather than move their manufacturing operations overseas to avoid paying U.S. duties. We reported in July 2017 that, while FTZs were created to provide benefits to the American public, little is known about their overall economic impact.¹¹ Few economic studies have focused on FTZs, and those studies have not quantified economic impacts or examined the effect of companies' FTZ status on regional and overall economic activity such as employment.

As of June 2018, there were 262 approved FTZs in the United States, with at least 1 in each state and in Puerto Rico, according to Board staff. Most FTZs consist of multiple physical locations, known as sites or subzones, which include individual companies' plants as well as multi-user facilities such as seaports or airports.

FTZ Board and CBP Responsibilities

According to Board staff, the Board's responsibilities include, among others, approving the establishment of FTZs and reviewing notifications and applications for production authority. The Board must authorize any proposed production activity before a company can bring into an FTZ the specified foreign-source materials or components for incorporation into a

¹⁰Products with imported components that are dutiable at higher rates than the finished product into which they are incorporated are referred to as having an inverted tariff structure.

¹¹For more information about the financial benefits of FTZs, see GAO, *Foreign-Trade Zones: CBP Should Strengthen Its Ability to Assess and Respond to Compliance Risks across the Program*, [GAO-17-649](#) (Washington, D.C.: July 27, 2017).

final product and to potentially receive FTZ benefits.¹² Current Board staff are Commerce employees and comprise an Executive Secretary, eight staff analysts who gather and analyze information for the Board's consideration, and a coordinator who handles clerical tasks, according to Board staff.¹³

CBP is responsible for oversight and supervision of FTZ operators, including the collection of duties, taxes, and fees.¹⁴ CBP reviews production notifications and applications with respect to its ability to provide oversight and ensure program compliance and informs the Board of its ability to oversee a proposed production activity if it were to be authorized.

Production Notification and Application Processes

Federal regulations set forth processes and procedural rules for companies applying for, and operating in, FTZs as well for the Board's evaluation of notifications and applications for production authority, pursuant to the FTZ Act of 1934 as amended.¹⁵ According to Board staff, the Board issued updated and modified regulations for FTZs in February 2012 to simplify the application process and expedite the review of applications when possible.¹⁶ The Board staff stated that they took into consideration comments from industry, including companies whose production activities require authorization decisions within short time frames, when updating the regulations.

The 2012 regulations divided the production application process into two processes to create a less resource-intensive process for companies and the U.S. government, according to Board staff. Board staff said that the 2012 regulations allow the Board to approve notifications and applications with restrictions. For example, the Board may decide to, among other

¹²Examples of production activities include producing upholstery-grade leather for interior design and fashion accessories, lithium ion batteries for civil or military use, or passenger automobiles.

¹³According to Board staff, staff members reviewing notifications are referred to as FTZ analysts, and staff members reviewing applications are referred to as Board examiners. In this report, "Board staff" refers to both FTZ analysts and examiners.

¹⁴[GAO-17-649](#).

¹⁵The FTZ regulations are codified at 15 C.F.R. part 400.

¹⁶77 Fed. Reg. 12,112 (Feb. 28, 2012).

things, (1) authorize the exemption of duty payments on some, but not all, components named in the notification for the proposed production activity; (2) authorize the activity for a limited time period; or (3) authorize the activity for a specified quantity of the component to be brought into the FTZ.

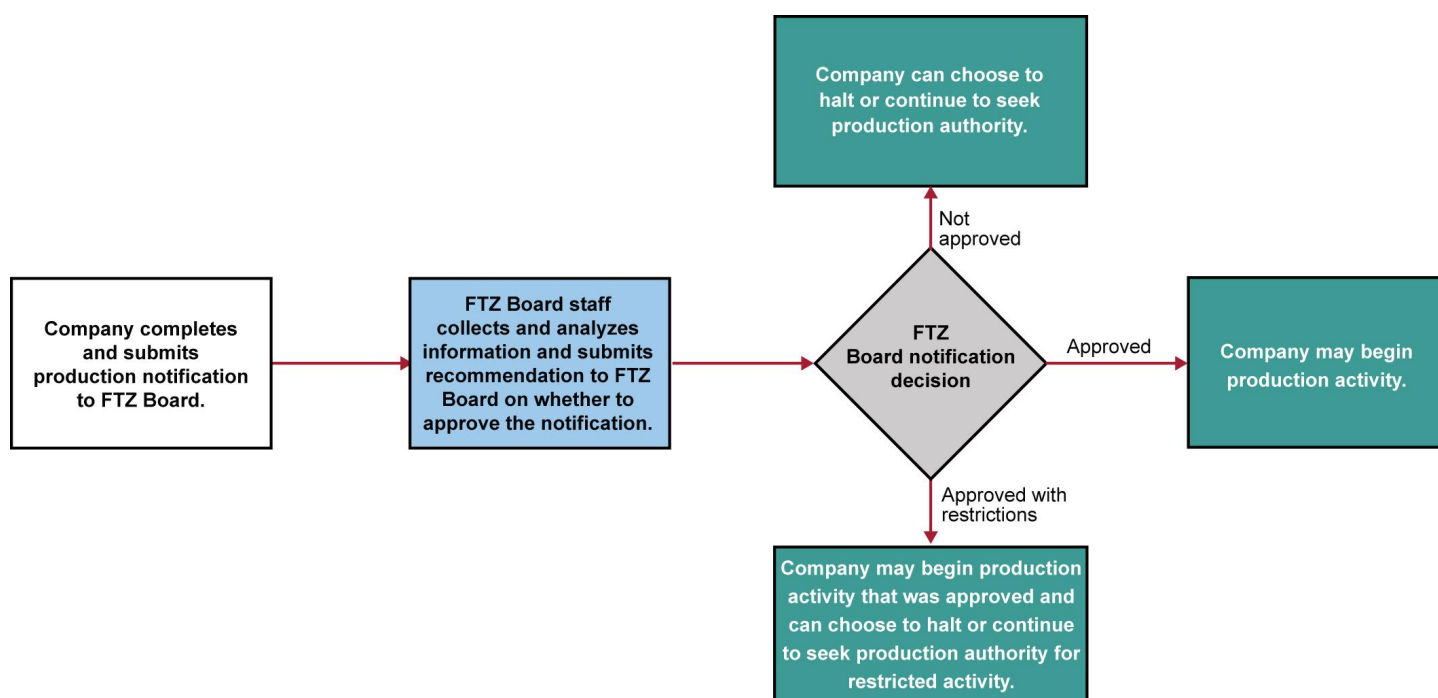
The following describes the notification and application processes under the 2012 regulations.

- **Notification process.** A company must first submit a production notification—which requires less information from companies than a production application—requesting production authority in an FTZ. If the Board approves a company’s notification, the company can begin the production activity. For example, in a 2013 notification, a company requested authority to produce printing plates used in the newspaper industry and to pay duties at the duty rate applicable to the final product (i.e., printing plates) instead of the duty rates applicable to the five individual foreign-source components (e.g., aluminum coils). The Board approved the notification without restrictions, allowing the company to begin conducting the authorized activity. If a notification is approved with restrictions, the company may begin the production activity while adhering to the specified restrictions. For example, in another 2013 notification, a company requested authority to produce sports safety helmets, bicycle baby seats, and bicycle car-carrier racks and pay duties on the final products instead of paying individual duties on some foreign-source components (e.g., helmet and baby seat parts). The Board approved the notification with a restriction, authorizing the company to begin the production activity but requiring it to pay duty on one foreign-source component (textile bags).
- **Application process.** According to Board staff, if a notification is approved with restrictions or denied, the company may file a more detailed production application to continue seeking authority for the activity that was restricted or denied. If the Board does not unanimously decide to authorize the application with or without restrictions, the production authority is denied. For example, in 2012, the Board determined that a notification requesting that a company’s existing authority to produce plastic adhesive bandages in an FTZ be expanded to include production of fabric adhesive bandages using foreign-source textile components warranted further review and denied the notification. The company subsequently filed an application for the expanded authority, providing additional information to support its request, which the Board also denied. A company whose application is denied may appeal the Board’s decision to the U.S.

Court of International Trade.¹⁷ According to Board staff, the production application process is similar to the application process under the pre-2012 regulations.

Figures 1 and 2 provide an overview of the Board processes for considering notifications and applications for production authority.

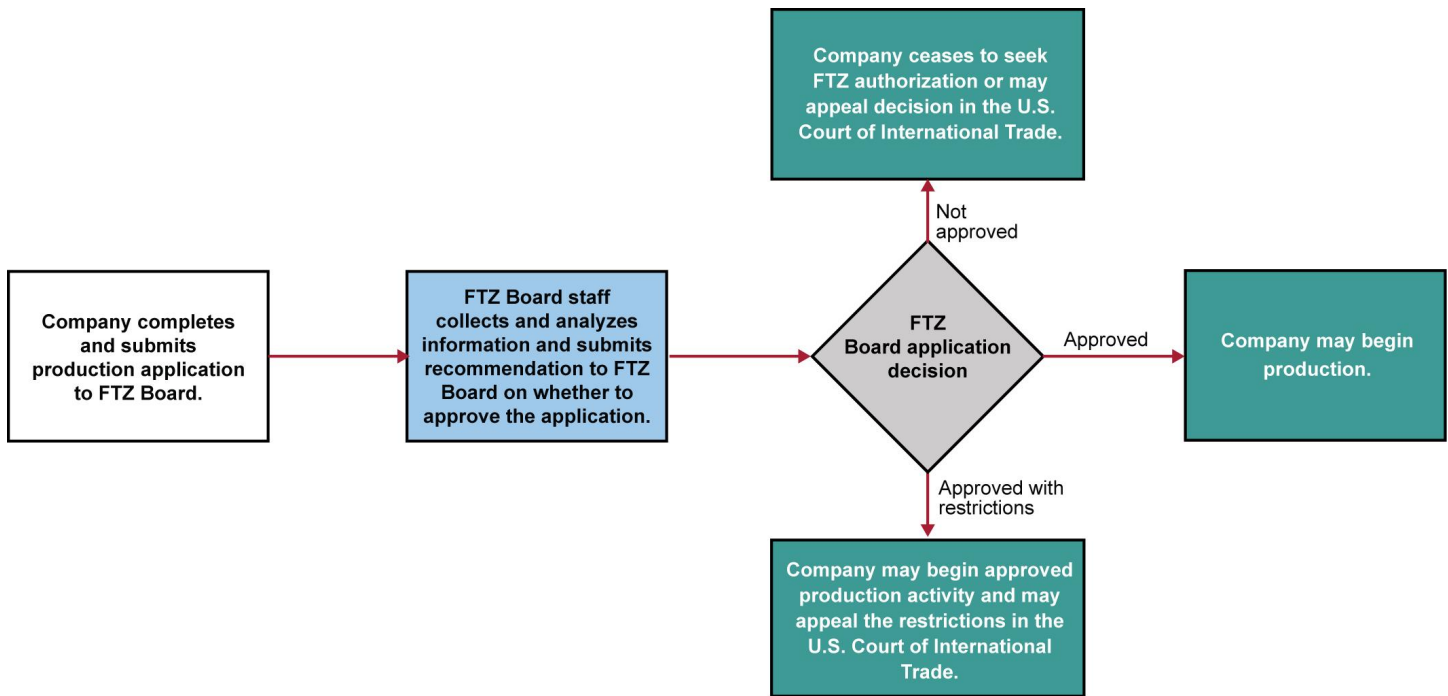
Figure 1: Overview of FTZ Process for Considering Notifications for Production Authority



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board procedures. | GAO-19-91

¹⁷Two federal circuit courts, the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Appeals for the District of Columbia Circuit, have found that the U.S. Court of International Trade has exclusive jurisdiction over appeals of Board determinations pursuant to 28 U.S.C. § 1581(i)(1), (4). The relevant decisions are *Conoco, Inc. v. United States Foreign-Trade Zones Board*, 18 F.3d 1581 (Fed. Cir. 1994), and *Miami Free Zone Corp. v. United States Foreign-Trade Zones Board*, 22 F.3d 1110 (D.C. Cir. 1994).

Figure 2: Overview of FTZ Board Process for Considering Applications for Production Authority



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board procedures. | GAO-19-91

Criteria Relevant to Evaluation of Production Notifications and Applications

The 2012 regulations detail criteria for the Board to consider when reviewing notifications and applications.¹⁸ These criteria include threshold and economic factors as well as consideration of significant public benefits (see table 1).¹⁹ According to the regulations, if the Board determines that any of the threshold factors apply to a proposed or

¹⁸15 C.F.R § 400.27.

¹⁹The regulations also contain an additional criterion, which the Board may consider in the evaluation of applications for production authority but is not required to consider. 15 C.F.R. § 400.27(d). The regulation states that in assessing the significance of the economic effect of the proposed zone activity as part of the consideration of economic factors, and considering whether it would result in a significant public benefit(s), the Board may consider the contributory effect that zone savings have as an incremental part of cost-effectiveness programs adopted by companies to improve their international competitiveness.

ongoing production activity, it shall deny or restrict authority for the activity. After reviewing the threshold factors, if there is a basis for further consideration of the application, the Board shall consider economic factors listed in the regulation when determining the net economic effect of the proposed activity.

Table 1: Regulatory Criteria for Evaluation of Applications for Production Authority in Foreign-Trade Zones

Threshold factors^a

- (1) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the executive branch;
- (2) the Foreign-Trade Zones Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or
- (3) the activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

Economic factors^b

- (1) Overall employment impact;
- (2) Exports and re-exports;
- (3) Retention or creation of value-added activity;
- (4) Extent of value-added activity;
- (5) Overall effect on import levels of relevant products;
- (6) Extent and nature of foreign competition in relevant products;
- (7) Impact on related domestic industry, taking into account market conditions; and
- (8) Other relevant information relating to the public interest and net economic impact considerations, including technology transfers and investment effects.

Public benefit criteria^c

The significant public benefit(s) that would result from the production activity, taking into account the threshold and economic factors.

Source: Codified at 15 C.F.R. § 400.27. | GAO-19-91

^a15 C.F.R. § 400.27(a).

^b15 C.F.R. § 400.27(b).

^c15 C.F.R. § 400.27(c).

The regulations' requirements for the Board to consider these criteria when reviewing notifications and applications differ as follows (italics added for emphasis):

- **Notifications.** Section 400.37 of the regulations states that the Executive Secretary's recommendation *shall consider*, among other things, comments submitted in response to the notification *in the context* of the factors set forth in section 400.27.²⁰ The regulation

²⁰15 C.F.R. § 400.37(b).

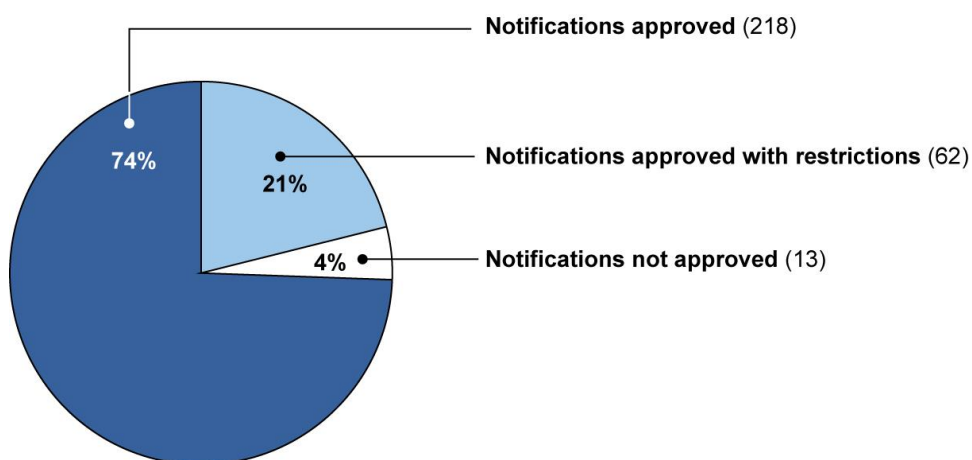
does not state that the Executive Secretary's recommendation must consider each factor individually.

- **Applications.** Section 400.27 states that the Board *shall apply* the criteria set forth therein. According to section 400.27, the Board must first review the threshold factors and after its review, if there is a basis for further consideration of the application, must consider all of the listed economic factors when determining the net economic effect of the proposed activity. Additionally, the Board is to take the threshold factors and economic factors into account in considering the significant public benefit(s) that would result from the production activity.

Board staff observed that the notification process is designed for identifying concerns related to the proposed production authority, not for resolving such concerns. If the Board identifies any concerns that it deems significant enough to deny a notification, the application process allows the Board to collect more information to inform further analysis. Board staff stated that examples of concerns related to production notifications and applications might include objections from domestic producers of component materials, such as textiles, who believe they would be negatively affected by duty reduction on foreign-source components used in the proposed production activity.

According to the Board, of the 293 production notifications submitted from April 2012 through September 2017 for which it rendered decisions, 218 notifications were approved without restrictions, 62 were approved with restrictions, and 13 were not approved (see fig. 3). For further information about the Board's decisions for the 293 notifications by industry category, see appendix II.

Figure 3: FTZ Board Decisions for Notifications Submitted April 2012–September 2017



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

Note: Percentages shown do not sum to 100 because of rounding.

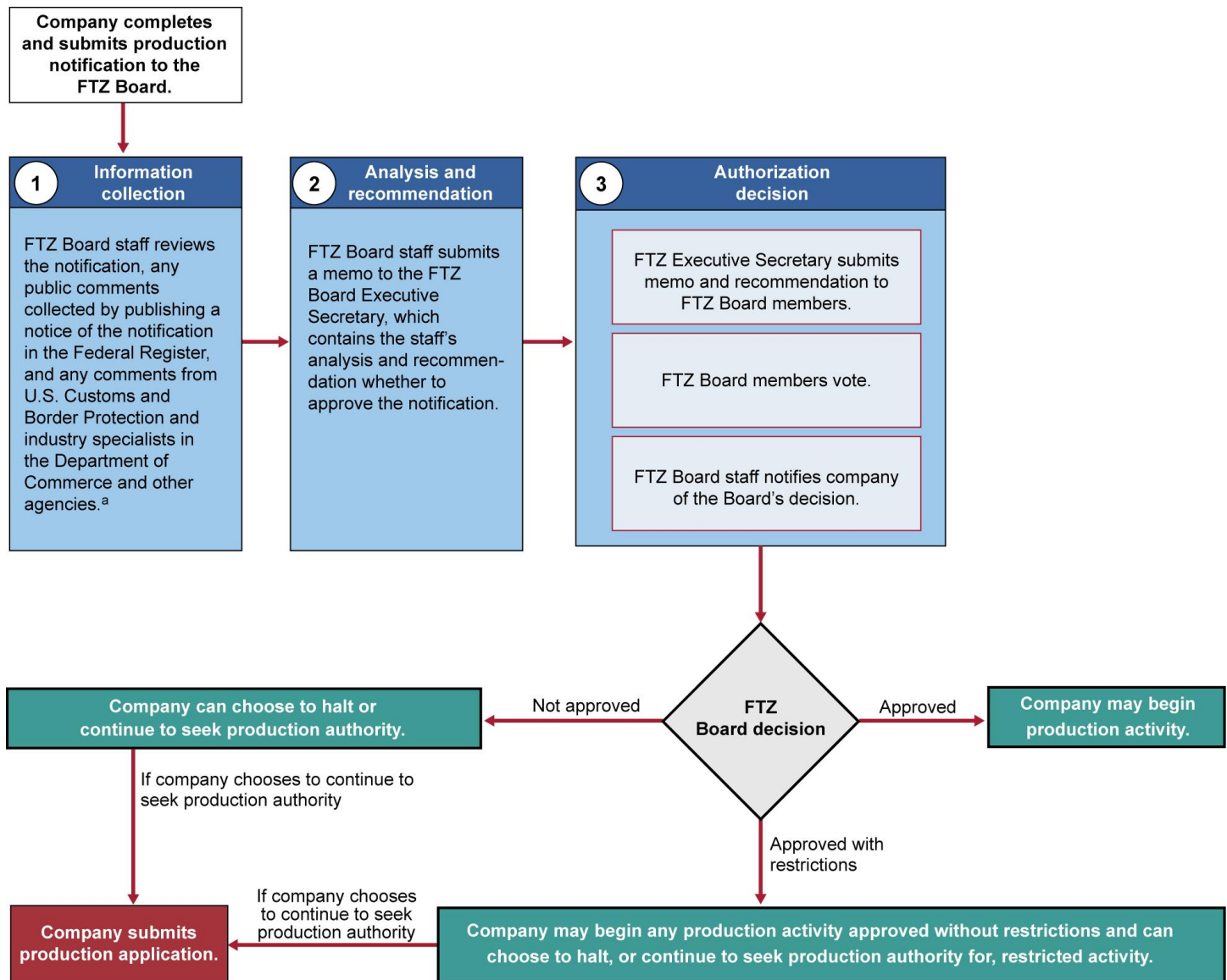
Of the companies that submitted the 75 production notifications approved with restrictions or not approved from April 2012 through September 2017, nine companies subsequently submitted production applications. As of September 2017, the Board had authorized two of these applications with restrictions and had not authorized one application, according to Board staff. For the remaining six applications, the Board had not authorized one application and the Board's decisions were pending for the other five applications as of August 2018.

FTZ Board Followed Procedures Generally Aligned with Regulations in Evaluating Production Notifications We Reviewed

The Board's Procedures for Evaluating Notifications Generally Align with Regulations

Our review of Board documents and interviews with Board staff found that the Board has established procedures for the evaluation of notifications that generally align with the Board's regulations. The Board's procedures for evaluating notifications can be organized into three phases: (1) information collection, (2) analysis and recommendation, and (3) authorization decision (see fig. 4). Each phase includes steps specifying the responsible party and the intended product and result.

Figure 4: FTZ Board's Process for Evaluating Notifications for Production Authority



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board procedures. | GAO-19-91

^aIf FTZ Board staff determine, after reviewing the information submitted in the notification, that the Board cannot approve it without further review through the application process, the staff may choose not to publish a Federal Register notice, according to Board staff.

Phase 1: Information Collection

In general alignment with the regulations, the Board's procedures for evaluating production notifications include steps for collecting information from the notifications, from public comments submitted in response to Federal Register notices of the notifications, from reviews of the notifications by industry specialists at Commerce and other agencies, and from CBP regarding its ability to oversee the proposed production activity.

- **Notification information.** The regulations specify that notifications must (1) provide the identity and location of the FTZ user; (2) identify the materials, components, and finished products associated with the proposed activity; and (3) include information as to whether any material or component is subject to a trade-related measure or proceeding,²¹ such as orders for antidumping duties.²² The Board procedures require staff to determine whether a notification is complete before beginning to evaluate it. To help companies complete the application, Board staff provide an instruction sheet listing the information required by the regulations.
- **Federal Register comments.** The Board regulations require the Executive Secretary to invite public comments in response to a Federal Register notice, unless the Executive Secretary determines, based on the notification's content, to recommend further review without inviting public comment.²³ The Board procedures instruct staff to publish a notice in the Federal Register after determining that the notification is complete.
- **Agencies' reviews.** The Board regulations do not require that industry specialists review notifications.²⁴ The Board procedures instruct staff to request industry specialists at Commerce and, as appropriate, at other agencies to review the notifications.

²¹15 C.F.R. § 400.22.

²²U.S. law authorizes the assessment of antidumping duties on products exported to the United States at unfairly low prices (i.e., dumped).

²³15 C.F.R. § 400.37. According to Board staff, if the staff determines, after reviewing the information submitted in the notification, that the Board cannot authorize it without further review through the application process, the staff may choose not to collect additional information through public comments responding to the Federal Register notice, analysis from industry specialists, or approval from CBP.

²⁴According to Board staff, the procedures outline this step because it is common practice for the analyst to seek comments from industry specialists. The Board staff also stated that the regulations allow for flexibility as circumstances warrant.

-
- **CBP comments.** The Board regulations do not require Board staff to request CBP comments for notifications.²⁵ The Board procedures instruct staff to prepare a letter to the CBP Port Director. According to CBP officials and guidance, CBP provides comments regarding its ability to oversee the proposed production activity to help ensure FTZ program rules and regulations are followed if it is approved.

Phase 2: Analysis and Recommendation

In general alignment with the regulations, the Board's procedures for evaluating production notifications include steps to guide staff in considering the information collected and in preparing a recommendation to the Board regarding whether to approve the notification.

- **Review of comments and other relevant factors.** The Board regulations require that the Executive Secretary's recommendation to the Board consider any comments submitted in response to the Federal Register notice; guidance from specialists within the government; and other relevant factors based on Board staff's assessment of the notification in the context of the criteria, including threshold and economic factors listed in section 400.27.²⁶ The Board procedures require staff evaluating notifications to consider any public comments submitted in response to the Federal Register notice and comments from industry specialists and CBP
- **Recommendations and memos.** The Board regulations do not require Board staff to prepare recommendations or memos.²⁷ The Board procedures require staff to use a prescribed format to prepare a recommendation, based on the information collected, regarding whether a notification should be approved (with or without restrictions) or not approved because further review of the proposed production activity is warranted. The staff also must prepare memos for the Treasury and Commerce Board members. The staff are to provide the

²⁵While the regulations do not require Board staff to request comments from CBP, the regulations state that any CBP comments pertaining to the notification shall be submitted to the Executive Secretary by the end of the comment period. 15 C.F.R. § 400.37(b).

²⁶Section 400.37 of the FTZ regulations states that the Board shall consider information in the context of the factors set forth in section 400.27, but it does not require staff to apply these threshold and economic factors. 15 C.F.R §§ 400.37 and 400.27(a) and (b).

²⁷However, the regulations require the Executive Secretary to submit a recommendation to the Board. 15 C.F.R. § 400.37(b).

memos with the recommendation to the Executive Secretary for review before sending them to the Board members.

Phase 3: Authorization Decision

In general alignment with the regulations, the Board's procedures for evaluating production notifications include steps for the Executive Secretary to make a recommendation to the Board for its consideration and for Board staff to notify the applicant of the Board's decision and to ensure that evaluation of the notification is completed within specified time frames.

- **Executive Secretary's recommendation and Board's decision.** The Board regulations specify that the Executive Secretary is required to submit a recommendation to the Board regarding whether further review of all or part of the proposed production activity is warranted.²⁸ The Board procedures require the Executive Secretary to review the memos and recommendations prepared by the Board staff and submit them to the Board members for their review and concurrence with the recommendation.
- **Notice to applicant.** The Board regulations require the Executive Secretary to inform the applicant of the Board's decision regarding authorization of the notification.²⁹ Similarly, the Board procedures require Board staff to notify the applicant of the Board's decision.
- **Evaluation time frames.** The Board regulations and procedures specify time frames for notification evaluation.³⁰ For example, under the regulations, the Executive Secretary shall submit to the Board a recommendation on whether further review of all or part of the activity subject to the notification is warranted within 80 days of receipt of the notification. Similarly, the procedures state that Board staff will ensure

²⁸15 C.F.R § 400.37(b). In the recommendation, the Executive Secretary is to state whether the notification should be authorized (with or without restrictions) or not authorized. The regulations require that the Board's determinations be made by unanimous vote. 15 C.F.R § 400.3(e). Therefore, both board members must agree in deciding whether a notification should be authorized with or without restrictions or whether further review is warranted. The regulations further detail that if either Board member determines that further review is warranted, the activity that is subject to further review shall not be conducted without authorization pursuant to applicable regulatory requirements. 15 C.F.R § 400.37(c).

²⁹15 C.F.R § 400.37(c).

³⁰15 C.F.R § 400.37.

that the recommendation is finalized so that the recommendation and memos can be sent to the Board members within 80 days of receipt of the notification. In addition, the regulations and procedures require that the applicant be informed of the Board's decision about the notification within 120 days.

FTZ Board Followed Its Procedures in Evaluating Production Notifications We Reviewed

Phase 1: Information Collection

Our analysis of Board case records for 59 notifications and our interviews with Board staff and Commerce, Treasury, and CBP officials showed that when evaluating the notifications, the Board followed its procedures in collecting the required information from the applicants; inviting public comments in response to Federal Register notices; requesting reviews from specialists at other agencies and Commerce; and, for most notifications, requesting CBP comments.³¹

Notification Information

The Board collected the required information from applicants for the 59 notifications we reviewed. All of the notifications included (1) the identity and location of the FTZ user; (2) the materials, components, and finished products associated with the proposed activity; and (3) information on whether any material or component was subject to a trade-related measure or proceeding.

For 5 of the 59 notifications we reviewed, Board staff recommended further review of the proposed activity on the basis of the applicant information and staff knowledge of the industry, according to Board staff. The staff explained that if the Board is aware of issues that would require a more detailed review of the proposed activity, the Board can decide, without collecting additional information, not to approve the notification. In such cases, the company must file a more detailed application if it wants to proceed with its request for production authority. For example, for 2 of these 5 notifications, Board staff recommended further review without collecting additional information because they were already reviewing

³¹Our sample, selected in part to represent a range of Board decisions, consisted of 34 approved notifications, 15 notifications that were approved with restrictions, and 10 notifications that were not approved.

production applications requesting similar production authorities for carbon fiber. For another notification, staff recommended further review without collecting additional information because the Board had not previously reviewed a similar request and the staff needed the additional information that would be collected through the application evaluation process. Of the five companies that submitted these 5 notifications, three companies decided to submit applications for production authority.

Federal Register Comments

For the remaining 54 notifications, Board staff published notices in the Federal Register and received public comments on 5 of them. The comments included both opposition and support from domestic producers and associations. For example, in comments responding to one of the notifications, a company opposed authorization of the proposed activity because the company believed that the activity, if approved, would likely have a negative impact on the domestic silicon metal industry. According to the comments, the price of silicon metal had declined significantly and granting the requested production authority would result in further downward pressure on U.S. silicon metal prices. In comments responding to another notification, a company supported the proposed extension of FTZ authority to produce upholstered furniture and related parts. The comments stated that the activity would, among other things, encourage production in a related industry, domestic thread production.

Agencies' Reviews

Board staff sought and received reviews of the 54 notifications from industry specialists in six Commerce offices, including the Offices of Textiles and Apparel, Consumer Goods, Materials, and Energy and Environmental Industries. The specialists recommended approving 49 of the notifications (with or without restrictions) and not approving the remaining 5 notifications because further review was warranted.

For example, for one notification, an industry specialist's review recommended approval, noting that the competitive landscape in Puerto Rico—the FTZ's location—had changed and some industry sectors had shifted manufacturing to foreign locations. According to the review, approval of the notification would therefore contribute to maintaining manufacturing operations in Puerto Rico, which would provide employment and an economic boost to the national economy. For a second notification, an industry specialist's review recommended denying the requested production authority because of concerns about the

possible effect of importing a textile component that was being produced domestically. The review stated that if the notification were approved, the company would avoid paying duties on the textile component, resulting in a significant incentive for the use of imported products over those produced domestically. For a third notification, the Board staff requested and received comments from the Department of Justice regarding a firearm import regulation for a notification seeking production authority for the demilitarization (or disassembly) of munitions and other explosive components.

According to the industry specialists who had reviewed notifications in our sample, their analyses were based on their knowledge of the industry, including domestic manufacturers of components that applicants sought to import into an FTZ, and on public comments submitted to the Federal Register, among other things.

CBP Comments

For 6 of the 59 notifications, Board staff did not ask CBP about its ability to oversee a proposed production activity because the staff were recommending further review of the notification. For the remaining 53 notifications, we found that the Board requested comments from CBP regarding its ability to provide oversight.³²

Phase 2: Analysis and Recommendation

We found that Board staff followed the Board's procedures in reviewing comments and other relevant factors for all notifications in our sample and providing recommendations to the Board regarding authorization of the notifications.

Review of Comments and Other Relevant Factors

Our review of Board case records found that Board staff prepared evaluations for all 59 of the notifications we reviewed, documenting consideration of public comments, any agency specialists' reviews, and CBP comments. In addition, although the regulations do not explicitly require consideration of the criteria listed in the regulations when

³²Board case records showed that CBP approved or had no objections for all but one of the notifications. For that notification, Board staff informed us, and a CBP official confirmed, that CBP did not respond to the Board staff's request for comment.

evaluating notifications, Board staff informed us that they always considered economic and threshold factors when they had collected information that identified potential areas of concern.³³

Our review of the case records for the 59 notifications found that some of the factors Board staff considered included whether similar production authority had been granted in the past for another company and whether concerns had been raised by domestic industries. For example, for one notification requesting production authority for wind turbine components, the Board staff's evaluation noted that the Board had previously approved production authority involving wind turbines and related components for other companies. For another notification, requesting production authority to import a foreign-source textile fabric for adhesive bandages duty free, the Board staff's evaluation noted that similar requests claiming lack of availability of domestically produced textile fabric at competitive prices had been strongly disputed by domestic producers, trade associations, or both.

More than half of the Board staff evaluations of the notifications we reviewed included a discussion of economic factors, and nearly a third included discussion of threshold factors. For example, 15 evaluations discussed the proposed activity's potential impact on related domestic industries. The evaluation of a notification requesting authority to produce customized plastic containers stated that a domestic company producing reusable plastic containers opposed the request on the grounds that the proposed activity could harm that company in the U.S. market. In addition, 13 evaluations discussed exporting and re-exporting finished products. For example, an evaluation of a notification requesting authority to produce automotive textile upholstery material noted that the company did not intend to enter the finished product into the U.S. market for domestic consumption (i.e., the company would re-export the finished product for sale outside the U.S. market).

Recommendations and Memos

Our review of case records for the 59 notifications found that the Board staff prepared recommendations for each notification and also prepared memos to the Treasury and Commerce Board members for the Executive

³³Section 400.37 of the regulations states that the Board shall consider information in the context of the factors set forth in section 400.27, but it does not require staff to apply these threshold and economic factors.

Secretary's review before providing them to the Board members.³⁴ Reasons noted in recommendations to authorize a production activity without restrictions included prior authorization of a similar activity or lack of impact on domestic industry. Reasons for recommending denial of authorization included new or complex policy issues that required further review.³⁵ Recommendations to authorize an activity with restrictions included restrictions on the quantity of a component that could be imported duty-free into an FTZ, on the amount of time for which a production activity would be authorized (e.g., 5 years), and on the eligibility of some components for FTZ benefits. For example, for one notification requesting authority to produce upholstered furniture, the memo recommended, among other things, restricting the amount of a specific foreign-source fabric that could be imported duty free into an FTZ and requiring that all other foreign-source fabrics be admitted to an FTZ under duty-paid status.³⁶ We found that for all 59 notifications, the Board staff's recommendations were in agreement with the industry specialists' comments.

Phase 3: Authorization Decision

Our review of the 59 sample notifications found that for each notification, the Board's Executive Secretary followed the Board's procedures in submitting a memo to the Board with recommendations for its decision and notifying the applicants of the decision. In addition, the Board staff generally followed time frames listed in the procedures.

Executive Secretary's Recommendation and Board's Decision

The Board's Executive Secretary submitted a memo to the Board recommending approving, approving with restrictions, or not approving each of the 59 notifications we reviewed.³⁷ The Executive Secretary recommended approving 34 notifications, approving 15 notifications with

³⁴According to Board staff, the Executive Secretary will review and discuss recommendation with analyst prior to submitting the memo to the Board for their vote.

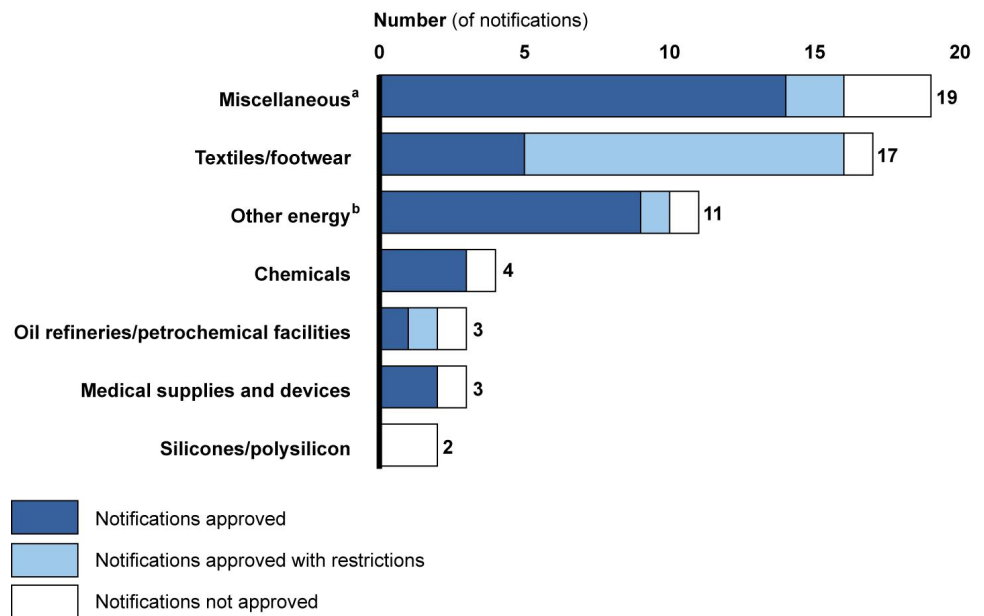
³⁵See appendix III for our analysis of the types of decisions made by the Board for the 59 notifications that we reviewed.

³⁶The Board defines duty-paid status as describing merchandise that is mainly of domestic origin but also includes foreign-origin merchandise for which customs entry and duty payments were made prior to its admission to the FTZ.

³⁷According to Board staff, the Executive Secretary typically includes with his memo the recommendations prepared by Board staff and industry specialists.

restrictions, and denying 10 notifications (see fig. 5). We found that the Executive Secretary's recommendations concurred with the Board staff's recommendations for all 59 notifications and that the Commerce and Treasury Board members concurred with the FTZ Executive Secretary's recommendations for 56 of the 59 notifications. For the remaining 3 notifications, the Executive Secretary recommended that further reviews were warranted and the Commerce Board member concurred. Because the notification was not approved, the Executive Secretary did not contact the Treasury Board member for his concurrence. According to Board staff, a notification will not be approved if at least one Board member determines further review is needed. See appendix III for more information about the Board's decisions for the 59 notifications in our sample.

Figure 5: FTZ Board Decisions for Selected Notifications Submitted April 2012–September 2017, by Industry Category



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

Note: We selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications submitted to the FTZ Board from April 2012 through September 2017.

^a"Miscellaneous" includes carbon fiber, explosive components, and mass spectrometers and related analytical equipment, among others.

^b"Other energy" includes solar and renewable energy, among others.

Notice to Applicant

For all 59 notifications, Board staff informed the applicant of the Board's decision.

Evaluation Time Frames

For the majority of the notifications in our sample, the Board generally followed time frames listed in the procedures. For example, for 46 of the 59 notifications, the Board informed the applicant of its decision within 120 days after the notification's submission, as required by the regulations and procedures.³⁸ The other 13 cases were completed within 122 to 160 days. According to Board officials, processing some notifications took more time because of a government shutdown or internal procedural delays. (See app. IV for more information about the processing times for notifications in our sample.) The Board staff also noted that even when a case was delayed, processing the notification took less time than if the company had submitted an application under the production application process before the regulations were revised in 2012.³⁹

According to Board staff, the notification process is designed to ensure that the applicant receives an authorization decision within 120 days. Board staff stated that, in general, any issues arising during evaluation of a production notification will lead to an authorization with restriction or denial of the notification, since decisions on the merits of such issues would require extended comment and rebuttal periods and additional analysis that could not be completed within the 120-day time frame for notifications. Board staff stated that, in these cases, a company can choose to submit a more detailed application, triggering the Board's application evaluation process. Among the companies that filed the 59 production notifications we reviewed, three companies whose notifications were not approved had filed a more detailed application for production authority as of September 2017.

³⁸For 13 cases, the 120th day fell on a weekend or a holiday and the review was completed on the next business day.

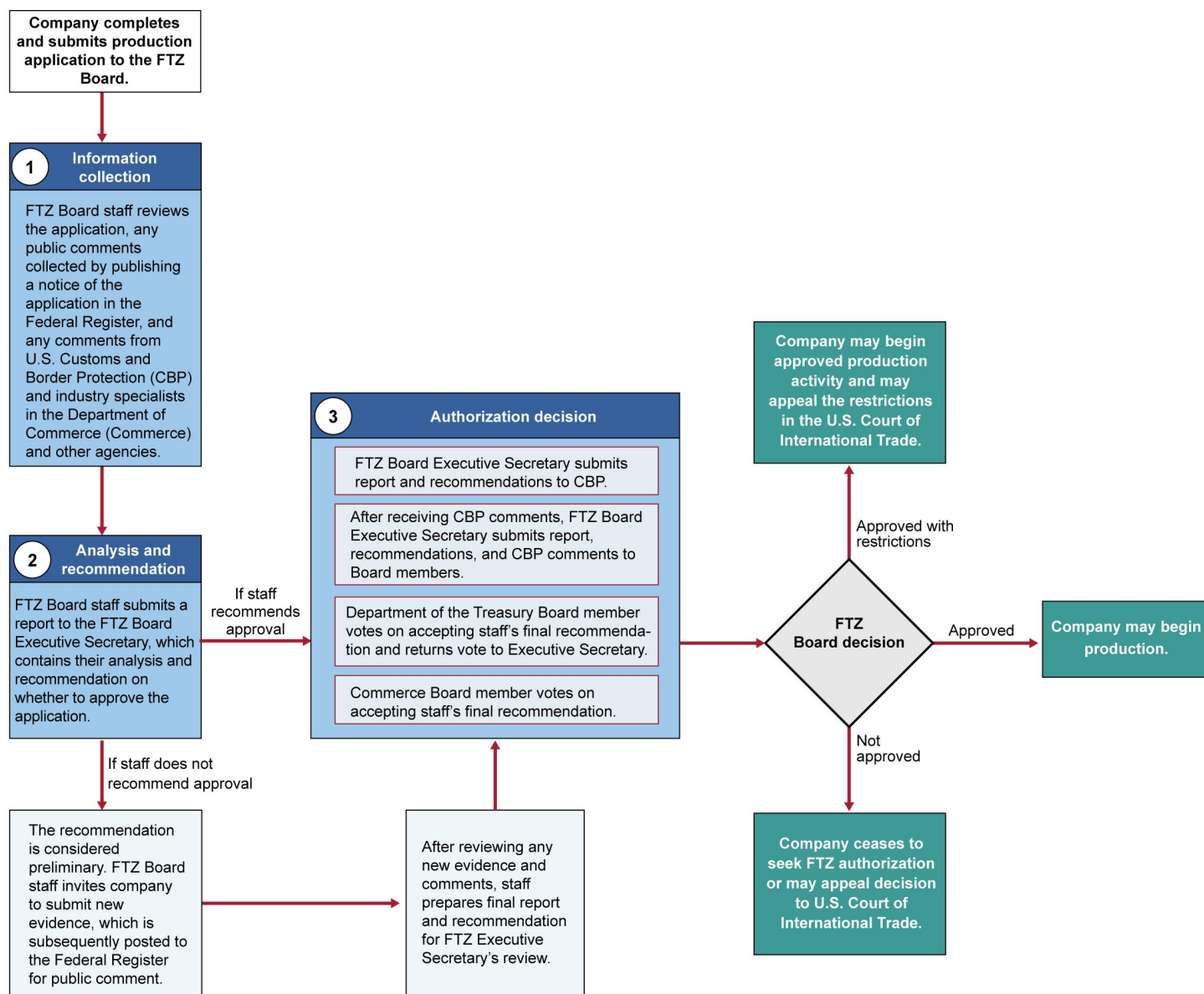
³⁹According to Board officials, before the regulations were revised in 2012, a company might have waited a year for an authorization decision.

FTZ Board Followed Procedures Generally Aligned with Regulations in Evaluating Applications We Reviewed, but It Did Not Consistently Document Consideration of All Required Criteria

Board's Procedures Generally Align with Regulations for Evaluating Production Applications

Our review of Board documents and interviews with Board staff showed that the Board has established procedures for evaluating production applications that generally align with its regulations. The Board's procedures for evaluating production applications can be organized into the same three phases as those for evaluating production notifications—(1) information collection, (2) analysis and recommendation, and (3) authorization decision—although some of the requirements differ (see fig. 6 for an illustration of the Board's application process). For each phase, the procedures include steps that specify the responsible party and the intended product and result.

Figure 6: FTZ Board's Process for Evaluating Applications for Production Authority



Source: GAO analysis of Foreign-Trade Zones (FTZ) Board procedures. | GAO-19-91

Phase 1: Information Collection

In general alignment with the regulations, the Board's procedures for evaluating production applications include steps for collecting information from the applications, from public comments submitted in response to

Federal Register notices of the applications, from reviews of the applications by industry specialists at Commerce and other agencies, and from CBP.

- **Application information.** The Board regulations require the applicant to provide detailed information about the proposed production activities, such as (1) a summary of the reasons for the application, including a description of the finished products and imported components; (2) the estimated annual value of benefits to the applicant; and (3) an explanation of the requested production authority's anticipated economic effects. To guide companies in completing applications, the Board provides an application instruction sheet with numerous questions,⁴⁰ many of which are similar to requirements listed in the regulations.⁴¹ The Board's procedures require Board staff to determine whether the application is complete before beginning to evaluate it.
- **Federal Register comments.** The Board regulations require that, after Board staff determine that the application satisfies regulatory requirements, the Executive Secretary shall, among other things, publish a notice in the Federal Register inviting public comments.⁴² Similarly, the Board procedures require the preparation of a notice for the Executive Secretary's review and signature that will be transmitted to the Federal Register.
- **Agencies' review.** While the Board's regulations do not specifically require Board staff to ask industry specialists to review the production applications, the procedures instruct staff to consult with industry specialists at Commerce and other agencies as appropriate.⁴³ See the

⁴⁰The application instruction sheet that the Board provides to companies has 41 questions, including questions focusing on the market and industry, FTZ-related savings, and the proposed products and components.

⁴¹15 C.F.R. § 400.23.

⁴²15 C.F.R. §§ 400.31 and 400.32(c)(2). According to the regulations, after publishing notice of the application in the Federal Register, the Board may receive new evidence from the applicant, which may result in the (re)opening of a comment period.

⁴³According to Board staff, the procedures outline this step because it is common practice for the analyst to seek comments from the Industry and Analysis unit in Commerce's International Trade Administration. Board staff also stated that the regulations allow for flexibility as circumstances warrant. According to Board procedures, in the past the Board has contacted the U.S. Department of Agriculture's Foreign Agriculture Service regarding authorization requests for sugar and the Department of Energy regarding authorization requests for biodiesel and oil refining.

text box for a description of production application reviews by industry specialists in Commerce's Office of Textiles and Apparel (OTEXA).⁴⁴

Description of Production Application Review by Department of Commerce Industry Specialists

According to industry specialists at the Department of Commerce, when Foreign-Trade Zones (FTZ) Board staff receive an application pertaining to textiles products, they forward the application to the department's Office of Textiles and Apparel (OTEXA). OTEXA officials then issue a mass mailing alerting industry (i.e., nongovernment) representatives that a textile case was submitted. In addition, the industry specialists said that the department co-manages the Industry Trade Advisory Committee on Textiles and Clothing, consisting of 23 vetted advisory committee members representing domestic producers, importers, retailers, distributors and associations, among others. The specialists stated that OTEXA officials would notify this committee about the Federal Register notice for the textile application to help ensure that the industries have seen the notice.

According to the industry specialists, OTEXA will thoroughly review the case, taking into account public comments, and submit a memo with a recommendation to the FTZ Board staff for consideration. The specialists stated that the main purpose of OTEXA's review is to determine whether the applicant is seeking to bring into an FTZ a textile component that is being manufactured domestically. According to the specialists, if OTEXA determines that the component is manufactured domestically, it will recommend to the FTZ Board staff that the application should not be authorized. The industry specialists said that lack of opposition to the application usually indicates that there is no domestic manufacturer of the product.

Source: GAO analysis of Department of Commerce information. | GAO-19-91

- **CBP's review.** The regulations require the Executive Secretary to provide the application and Federal Register notice to CBP for review and require CBP to submit any comments about the application to the Executive Secretary by the conclusion of the Federal Register public comment period.⁴⁵ Similarly, the Board procedures require Board staff to prepare a letter to the CBP Port Director. According to the Board staff and CBP officials, a letter is sent to the local CBP Port Director to collect information on CBP's ability to provide oversight and help ensure that FTZ program rules and regulations are followed if the activity is authorized.

Phase 2: Analysis and Recommendation

In general alignment with the regulations, the Board's procedures for evaluating production applications include steps to guide Board staff in reviewing information relevant to each production application and in preparing an examiner's report and recommendation to the Executive Secretary and the Board.

⁴⁴OTEXA is in the Textiles, Consumer Goods, and Materials unit, which, according to Commerce officials, is part of the International Trade Administration's Industry & Analysis unit.

⁴⁵15 C.F.R. § 400.32(c)(3) and (d).

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- **Review of comments and other relevant factors.** The regulations require that in evaluating the application, the examiner⁴⁶ take into account, among other things, public comments in response to the Federal Register notice as well as the threshold and economic factors.⁴⁷ The Board's procedures for evaluating production applications require Board staff to consider all information collected for the application record. Information on the application record includes comments from any industry specialists and CBP and any public comments submitted in response to the Federal Register notice. Neither the FTZ regulations nor the procedures require Board staff to document consideration of the threshold and economic factors and any significant public benefits.
 - **Examiner's report and recommendations.** Under the Board regulations, the examiner is required to prepare an examiner's report—which includes an analysis and a recommendation regarding whether the application should be authorized—and provide it to the Executive Secretary for review.⁴⁸ The Board procedures similarly require Board staff to prepare a report and recommendation to be provided to the Executive Secretary. According to the procedures, a recommendation to approve an application (with or without restrictions) signifies that the staff have determined that the criteria have been met for the authorized components. If the staff recommends either approving the application with restrictions or not approving it, the recommendation will be considered preliminary and the applicant will have the opportunity to submit additional evidence.⁴⁹ Both the Board procedures and the regulations require that after the receipt of any new evidence, the case record be reviewed again and a final report and recommendation be prepared for review by the Executive Secretary.

⁴⁶The examiner is a member of the Board staff.

⁴⁷According to the regulations, when evaluating the applications, the examiner shall (1) consider the threshold factors and, if the examiner determines that these criteria have been met and (2) consider the economic factors, taking into account their relative weight and significance under the circumstances. 15 C.F.R. § 400.34(b).

⁴⁸15 C.F.R. § 400.34.

⁴⁹The Board procedures state that if the applicant submits new evidence for which there has not been an opportunity for public comment, the FTZ analyst will prepare a Federal Register notice opening a new 45-day public comment period. See *also*, 15 C.F.R. § 400.34(a)(5)(iv)(B) (providing for a public comment period of not less than 30 days, with an additional 15-day period for rebuttal comments).

Phase 3: Authorization Decision

In general alignment with the regulations, the Board's procedures for evaluating production applications include steps for the Executive Secretary to make a recommendation to the Board for consideration and for the applicant to be notified of the Board's decision. In addition, the procedures include time frames to help ensure that evaluation of the application is completed within the specified general time frames.⁵⁰

- **Executive Secretary's recommendation and Board's decision.** The regulations require that the Executive Secretary circulate the examiner's report, with the recommendation, to CBP and the Treasury Board member for review and action.⁵¹ The Treasury Board member is to submit his or her vote to the Executive Secretary within 30 days unless a meeting is requested, and the Commerce Board member subsequently is to complete the decision process. Under the regulations, the Commerce and Treasury Board members must unanimously decide whether to authorize the application (with or without restrictions).⁵² Similarly, the Board procedures require the Executive Secretary to transmit documents, such as the application, to CBP headquarters staff for review, to the Treasury Board member for review and consideration, and to the Commerce Board member for final review. The transmittal includes the examiner's report and recommendation.
- **Notice to applicant.** The Board regulations require the Executive Secretary to notify the applicant in writing and publish a notice in the Federal Register of the Board's determination.⁵³ The Board procedures similarly detail a process for notifying the applicant of the Board's decision and transmitting it to the Federal Register. If the

⁵⁰Section 400.31(a) of the regulation states that the general time frame to process applications for production authority is 12 months.

⁵¹15 C.F.R. § 400.36(a).

⁵²15 C.F.R. §§ 400.3(e) and 400.36(e).

⁵³15 C.F.R. § 400.32(c)(6).

applicant is not satisfied with the decision, the applicant can appeal the decision to the U.S. Court of International Trade.⁵⁴

- **Evaluation time frames.** The Board regulations and procedures establish time frames for various steps in the process for evaluating applications. For example, under both the regulations and the procedures, if the examiner's report recommends either authorizing with restrictions or not authorizing the proposed activity, the applicant is given 45 days to respond to the recommendation and submit additional pertinent evidence. Additionally, both the regulations and the procedures set a general time frame of 150 days from the close of the public comment period for the completion or submission of the examiner's report. The regulations also recognize that additional time may be required in some circumstances, such as when the applicant has obtained a time extension for a particular procedural step.⁵⁵

The Board Followed Its Procedures in Evaluating Production Applications We Reviewed

Phase 1: Information Collection

Our review of available documents for each of the three applications in our sample indicate that Board staff followed the Board's procedures in collecting information from companies, publishing notices and obtaining public comments from the Federal Register, and gathering comments from agencies such as Commerce and CBP. All three companies requested authority to import textiles from foreign suppliers into an FTZ for use in manufacturing products that would be later imported from the FTZ into the U.S. market for consumption.

Application Information

The Board staff collected information from all three companies' applications. For example, each company provided information regarding (1) reasons for the application and an explanation of its anticipated

⁵⁴Two federal circuit courts, the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Appeals for the District of Columbia Circuit, have found that the U.S. Court of International Trade has exclusive jurisdiction over appeals of Board determinations pursuant to 28 U.S.C. § 1581(i)(1), (4). The relevant decisions are *Conoco, Inc. v. United States Foreign-Trade Zones Board*, 18 F.3d 1581 (Fed. Cir. 1994), and *Miami Free Zone Corp. v. United States Foreign-Trade Zones Board*, 22 F.3d 1110 (D.C. Cir. 1994).

⁵⁵15 C.F.R. § 400.34.

economic benefits; (2) the estimated total annual value of benefits of the proposed activity to the company; (3) whether the activity was consistent or inconsistent with U.S. trade and tariff law or policy formally adopted by the executive branch; (4) whether approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; and (5) whether the activity involved items subject to quantitative import controls or inverted tariffs.⁵⁶

We found that two of the companies responded partially to a question soliciting data on annual current and planned production capacity for the proposed FTZ activity.⁵⁷ In addition, one of these companies did not respond to a question regarding whether the production activity would result in significant public benefits, taking into account the threshold and economic factors. According to Board staff, applicants may not be able to provide the quantitative information needed to answer some of the questions. The staff stated that, because the evaluation process does not lend itself to specific calculations, the absence of certain data does not prevent the Board's evaluation of the application. According to Board staff, the Board's recommendations are based on the totality of qualitative and quantitative information in the case record.

Federal Register Comments

The Executive Secretary posted notices in the Federal Register of the three production applications, pursuant to the Board's procedures, and received public comments on all three. One application received two comments from a domestic textile producer that opposed the application. Another application received three comments—two from a domestic textile producer and one from domestic textile industry trade associations—opposing the application and received a fourth comment—from a domestic textile producer—supporting it. The third application received 14 comments from domestic textile producers, textile organizations, and congressional and city government officials, among others. Twelve of the 14 comments supported the application; the remaining 2 comments, from the same domestic producer, opposed it.

⁵⁶Products with imported parts that are dutiable at higher rates than the finished product into which they are incorporated are referred to as having an inverted tariff structure.

⁵⁷The third company provided the requested data on annual current and planned production capacity.

Agencies' Reviews

Board staff requested that industry specialists review one of the three production applications, although the Board's procedures do not require such reviews, according to Board staff. In a memo from Commerce's OTEXA, a specialist who reviewed the application recommended not approving it because the textile components that the company had planned to import into the FTZ were also produced domestically by other manufacturers. In addition, the memo stated that granting the company's request for FTZ production authority would provide a significant incentive to use imported textile materials rather than textile materials produced domestically, which could have negative economic effects on domestic producers and companies supplying the production components.

For the other two applications—both related to the production of carbon and other fiber with foreign-source components—the Board staff did not seek comments from industry specialists and initiated their own industry research instead. According to Board staff, they did not reach out to OTEXA because OTEXA had recently provided comments on a similar carbon fiber case. The Board staff did not request that other agencies review the three applications.

CBP's Review

CBP's local Port Director reviewed all three production applications and responded that it could provide oversight of the proposed activities.

Phase 2: Analysis and Recommendation

We found that Board staff followed the Board's procedures in reviewing comments and other relevant factors for the three production applications and providing recommendations to the Board regarding approval of the applications.⁵⁸

Review of Comments and Other Relevant Factors

Our review of Board case records for the three applications found that in evaluating the applications, Board staff considered the public comments submitted in response to the Federal Register notices as well as comments from industry specialists and CBP. In addition, although the

⁵⁸The same Board staff evaluated all three applications.

case records did not document consideration of all required criteria for two of the three applications, we concluded after interviewing Board staff that they had considered the required criteria. The procedures do not require Board staff to document consideration of the required criteria. The case records we reviewed also showed that Board staff considered the authorization decisions of recent applications involving similar foreign-source components.

Examiner's Reports and Recommendations

We found that the Board staff issued preliminary recommendations and subsequently prepared detailed examiner's reports, with final recommendations, for the three production applications. For two of the applications, the examiner preliminarily recommended authorizing one of the requested production activities with a restriction,⁵⁹ namely, requiring that the final product be re-exported and not sold on the U.S. market.⁶⁰ For the third application, the examiner preliminarily recommended, on the basis of the OTEXA specialist's analysis, not approving the request for expanded FTZ production authority. The Board staff also prepared reports with final recommendations for the Executive Secretary's review, taking into account new evidence and rebuttals that the applicants had submitted in response to opposing public comments. The final recommendations proposed by the Board staff were identical to the preliminary recommendations.

For the two applications that received final recommendations to authorize with restrictions, the examiner's reports stated that an authorization without restrictions would negatively impact a domestic producer and that the applicants had not demonstrated a causal link between proposed FTZ-related cost savings and an overall net positive national economic effect, among other reasons. For the application that the industry specialist had reviewed, the examiner's report stated that, after reviewing all comments and information on the case record, OTEXA's position continued to be that approving FTZ production authority in this

⁵⁹One of these applications requested FTZ production authority for two activities. The examiner recommended unrestricted authority for one of the activities.

⁶⁰According to U.S. Census Bureau's Common Trade Definitions, exports of foreign goods (re-exports) consist of commodities of foreign origin that have previously been admitted to a U.S. Foreign-Trade Zone or entered the United States for consumption, including entry into a CBP-bonded warehouse, and that, at the time of exportation, are in substantially the same condition as when imported.

circumstance, given the domestic supply of required textile materials, would encourage the use of imported textiles and reduce purchases from domestic producers, which could cause domestic production to decline.

Phase 3: Authorization Decision

Our review of the case records for the three production applications found that the Executive Secretary submitted the examiner's reports and recommendations to CBP for review and comment and to the Board members for their respective votes, pursuant to the Board's procedures and regulations, and that the applicants were notified of the Board's decisions. We also found that all three applications took longer than the general 12-month time frame detailed by the regulations.

Executive Secretary's Recommendation and Board's Decision

We found that CBP reviewed, and concurred with, the examiner's recommendations for all three applications.⁶¹ The Executive Secretary submitted copies of his memos for each of the three applications, along with the examiner's reports and recommendations, to both the Treasury and Commerce board members. The memos recommended authorizing with restrictions two of the applications and not authorizing the third application, in agreement with the examiner's recommendations. In addition, the Executive Secretary's memo to the Board regarding the application that OTEXA had reviewed stated that, as with recent cases involving textile-based production components, the content of OTEXA's memorandum established a key basis for the final recommendation for the Board's action.⁶² The Board members unanimously concurred with the Executive Secretary's recommendations for all three applications.

Notice to Applicant

For all three applications, the Board staff notified the applicants of the Board members' decisions.

⁶¹ FTZ Board staff provided CBP headquarters staff with copies of the examiner's reports with the recommendations, the comments of local port directors, and the resolutions to be adopted by the Board members for all three applications.

⁶² OTEXA recommended not authorizing the application.

Evaluation Time Frames

Board staff developed the examiner's preliminary recommendation within the general 150-day time frame cited in the Board's procedures for one of the three applications we reviewed and took additional time for the other two applications. Each of the three applications involved textiles related to foreign-source components, which our review of the case records showed can be controversial. For the three applications, the examiner took 116, 235, and 431 days, respectively, to complete the preliminary recommendations. In addition, the Board's evaluation of each of the three applications that we reviewed took longer than the general 12-month time frame detailed by the regulations; however, the regulations state that processing a case may take longer when it involves a controversial or complex issue.⁶³ Processing the three applications took approximately 18, 28, and 28 months, respectively, from the dates when the Board received the applications to the dates when the applicants were notified of the Board's decisions.

For all three applications, preliminary recommendations to either authorize with restrictions or not authorize led to the submission of additional evidence by the applicants, opposition and support by various parties through public comments in response to the Federal Register notices, and the applicants' rebuttals of public comments. For example, Board staff said that for one of the applications, the OTEXA specialist who reviewed it asked the Board staff to request additional information from the applicant to facilitate analysis of the potential impact of the proposal. The applicant took more than 3 months to provide the information. After the specialist and the Board staff reviewed the additional information, a preliminary negative recommendation was rendered, which necessitated opening an additional public comment period. An opposing party requested an extension of that comment period. After the extended comment period ended, the Board staff said that it allowed a public comment period for rebuttal comments. According to Board staff, another application that we reviewed involved somewhat similar sets of complex circumstances. Board staff noted that these two

⁶³The regulation states that the general time frame to process applications for production authority is 12 months but that additional time is most likely to be required for applications requesting production authority when a complex or controversial issue is involved or when the applicant or other party has obtained a time extension for a particular procedural step. 15 C.F.R. § 400.31(a).

applications each involved a complex set of circumstances that needed to be carefully and thoroughly reviewed.

Lack of Consistent Documentation Made It Difficult to Verify the Board Considered All Required Criteria for Applications We Reviewed

While the Board's procedures and regulations do not call for staff to document their consideration of all criteria required by section 400.27 of the regulations, the absence of such documentation for two of the three applications we reviewed made it difficult to verify that the Board had considered all of these criteria when evaluating the applications. For example, the examiner's report for one of these two applications did not include documentation to demonstrate that the Board staff had considered the required threshold factors. Also, the reports for the two applications did not include documentation that the staff had considered several of the required economic factors, including (1) retention or creation of value-added activity, (2) extent of value-added activity, and (3) overall effect on import levels of relevant products. The records for all three applications included documentation of consideration of the proposed production activity's potential significant public benefits. Board staff and the Executive Secretary explained in interviews and in written responses to our questions how they had considered all the required threshold and economic factors and any significant public benefits when evaluating the three applications we reviewed.⁶⁴

The examiner's reports for the two applications did not include documentation indicating the Board staff's rationale for selecting criteria as relevant. According to Board staff, each examiner's report includes information that is most relevant to the analysis of the case. Each report also provided a narrative discussing the criteria that the Board staff considered relevant and that supported the recommendation, and each report explained the rationale for the Board staff's decision to recommend authorizing with restrictions or not authorizing the production activity. According to the Board staff, because only the most relevant criteria are included in the examiner's report, not all of the threshold and economic factors are explicitly documented. According to *Standards for Internal Control in the Federal Government*, management should clearly

⁶⁴Board staff explained that economic factors are not weighted as part of the review process.

document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.⁶⁵ If management determines that a criterion is not relevant, management should support that determination with documentation that includes its rationale. Without such documentation in the examiner's reports, Board members lack readily available written assurance that the recommendations reflect consideration of all of the required criteria and that its decisions comply with U.S. trade and tariff laws and policy that has been formally adopted by the executive branch. In addition, such documentation would provide an institutional record of the examiner's consideration of all the required criteria.

According to Board staff, the examiner's reports may contain varying levels of discussion on each criterion, depending on the specific circumstances of the application. Board staff stated that the criteria listed in section 400.27 of the regulations form the framework and basis of the analysis in each examiner's report, although the analysis and discussion in the reports may not refer directly to each economic factor. With respect to the examiner's report that contained no documentation of the consideration of the threshold factors, the Board staff stated that their consideration of the economic factors had indicated that the application should be denied and had formed the basis of the report's recommendation. The recommendation and the Board's decision would not be affected by including in the report a discussion of the threshold factors, according to the Board staff.

In addition, Board staff stated that the extent to which the examiner's reports discuss specific pieces of evidence can vary depending on the relevance and significance of each piece of evidence to determining whether the applicant has met the burden of proof for approval under the regulatory factors or criteria. The Board staff also noted that the extent to which the examiner addresses each piece of evidence is generally a subject of discussion with the Executive Secretary during the drafting of the report. Only by interviewing Board staff, in conjunction with our review of the case records, were we able to determine that the Board had considered all of the required criteria when making its recommendations to authorize (with or without restrictions) or not authorize an application for production authority.

⁶⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

Conclusions

The Board has procedures that generally align with the regulations for evaluating production notifications and applications for production authority, and our review of FTZ sample cases and interviews with Board staff and other relevant agencies found that the Board followed these procedures. The Board regulations include criteria that the Board is required to consider during its review of an application for production authority.⁶⁶ However, the examiner's reports we reviewed did not consistently include documentation demonstrating that the examiner considered all required criteria before recommending whether the applications should be authorized. While not required by the Board regulations and procedures, such documentation would provide the Board members readily available written assurance that the recommendations reflect consideration of all of the required criteria and that its decisions comply with U.S. trade and tariff laws. In addition, such documentation would provide an institutional record of the examiner's consideration of all the required criteria.

Recommendation for Executive Action

The Secretary of Commerce, as Chairman of the FTZ Board, should ensure that the Board's Executive Secretary incorporates into its procedures a requirement that each examiner's report document Board staff's consideration of all required criteria listed in section 400.27 of the regulations during evaluations of applications for production authority. (Recommendation 1)

Agency Comments

We provided a draft of this report to Commerce, Treasury, and the Department of Homeland Security for review and comment. Commerce provided written comments, which are reproduced in appendix V. In its comments, Commerce concurred with our recommendation and stated that it had taken action to address it. In addition, Commerce and Treasury provided technical comments, which we incorporated as appropriate. The

⁶⁶15 C.F.R. § 400.27.

Department of Homeland Security stated by email that it had no comments about our draft report.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretaries of Commerce, the Treasury, and Homeland Security and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.



Kimberly M. Gianopoulos
Director, International Affairs and Trade

Appendix I: Objectives, Scope and Methodology

This report examines (1) the extent to which the Foreign-Trade Zones Board (the Board) has established and followed procedures aligned with its regulations for evaluating production notifications and (2) the extent to which the Board has established and followed procedures aligned with its regulations for evaluating production applications.¹

To examine the extent to which the Board has established procedures aligned with its regulations for evaluating production notifications and applications, we reviewed and compared the Board's 2012 regulations to the Board's staff internal procedures. In conducting this analysis, we also identified procedures that the Board is required to follow in evaluating notifications and applications. We interviewed Board staff, industry specialists in the Department of Commerce (Commerce), and officials from the Department of the Treasury (Treasury) and the Department of Homeland Security's Customs and Border Protection (CBP) to identify their roles in the evaluation of notifications and applications and to clarify the regulations' requirements and the Board's internal procedures.

To examine the extent to which Board staff followed the Board's procedures when evaluating production notifications and applications, we selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications submitted to the Board from April 2012 through September 2017. We selected this time period to ensure that the sample reflected the Board's activities between April 2012—when, according to staff, the Board began implementing regulations that it had modified in February 2012—and the end of fiscal year 2017. To select our sample of 59 notifications, we first selected 10 of the 13 notifications submitted during the selected time period that were not approved by the Board. We did not select the remaining 3 notifications that were not approved, because the companies that submitted those notifications subsequently submitted production applications and the Board's

¹A company must first submit a production notification, which requires fewer types of information from companies than a production application. If a notification is approved with restrictions or denied, the company may file a more detailed production application to continue seeking production authority.

decisions about the applications were pending when we made our selection. The notifications that were not approved were submitted by companies in seven industry categories—silicones/polysilicon, textiles/footwear, oil refineries/petrochemical facilities, other energy, chemicals, medical supplies and devices and miscellaneous.² For each of these seven categories, our sample of 59 notifications includes all notifications for which the Board had rendered decisions at the time of our selection and excludes any for which decisions were pending. Our sample does not include six production notifications submitted by companies in the textiles/footwear industry category that the Board did not approve or approved with restrictions, because those companies subsequently submitted applications. Our final sample of 59 notifications includes all three types of Board decisions (34 approved, 15 approved with restrictions, and 10 not approved). However, because of its size, our final sample is not generalizable to all notifications submitted from April 2012 through September 2017. We also selected and analyzed three production applications, respectively submitted by three companies that submitted 3 of the 59 notifications we analyzed. These three applications were the only applications that the Board reviewed and rendered final decisions on from April 2012 through September 2017.

We analyzed case records containing documents that companies submitted when they filed their production notifications and applications; information collected by Board staff from public comments in response to Federal Register notices; comments from industry specialists at Commerce, CBP, and the Department of Justice; and reports prepared by Board staff, documenting their analyses and recommendations for each notification and application. To conduct a systematic assessment of the case records, we created a data collection instrument to determine, among other things, whether the applicant submitted all required information for each notification and application.³ In addition, at least two analysts, including an economist, independently reviewed each case record; any resulting disagreements were resolved through discussion among team members and, as appropriate, with Board staff. Further, we collected and analyzed data for these cases on the types of Board

²The notifications and applications in the “miscellaneous” category were submitted by companies in the carbon fiber, explosive components, and mass spectrometers and related analytical equipment industries, among others.

³Section 400.27 of the 2012 regulations lists criteria such as threshold and economic factors and significant public benefit(s) for the Board to consider when reviewing notifications and applications.

decisions (approved, approved with restrictions, and not approved); the extent of public comments received for both notifications and applications; the extent of industry specialists' and CBP's comments; the types and amount of notification restrictions; and whether the duration of the Board's evaluations was within the time frames detailed in the Board's regulations and procedures. We also determined the extent to which the recommendations of the Board's analysts, Commerce's industry specialists, the Board's Executive Secretary, and Board members were in agreement. We determined that the case records data we reviewed, which we obtained from the Board's case tracking system, were sufficiently reliable for our purposes of understanding the universe of notifications and applications submitted for production authority and reviewing a sample from that universe. To make this determination, we took steps that included reviewing related documentation guidance for the Board's case records tracking system; interviewing knowledgeable agency officials; and reviewing a sample of cases with our data collection instrument, which confirmed information included in the case tracking system data.

Further, we analyzed the extent to which Board staff considered all required threshold and economic factors and any significant public benefits for the three applications in our sample.⁴ While neither the Board's regulations nor its procedures require Board staff to document consideration of all required threshold and economic factors and significant public benefits, as detailed in section 400.27 of the regulations, during their evaluations of production applications, *Standards for Internal Control in the Federal Government* calls for such documentation.⁵ To conduct this analysis, we reviewed the examiner's reports for all three applications and interviewed Board staff to determine whether the examiner had considered all of the required criteria. We cannot generalize or extrapolate our analysis for the three applications to all notifications and applications submitted to the Board from April 2012 through September 2017. We also interviewed relevant officials from Commerce (including industry specialists), Treasury, and CBP to obtain

⁴15 C.F.R § 400.27.

⁵According to *Standards for Internal Controls in the Federal Government*, management should clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. In addition, if management determines that a criterion is not relevant, management should support that determination with documentation that includes its rationale. See [GAO-14-704G](#).

clarifications regarding some of the notifications and applications in our sample.

We conducted this performance audit from July 2017 to November 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Foreign-Trade Zones Board Decisions for All Production Notifications Submitted April 2012–September 2017

From April 2012 through September 2017, the Foreign-Trade Zones Board (the Board) rendered decisions on 293 notifications requesting foreign-trade zones (FTZ) production authority that were submitted by companies in 25 industry categories (see table 2).¹ The Board reported approving 218 notifications (74 percent), approving 62 notifications with restrictions (21 percent), and not approving 13 notifications (4 percent). Nine of the companies whose notifications were approved with restrictions or not approved continued to seek production authority by submitting production applications.

Table 2: FTZ Board Decisions for All Production Notifications Submitted April 2012–September 2017, by Industry Category

n/a Industry category ^a	n/a Number of notifications reviewed by FTZ Board	FTZ Board decisions (numbers of notifications)		
		Approved	Approved with restrictions	Not approved
Auto parts	25	25	0	0
Textiles/footwear	23	5	14	4
Vehicles	23	13	10	0
Other consumer products	22	15	7	0
Industrial/machinery equipment	21	20	1	0

¹To obtain production authority (i.e., permission to conduct production activities in an FTZ), a company must first file a production notification. If the notification is approved with restrictions or not approved, the company may then file a more detailed production application. According to the Department of Commerce, "production" is considered to be anything that results in a substantial transformation of an article or that changes its six-digit Harmonized Tariff Schedule of the United States classification or eligibility for entry. Production authority authorizes a company to make transformations or changes to goods admitted to an FTZ.

**Appendix II: Foreign-Trade Zones Board
Decisions for All Production Notifications
Submitted April 2012–September 2017**

n/a Industry category ^a	n/a Number of notifications reviewed by FTZ Board	FTZ Board decisions (numbers of notifications)		
		Approved	Approved with restrictions	Not approved
Pharmaceutical	21	21	0	0
Miscellaneous ^b	19	14	2	3
Consumer electronics and related products	16	15	1	0
Cosmetics/fragrances	16	15	1	0
Construction equipment	15	13	2	0
Other energy ^c	11	9	1	1
Aircraft/defense	10	2	8	0
Printers/copiers and their supplies	10	7	3	0
Other electronics/telecommunications	10	10	0	0
Appliances	9	7	2	0
Food products/supplements	9	7	2	0
Shipyards	8	2	6	0
Metals and minerals	7	7	0	0
Chemicals	4	3	0	1
Oil refineries/petrochemical facilities	3	1	1	1
Medical supplies and devices	3	2	0	1
Semiconductors	3	3	0	0
Silicones/polysilicon	2	0	0	2
Oil drilling equipment	2	2	0	0
Steel	1	0	1	0
Total	293	218	62	13

Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

^aIndustry categories do not necessarily indicate the type of component named in the notification. For example, in one notification, a company in the medical supplies and devices industry category that had previously been granted authority to produce plastic adhesive bandages requested an expansion of this authority to include the production of fabric adhesive bandages using a foreign-source component. In this example, the industry category was medical supplies and devices, but the component was a textile.

^b"Miscellaneous" includes carbon fiber, explosive components, and mass spectrometers and related analytical equipment industries, among others.

^c"Other energy" includes the solar and renewable energy industries, among others.

Our analysis of the Board's decisions from April 2012 to September 2017 found the following.

- The Board approved all production notifications for six industry categories:
 - Auto parts (25 notifications)

- Pharmaceutical (21 notifications)
- Other electronics/telecommunications (10 notifications)
- Metals and minerals (7 notifications)
- Semiconductors (3 notifications)
- Oil drilling equipment (2 notifications)
- According to Board staff, companies in some industry categories, such as auto parts and pharmaceutical, often have long-established records of operating in FTZs. Board staff also stated that many companies in these industry categories submit notifications requesting production authority for items similar to those for which the Board has granted authority in the past. Officials also stated that companies are more likely to submit notifications requesting authorization for certain production activities if other companies have previously received authorization for similar activities.
- Textiles/footwear was the industry category with the largest number of notifications that were approved with restrictions or not approved. Of the 23 notifications submitted, 14 were approved with restrictions and 4 were not approved. Board staff noted that domestic textile producers that could be affected by authorization of production notifications are often those that oppose approval of the notifications.
- Of the companies that submitted the 75 production notifications that were approved with restrictions or not approved, 9 companies continued seeking production authority by filing a more detailed production application with the Board. As of August 2018, 2 applications had been authorized with restrictions, 2 applications had not been authorized, and the Board's decisions were pending for the remaining 5 applications.

Appendix III: Rationales for Foreign-Trade Zones Board Decisions for Selected Production Notifications Submitted April 2012–September 2017

We selected and analyzed Foreign-Trade Zones (FTZ) Board (the Board) case records for a nongeneralizable sample of 59 notifications to identify the rationales for the Board's decisions and the types of restrictions, if any, included in the decisions.¹ Table 3 shows the Board's decisions for the 59 notifications in our sample, by industry category.

Table 3: FTZ Board Decisions for Selected Production Notifications Submitted April 2012–September 2017, by Industry Category

Industry category ^a	Number of notifications reviewed by FTZ Board ^b	FTZ Board decisions (numbers of notifications)		
		Approved	Approved with restrictions	Not approved
Miscellaneous ^c	19	14	2	3
Textiles/footwear	17	5	11	1
Other energy ^d	11	9	1	1
Chemicals	4	3	0	1
Oil refineries/ petrochemical facilities	3	1	1	1
Medical supplies and devices	3	2	0	1
Silicones/polysilicon	2	0	0	2
Total	59	34	15	10

Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

Note: We selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications that companies submitted to the FTZ Board (the Board) from April 2012 through September 2017. All 59 notifications were submitted by companies in the seven industry categories shown. We selected these industry categories, from among 25 categories represented by

¹We selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications companies submitted to the Board from April 2012 through September 2017. See app. I for further information about our methodology.

all notifications submitted during this time period, because the 10 notifications that the Board did not approve were submitted by companies in these seven categories.

^aIndustry categories do not necessarily indicate the type of component named in the notification. For example, in one notification, a company in the medical supplies and devices industry category that had previously been granted authority to produce plastic adhesive bandages requested an expansion of this authority to include the production of fabric adhesive bandages using a foreign-source component. In this example, the industry category was medical supplies and devices, but the component was a textile.

^bThe numbers of notifications reviewed by the Board represent all notifications submitted for each industry category, except textiles/footwear, for which the Board rendered a decision. Twenty-three notifications were submitted for textiles/footwear; however, we excluded 6 of these notifications because the companies subsequently filed applications for which decisions were pending as of September 2017 and our review did not include active cases.

^c"Miscellaneous" includes the carbon fiber, explosive components, and mass spectrometers and related analytical equipment industries, among others.

^d"Other energy" includes the solar and renewable energy industries, among others.

Notifications That Were Approved

The Board approved production authority for 34 of the 59 notifications in our sample. Our analysis of Board case records found that the Board's rationale for its decision for 32 of the 34 authorizations fell into one of the following four categories:²

- **The Board had previously approved similar production authority for another company (23 notifications).** For example, in evaluating a notification requesting production authority for lithium ion batteries and electric vehicle motors, Board staff noted that the Board had approved similar production notifications for other companies in recent years.
- **No opposition or concerns were raised by an industry or industry analyst during the Board's review of the notification (4 notifications).** For example, in evaluating one notification, Board staff noted that no concerns were raised during the public comment period or by Department of Commerce industry analysts.
- **No duty savings would be realized for the finished product of the proposed activity (3 notifications).** For example, in evaluating a notification requesting authority to produce finished upholstery grade leather and cut parts, Board staff noted that duties for the finished goods were not lower than the duties for the components (leather hides) required for production.

²For 2 of the 34 notifications that the Board approved, we could not ascertain the Board's rationale for its decision, because the case records indicated the decision was "based on circumstances present" and did not provide a specific reason.

- **No products of foreign origin would be involved in the proposed activity (2 notifications).** For example, in evaluating one notification Board staff noted that the applicant was not requesting the use of any foreign-source steel in the proposed FTZ operations.

Notifications That Were Approved with Restrictions

Our sample of 59 notifications included 15 cases in which the Board approved production authority with restrictions. Our analysis of Board case records found that the restrictions imposed by the Board fell into one or more of the following six categories.

- **The Board required the company to pay duties on one or more components before importing the component into the FTZ (9 notifications).** For example, the Board's decision for one notification stated that the company must pay duties on certain foreign-origin upholstery fabrics before bringing them into the zone.
- **The Board required the company to pay duties on some or all components brought into the FTZ when transferring the finished product from the zone, even if the components were used in production (8 notifications).** For example, for one notification, the Board required the company to pay duties on upholstery leather brought into an FTZ for manufacturing furniture when the furniture left the FTZ.
- **The Board authorized a limited quantity of certain components specified in the notification (6 notifications).** For example, the Board decision for one notification limited the square yards of a given fabric that the company was allowed to admit into an FTZ.
- **The Board required the FTZ user to submit additional data and information (6 notifications).** For example, the Board decision for one notification required the company to submit supplemental annual report data and information for the purpose of monitoring by Board staff.
- **The Board restricted the duration of FTZ production authority (4 notifications).** For example, the Board decision for one notification limited production authority to 5 years.
- **The Board required that a product be re-exported from the zone (not for entry into U.S. market) (1 notification).** For this notification, the Board instructed the company to ship all of the foreign upholstery fabric out of the subzone and not ship it into the United States for U.S. consumption.

For the 15 notifications that were approved with restrictions, our analysis of Board case records found that the Board’s rationales for its decisions fell into one or more of the following six categories.³

- **Similar authority had been approved in the past (6 notifications).**⁴ For example, in its decision for one notification, the Board noted that a similar authority had been requested by another company and that the authority was granted with a similar restriction.
- **The proposed activity supported U.S.-based production that otherwise would be conducted abroad (4 notifications).** For example, in decisions for two notifications, the Board noted that the approved production authority supported domestic U.S. production that otherwise could be (or was being) conducted abroad. The restriction for these notifications concerned the quantity of a fabric that could be brought into the zone duty free.
- **New or complex policy issues were involved (2 notifications).** For example, in its decision for one notification, the Board approved the requested production authority for the first time and added a time restriction that would allow the Board to identify any domestic impact.
- **No opposition was raised by domestic industry or by industry analysts (1 notification).** In its decision for this notification, the Board noted that industry analysts at Commerce had no concerns as long as the company paid duties on imported fabric components specified in the notification when the finished good left the zone.
- **No duty savings would be realized for the finished product of the proposed activity (1 notification).** In its decision for this notification, the Board noted that the applicant had indicated it would pay duties on all foreign-source materials when leaving the zone for sale in the United States.
- **The proposed activity would have no duty-reduction benefit and would help only with logistics or record-keeping (1 notification).** In its decision for this notification, the Board noted that production authority had previously been approved with restrictions and that the company had requested a change to the authorization for record-keeping purposes.

³Decision rationales listed in the case records explained the reason for authorization or the reason for applying a given restriction, depending on the case.

⁴Similar authority might include a full authorization or an authorization with restrictions granted to a previous company.

Notifications That Were Not Approved

The Board's reasons for not approving 10 notifications fell into one or more of the following two categories.

- **New or complex policy issues or concerns were involved (5 notifications).** For example, in its decisions for these notifications, the Board noted that (1) it had not previously approved production authority for a given component or a given product, (2) circumstances within the industry and opposition to the production notification continued to evolve, (3) the production process made tracking the source or destination of a given component difficult when it entered or left the FTZ, (4) the component or product involved sensitive trade policy issues, or (5) the economic impacts and potential precedents were unclear.⁵
- **Further review was needed because of domestic industry concerns (8 notifications).** For example, in its decisions for these notifications, the Board cited concerns that included the possibility that authorization would put pressure on domestic industries already experiencing low growth and depressed prices and would cause disagreements between the applicant and industry members regarding the domestic availability of an FTZ production component at competitive prices. In addition, for one notification, the Board's decision rationale stated that, although similar authority had been approved several years earlier, authority was not currently being granted because conditions had changed since the earlier authorization.

⁵Some of these cases involved more than one complex policy issue or concern.

Appendix IV: Time Frames for Foreign-Trade Zone Board's Processing of Selected Production Notifications and Applications

The Foreign-Trade Zones Board (the Board) regulations establish time frames for evaluating notifications and applications submitted by companies seeking permission to conduct production activities in a foreign-trade zone (FTZ). The regulations require that the Executive Secretary inform the applicant of the Board's authorization decision within 120 days of receiving the notification.¹ The regulations also state that the general time frame to process applications for production authority is 12 months.² We selected and analyzed a nongeneralizable sample of 59 notifications and 3 applications and the Board's case records to examine, among other things, whether the Board completed its processing of these notifications and applications within the time frames detailed in the Board's regulations.³ We found that the Board generally followed the 120-day time frame for the majority of the 59 notifications in our sample but, for all 3 applications that we reviewed, took longer than the general 12-month time frame set in the regulations for the applications. According to the regulations, additional time may be required to process applications that involve a complex or controversial issue.

¹15 C.F.R. § 400.37(c).

²The regulation also states that additional time is most likely to be required for applications requesting production authority when a complex or controversial issue is involved or when the applicant or other party has obtained a time extension for a particular procedural step. 15 C.F.R. § 400.31(a).

³For more information about our selection methodology, see app. I.

Notification Processing Time Frame

The Board generally completed its processing of the 59 notifications we reviewed within the time frames detailed in the regulations. Eight cases were completed in less than 120 days, with time frames ranging from 21 to 119 days. Twenty-five cases were completed in exactly 120 days. In 13 cases, the 120th day fell on a weekend or a holiday and the review was completed on the next business day. Another 13 cases were delayed and completed in 122 to 160 days. According to Board staff, processing 5 of these 13 notifications exceeded the 120-day time frame because of a government shutdown. In addition, according to the Board staff, processing 8 of the 13 notifications exceeded the 120-day time frame because of internal procedural delays, such as an industry specialist's needing more time to analyze a notification. Of those 8 notifications, 7 were submitted by companies in the textiles/footwear industry and the eighth was submitted by a company in the "other energy" industry category.

The time that the Board took to complete processing (i.e., finish its evaluations and inform applicants of its decisions) for the 59 notifications we reviewed varied by industry category (see table 4). For example, the Board informed all of the applicants that submitted notifications in the chemical, medical supply and device, and silicone/polysilicon industry categories of its decisions within 120 days or within 120 days plus the next business day. However, for 7 of 17 notifications from companies in the textiles/footwear industry category, the Board informed applicants of its decisions after the 120-day period.

Table 4: Number of Selected Notifications for Which the FTZ Board Informed Applicants of Its Authorization Decisions within or after Time Frame Required by Regulations, by Industry Category

n/a	n/a	Number of notifications	
		FTZ Board informed applicant of its decision within required 120-day time frame ^c	FTZ Board informed applicant of its decision after required 120-day time frame
Industry category ^a	Number of notifications reviewed by FTZ Board ^b		
Miscellaneous ^d	19	17	2
Textiles/footwear	17	10	7
Other energy ^e	11	8	3
Chemicals	4	4	0
Oil refineries/petrochemical facilities	3	2	1
Medical supplies and devices	3	3	0

**Appendix IV: Time Frames for Foreign-Trade
Zone Board's Processing of Selected
Production Notifications and Applications**

n/a	n/a	Number of notifications	
		FTZ Board informed applicant of its decision within required 120-day time frame ^c	FTZ Board informed applicant of its decision after required 120-day time frame
Industry category ^a	Number of notifications reviewed by FTZ Board ^b		
Silicones/polysilicon	2	2	0
Total	59	46	13

Source: GAO analysis of Foreign-Trade Zones (FTZ) Board data. | GAO-19-91

Note: We selected and analyzed a nongeneralizable sample of case records for 59 of the 293 production notifications companies submitted to the FTZ Board (the Board) from April 2012 through September 2017.

^aIndustry categories do not necessarily indicate the type of component named in the notification. For example, in one notification, a company in the medical supplies and devices industry category that had previously been granted authority to produce plastic adhesive bandages requested an expansion of this authority to include the production of fabric adhesive bandages using a foreign-source component. In this example, the industry category was medical supplies and devices, but the component was a textile.

^bThe number of notifications reviewed by the Board represents all notifications submitted for each industry category during the period April 2012 through September 2017 except for textiles/footwear where the Board rendered a decision. Twenty-three notifications were submitted for the textiles/footwear category during this period; however, we excluded 6 notifications because the companies decided to file applications, for which Board decisions were pending as of September 2017, and our review did not include active cases.

^cAccording to regulations, the Executive Secretary shall notify the applicant of the Board's authorization decision within 120 days of receipt of the notification. If the 120th day fell on a weekend, the applicant was notified on the next business day. In such instances, we considered the Board to have notified the applicant within the regulation's 120-day time frame.

^d"Miscellaneous" includes the carbon fiber, explosive components, and mass spectrometers and related analytical equipment industries, among others.

^e"Other energy" includes the solar and renewable energy industries, among others.

Application Processing Time Frame

The Board's processing of each of the three applications in our sample took longer than the general 12-month (365 days) time frame set in the regulations.⁴ Processing of the three applications took 558, 866, and 864 days, respectively, from the date when Board received the application to the date when the applicant was notified of the Board's decisions. For all three applications, the Board issued preliminary recommendations either to approve with restrictions or not to approve the requested production

⁴The regulation states that the general time frame to process applications for production authority is 12 months but that additional time is likely to be required for applications requesting production authority when a complex or controversial issue is involved or when the applicant or other party has obtained a time extension for a particular procedural step. 15 C.F.R. § 400.31(a).

authority.⁵ These preliminary decisions led to the submission of additional evidence, rebuttals to additional evidence, and opposition and support by various parties, which extended the time needed for final decisions by the Board members.⁶

The regulations state that evaluating an application may take longer when it involves a controversial or complex issue. The three applications we reviewed involved textile-related foreign components, which the case records and our interviews with Board officials showed can be controversial. For the three applications, completing certain steps delayed Board staff's processing of the applications, causing it to exceed the general time frame set in the regulations. For example, the regulations state that the examiner shall generally develop recommendations and submit a report within 150 days after the end of the public comment period. For the three applications, the examiner took 116, 235, and 431 days, respectively, to complete the preliminary recommendations. According to Board staff, processing two of the applications took longer than the general time frame because of a complex set of circumstances that called for careful and thorough review.

In addition, under the regulations, once the Executive Secretary has circulated the examiner's report, the Department of the Treasury (Treasury) Board member is generally expected to return a vote within 30 days.⁷ For the three applications we reviewed, Treasury took 26, 90, and 212 days, respectively, to return a vote. A Treasury official also stated that before rendering a decision about two applications requesting the same type of authorization, Treasury waited for Board staff to complete its review of both applications. The Treasury official stated that he held

⁵All three applications requested production authority for activities that involved foreign-source textile-related components. Two of the three applications requested production authority for carbon fiber, which can be used for space and defense applications, among other things, according to Board staff. The third application requested authority to produce textile fabric-based adhesive bandages using foreign-source fabrics.

⁶ According to regulations, a request can also be made for a hearing by a party who may be materially affected by the zone activity in question and who shows good cause. 15 C.F.R. § 400.52. Although not requested in these three applications, a hearing could also extend the time for final decisions by the Board members.

⁷Specific sections of the regulations "set forth the time schedules which will ordinarily apply in processing applications." 15 C.F.R. § 400.31. For example, one section states, in part, that the vote of the Treasury Board member shall be returned to the Executive Secretary of the Board within 30 days, unless a formal meeting is requested. 15 C.F.R. § 400.36(c).

**Appendix IV: Time Frames for Foreign-Trade
Zone Board's Processing of Selected
Production Notifications and Applications**

substantial discussions with Board staff about each of the three applications before reaching a decision.

Appendix V: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

November 8, 2018

Ms. Kimberly M. Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report titled *FOREIGN TRADE ZONES: Board Should Document Consideration of All Required Criteria When Evaluating Applications* (GAO-19-91, November 2018). The Department of Commerce concurs with the sole recommendation of the draft report that I, as Chairman of the Foreign-Trade Zones Board, "should ensure that the Board's Executive Secretary incorporates into its procedures a requirement that each examiner's report document Board staff's consideration of all required criteria listed in Section 400.27 of the regulations during evaluations of applications for production authority." I am pleased to report that the Executive Secretary has updated the applicable internal procedures memorandum regarding the processing of applications for production authority to include the requirement you have recommended.

If you have any questions, please contact MaryAnn Mausser, Commerce GAO Liaison, at (202) 482-8120.

Sincerely,

A handwritten signature in black ink that reads "Wilbur Ross".

Wilbur Ross

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the individual named above, Christine Broderick (Assistant Director), Barbara R. Shields (Analyst-in-Charge), Claudia Rodriguez, Pedro Almoguera, Martin de Alteriis, Grace Lui, Reid Lowe, and Christopher Koblitis made key contributions to this report. Other contributors include Lilia Chaidez, Philip Farah, Peter Kramer, and Julia Robertson.

Appendix VII: Accessible Data

Data Tables

Accessible Data for FTZ Board Authorization Decisions for Selected Production Notifications, by Industry Category, April 2012–September 2017

Category	Number of notifications approved	Number of notifications approved with restrictions	Number of notifications not approved	Total
Miscellaneous	14	2	3	19
Textiles/Footwear	5	11	1	17
Other Energy	9	1	1	11
Chemicals	3	0	1	4
Oil Refineries/Petrochemical Facilities	1	1	1	3
Medical Supplies and Devices	2	0	1	3
Silicones/Polysilicon	0	0	2	2

Accessible Data for Figure 3: FTZ Board Decisions for Notifications Submitted April 2012–September 2017

Notification category	Notification category total	Notification category percentage
Notifications approved	218	74
Notifications approved with restrictions	62	21
Notifications not approved	13	4

Accessible Data for Figure 5: FTZ Board Decisions for Selected Notifications Submitted April 2012–September 2017, by Industry Category

Category	Number of notifications approved	Number of notifications approved with restrictions	Number of notifications not approved	Total
Miscellaneous	14	2	3	19
Textiles/Footwear	5	11	1	17
Other Energy	9	1	1	11
Chemicals	3	0	1	4
Oil Refineries/Petrochemical Facilities	1	1	1	3
Medical Supplies and Devices	2	0	1	3
Silicones/Polysilicon	0	0	2	2

Agency Comment Letter

Accessible Text for Appendix V: Comments from the Department of Commerce

November 8, 2018

Ms. Kimberly M. Gianopoulos

Director, International Affairs and Trade

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

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If you have any questions, please contact MaryAnn Mausser, Commerce GAO Liaison, at (202) 482-8120.

Sincerely,

Wilbur Ross

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