FOREIGN-TRADE ZONES

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Opening the door

USITC investigation into FTZ conditions creates opportunity for change

By James Grogan and Alison Jacobs

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A USITC survey will provide new insight into FTZ operator and user challenges.

ON DEC. 14, 2021, the US Trade Representative (USTR) requested that the US International Trade Commission (USITC) evaluate the US Foreign-Trade Zone program's impact on employment and competitiveness of goods produced in foreign-trade zones (FTZs). The fact-finding investigation is conducted under section 332(g) of the Tariff Act of 1930, and is unique in that USITC will consider specific conditions for American FTZs compared with similar programs in Canada and Mexico. Although the USITC did investigate the likely impact of the United States-Mexico-Canada Agreement (USMCA) on the domestic economy, FTZs were not discussed in their report. Further, the USITC has not specifically investigated conditions for the zones since 1988, as noted the USITC publication, "The Implications of Foreign-Trade Zones for U.S. Industries and for Competitive Conditions Between U.S. and Foreign Firms (Supplement and Expansion)," published in 1998.

In response to a USTR request, the commission launched the "Foreign-Trade Zones (FTZs): Effects of FTZ Policies and Practices on US Firms Operating in US FTZs and Under Similar Programs in Canada and Mexico" investigation (No. 332-588). This study includes review of all economic activity in FTZs operating in the United States, Canada, and Mexico since 2016; review of current FTZ policies and practices in those countries; and analysis of the effects current FTZ policies in those three countries have on product cost-competitiveness for the businesses operating the zones.

The investigation included a public hearing on May 17. Witnesses, including the National Association of Foreign-Trade Zones (NAFTZ), presented the USITC team with information on the FTZ program's origins as well as current benefits and tariff challenges. Witnesses were also welcomed to submit post-hearing briefs and statements to address any matters raised during the hearing. Further, the USITC has begun issuing an industry survey for current FTZ operators and users to provide more insight into their current operations. Businesses that receive the questionnaire are required by law to respond, even if no longer actively producing in a domestic FTZ. This is a unique opportunity to contribute to the investigative process.

NAFTZ has long advocated for two changes to the North American Free Trade Agreement (NAFTA) and USMCA:

- Products manufactured in a US FTZ should qualify for preferential treatment under NAFTA/USMCA when withdrawn for domestic consumption (the "origin restriction rule"); and
- Elimination of the NAFTA/USMCA duty deferral restriction, which reduces the amount of duty a USMCA territory can refund to the "lesser of" the duty owed on the finished good in the country to which it is exported (e.g., Mexico) and the duty paid upon admission into the duty deferral program (e.g., a US FTZ).

With these goals in mind, NAFTZ advocated US Congress for this USITC investigation. The association is now an active participant, having quickly established a task force of association, legal, and sector experts to participate in the May 17 hearing; provided relevant data and examples of zone operations; and submitted written testimony and post-hearing briefs.

In addition to its involvement in the hearing, NAFTZ hosted sessions with the USITC team, to bolster their current knowledge of US zones, and facilitated in-person tours of several operational FTZs. These collaboration events provided an opportunity for association members to further the discussion on how current policies support local economic development and domestic manufacturing and distribution operations. The oral and written testimony, training events, and tours have helped further the NAFTZ's core argument: that the rule of origin and duty deferral restrictions in NAFTA, and carried into the USMCA, place US manufacturers at a significant disadvantage compared with their counterparts abroad.

The association has also provided support for FTZ operators and users by reviewing the lengthy industry survey drafted by the USITC team. Several webinars helping companies interpret and respond to the survey will be offered over the next months as well, to ensure no opportunity is missed to advance this important agenda.

As the report deadline of April 14, 2023, approaches, NAFTZ will continue to support the USITC team and the FTZ community. In addition to the initiatives detailed, the association is coordinating sector-specific discussions between the USITC team and zone operators in select industries, such as automotive, petroleum, and life science. Further, NAFTZ continues to advocate for and support zone operators and users by collecting success stories and case studies to share with the USITC team. These discussions and case studies offer a deeper insight into the current landscape, including the specific benefits and challenges facing FTZ operators and users.

The Foreign-Trade Zone program began as an economic development tool to boost

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Restrictions on FTZs threaten American competitiveness.

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investment, keep jobs in the United States, and encourage American international trade activity, including exports. Current USMCA restrictions on the zones threaten not only these goals, but American competitiveness on a larger scale. Today, FTZ manufacturers are not on a level playing field with their foreign competitors that receive a federal tariff advantage. NAFTZ strives to highlight this disadvantage and put FTZ manufacturers on the same footing as their foreign competition, but we need the support of FTZ operators and users to bolster our efforts. Interested parties should consider preparing a summary of their FTZ benefits and challenges, potential impact to their program use if these restrictions continue, and any instances where tariff treatment played a role in offshoring production (or preventing US expansion). We also encourage planning a discussion with NAFTZ or USITC to voice your opinion. ■

For more information on any of these initiatives, or if you want to share your FTZ or USMCA story (directly or anonymously), contact NAFTZ at 202-331-1950 or NAFTZ President Jeff Tafel at jtafel@naftz.org.

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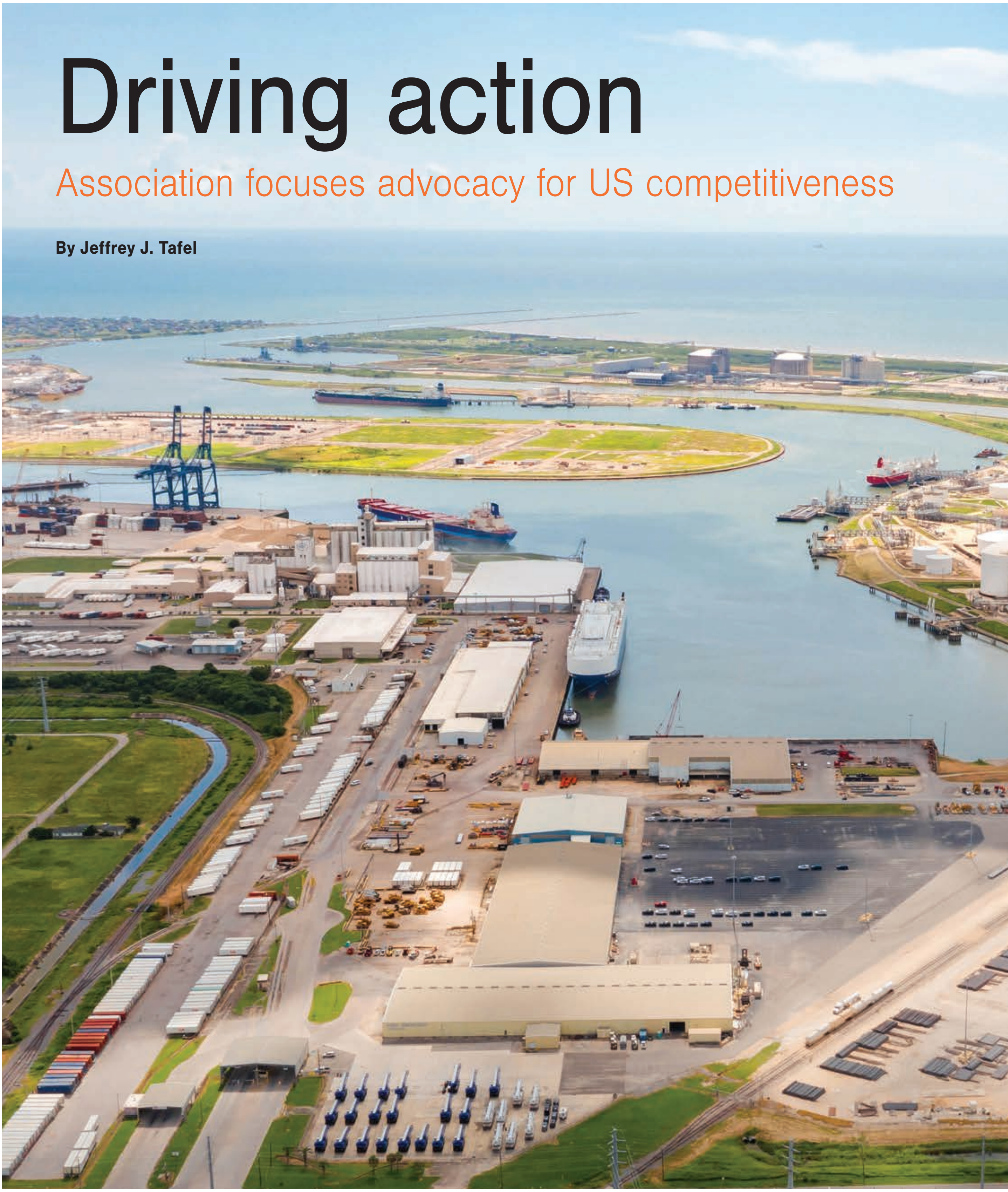
Driving action

Association focuses advocacy for US competitiveness

By Jeffrey J. Tafel



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AMERICA'S FOREIGN-TRADE ZONES program is open for business, whether the company is US-owned or a foreign-owned affiliate. By offering duty savings, supply chain efficiencies, and enhanced security, the program creates a profitable harbor in the United States for global companies active domestically and around the world.

For companies operating within an FTZ, US Customs and Border Protection (CBP) officers step in to collect duties only when imported goods leave the zone to enter US commerce, not when goods are admitted to the zone from abroad. Goods can be stored in a zone indefinitely and are typically exempt from state and local ad valorem inventory taxes.

For final products that enter the US market from an FTZ, duties can be reduced or eliminated by offsetting "inverted tariffs." If US tariffs on imported raw materials or components are higher than the tariff on the final product, the zone user can elect to pay the lower, final-product duty on the value of the imported goods when they enter US commerce as part of the final product.

Duties are eliminated entirely on goods that are re-exported, or on imported inputs that are then re-exported as part of a final product. Foreign-owned affiliates can utilize the zone environment in the United States as a "land bridge" to export to North and South America and on to Asia or back to Europe. Duties are also eliminated on imported goods that, through the production process, end up damaged or scrapped.

On the entry side, FTZ user companies can realize significant savings on the payment of the Merchandise Processing Fee (MPF) through the "weekly entry" process. Outside the FTZ environment, companies are liable to pay the MPF on every entry, up to a maximum of $485 per entry. Through weekly entry, which is only available to FTZ-user companies, those payments can be reduced

Cost benefits have encouraged major retailers to establish new FTZ distribution centers across the United States.

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More than 3,400 companies participate in the FTZ program.

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to one per week, resulting in significant savings for the user and a reduction in transactions for CBP. This has encouraged major retailers to establish state-of-the-art FTZ distribution centers in the United States.

Another real benefit of the FTZ program is enhanced security. By design, FTZs are secure areas with controlled access, background screening of key employees, and enhanced inventory and record-keeping controls. US Customs considers participation in the FTZ program to be a best practice for its Customs Trade Partnership Against Terrorism (C-TPAT).

The FTZ program is more user friendly than ever. Companies new to the FTZ environment can tap into a growing NAFTZ network of providers offering FTZ inventory-management software and third-party logistics, as well as experienced grantees who manage administration of the zones at the local level.

In its most recent report (2020), the Foreign-Trade Zones Board noted more than 3,400 companies participate in the FTZ program and more than 470,000 domestic workers are directly employed by companies operating in the zones. There are nearly 200 active FTZs, with a total of 347 active production operations. The value of shipments into zones totaled nearly $625 billion, with approximately 59 percent of shipments received at FTZs involving domestic status merchandise. The levels of domestic status merchandise used by FTZ operations — 74 percent for production operations and 42 percent for warehouse/distribution operations — indicates that FTZ activity tends to involve domestic operations

The bigger picture

RANKED THE 11TH largest port in the nation based on foreign waterborne tonnage and fifth in Texas by the same measure, Port Freeport is making waves on the Gulf Coast. Port Freeport is a deep-water port strategically situated in the industrial hub of Brazoria County, Texas, with an abundance of land available for development, accessibility through road and railway, and the shortest and soon to be deepest channel on the Texas Coast with more than 500 acres mitigated and shovel ready.

Known for reliable and flexible customer service, Port Freeport has experienced exponential growth and is undertaking strategic initiatives to provide customers with competitive expansion options while creating jobs as a leading economic catalyst for the region and state. One of these initiatives is the Freeport Harbor Channel Improvement Project, comprised of four reaches that will deepen and partially widen the channel from its current 46 feet to depths ranging from 51 feet to 56 feet MLLW. The first reach of the channel was completed in September 2021, and the project in its entirety is expected to be completed in 2025 as Port Freeport celebrates its 100th anniversary.

Port Freeport serves its customers and stakeholders through state-of-the-art infrastructure, OEM processing, multimodal terminal services, and Foreign-Trade Zone No. 149. Velasco Container Terminal, completed in 2014, included 800 feet of berth, a container storage yard and two post-Panamax gantry cranes. The expansion phase of Velasco Terminal, currently under way, features an additional 927 feet of berth and an 85-foot roll-on/roll-off platform destined for completion in early 2023. The terminal will accommodate additional post-Panamax gantry cranes and stabilized backlands for cargo storage. In 2015, a vehicle storage and processing terminal was created with more than 6,000 vehicle parking spaces. An expansion area of 4,000 spaces was added in 2020. The initial phase of rail development, completed in 2019, serves multiple commodities such as bulk aggregate, steel pipe, and heavy equipment, and will double its rail capacity by the end of 2023.

More than $31 billion dollars of new projects have been, or are being, constructed in Brazoria County since 2015, with $18.5 billion of those projects along the Freeport Harbor Channel. ■

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that include significant domestic inputs alongside foreign inputs.

Warehouse and distribution operations received more than $283 billion in merchandise while production operations received $341 billion (55 percent of zone activity). The largest industries accounting for zone production activity include the pharmaceutical, oil refining, automotive, electronics, and machinery/equipment sectors.

FTZs are one of the most effective tools available today to increase the global competitiveness of US-based operations, promote economic development, and facilitate international trade.

And, as the National Association of Foreign-Trade Zones (NAFTZ) nears its 50th anniversary in 2023, the Washington, DC-based association continues to serve as the collective voice of foreign-trade zone professionals throughout the United States.

The only trade association focused specifically on the US Foreign-Trade Zone program, we focus on high-quality education and demonstration of its value in our changing economic environment. The association works with all federal departments and agencies that play a role in American FTZs and advocates with these entities, as well as elected officials, to improve and protect zone benefits.

We support our members by meeting the unique needs of grantees, operators, zone users, and a wide variety of service providers through events, professional development, member activities, and more.

FTZ-focused events include the "Fundamentals of FTZ" course, Legislative Summit, Spring Seminar Conference, Annual Conference and Exposition, and webinars on topics such as Customs and Border Protection (CBP) compliance and Partner Government Agencies (PGA) data.

Professional development opportunities include advanced FTZ "202 courses" for grantees and operators/users, Accredited Zone Specialist (AZS) designation, and mentorship programs.

Member activities consist of a formal mentor program, grantee/committee networking groups, operator user committee networking groups, petroleum committee networking groups, PGA working groups, and a career center.

The primary benefit of membership is the opportunity to network with experienced professionals in the FTZ world, whether that experience is in using or operating a zone, as a grantee, a consultant, or FTZ product or service provider. NAFTZ brings the professional community together for everyone's benefit. ■

For information on joining NAFTZ, contact Senior Manager of Communications and Member Services Kristine Rosa at krosa@naftz.org, call 202-331-1950, or visit www.naftz.org.

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Trade negotiations may create new opportunity for FTZ use.

Saving grace

Mitigating trade-remedy tariffs

By Melissa Irmen

THE RELATIVELY RECENT INCREASE of trade-remedy tariff use has left many US importers wondering how to alleviate the impact of these increased costs, and whether use of foreign-trade zones (FTZs) to avoid them altogether might be the answer.

Trade remedy tariffs impact imported solar panels and washing machines, (Section 201), imported steel and aluminum (Section 232), and goods imported from China (Section 301). Each tariff program is governed by different sections of the law, managed by different offices within the administration, and enforced using various protocols by Customs and Border Protection (CBP). Therefore, each must be looked at individually to determine opportunities the Foreign-Trade Zone program might offer to any US importer. However, we can draw some generalities across the programs for consideration when making supply chain decisions.

The basic premise of an FTZ operation – that import duties are not paid unless and until the goods enter US commerce – has remained the same since the creation of the program by Congress in 1934 as an economic tool during the Great Depression. But the ways in which companies benefit from this deferred and sometimes eliminated duty has evolved. For domestic importers dealing in goods subject to the trade remedy duties, the ability to wait to pay the duty until the goods are withdrawn from the FTZ for sale to a US buyer, rather than at the time of bringing them to a US facility, is enough benefit to justify activating that facility as a foreign-trade zone. Exporting those goods from a zone, for sale to a non-US buyer, avoids paying the duties entirely. This may also impact the decision to locate fulfillment in the US or another country. In the case of Section 232 duties, which are ineligible for refund using the drawback program, FTZs provide the only duty-free option when goods are ultimately exported from the United States.

When negotiations with the European Union led to replacing of the Section 232 tariffs by tariff-rate quotas (TRQs) on steel and aluminum from the EU, effective Jan. 1, 2022, it was uncertain how this would impact US FTZs. A TRQ is a two-tiered tariff system that combines import quotas and tariffs to regulate import products, enabling a lower tariff rate on imports of a given product within a specified quantity and requiring a higher tariff rate on imports exceeding that quantity. After much discussion with the US Commerce Department and CBP, and advocacy of the National Association of Foreign-Trade Zones (NAFTZ), it was confirmed that if products subject to the TRQs are arriving to the United States at a time when the quota is full, those goods can be admitted to the FTZ, stored until the quota amounts reset, and then removed from the zone and imported into the US at the lower tariff rate, currently 0 percent.

The cash-flow benefit of FTZs is in high demand as the US continues to experience supply chain disruptions. Companies that need to maintain more safety stock in their supply chain management are storing it in zones to defer paying duties – retaining cash for operational priorities – until it is needed to fulfill orders or manufacturing needs.

Some circumstances exist in which domestic companies may not be required to pay the trade-remedy tariffs if they have an FTZ as part of their duty mitigation strategy. Companies bringing goods to the US to be warehoused and then shipped to foreign locations, or for use in production of finished goods destined for foreign markets, can export those goods from the zone and avoid US tariffs on the imported goods or components. This applies even if the goods are subject to the 201, 232, or 301 tariffs.

Some US companies utilize other FTZ benefits to mitigate trade remedy tariffs. For example, duty is not paid on goods that are admitted into a foreign-trade zone and later scrapped inside the zone. For operations that result in scrap as a normal course of manufacturing or processing imported materials – such as a steel distributor that imports bars cut to customer specifications – no duty is ever paid on the leftover material that has been destroyed beyond commercial value. If the processed scrap is sold to a recycler, duty is paid only on the lower value of the goods, not the original admitted value.

Ultimately, US FTZs cannot provide a means of avoiding trade remedy tariffs for goods brought into US commerce. But the FTZ program can help retain American jobs in situations where those tariffs have decreased the desirability of a US processing location for goods that may have alternative destinations or uses. Any company importing goods into the US should look at the benefits of the FTZ program to evaluate the applicability to the current circumstances, even if there previously was low return on investment. While the FTZ program certainly is not new, changing business scenarios support including an FTZ in your duty mitigation and economic development toolkit. ■

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