FOREIGN-TRADE ZONES

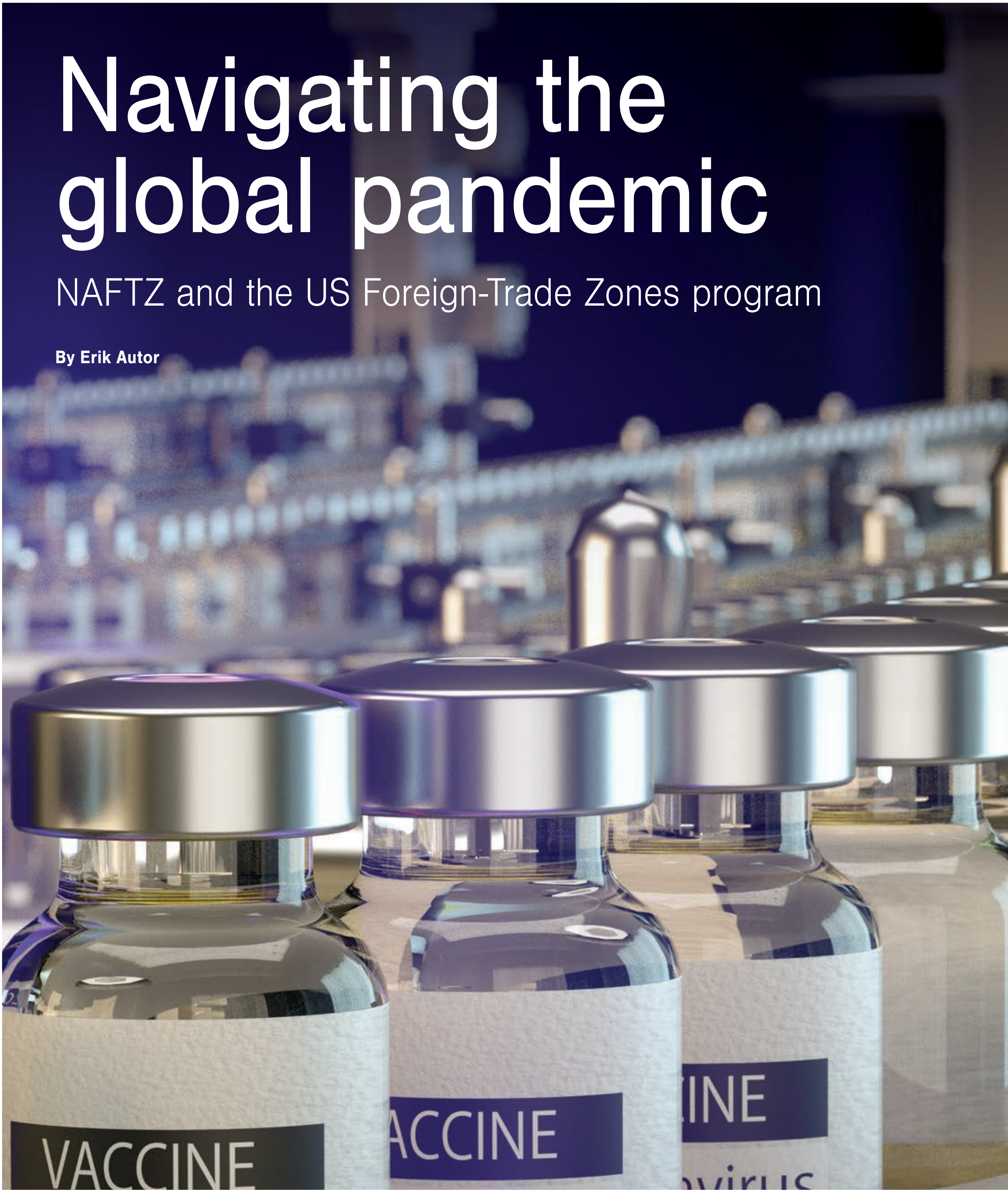
The Port of Brownsville

FOREIGN-TRADE ZONES

Navigating the global pandemic

NAFTZ and the US Foreign-Trade Zones program

By Erik Autor



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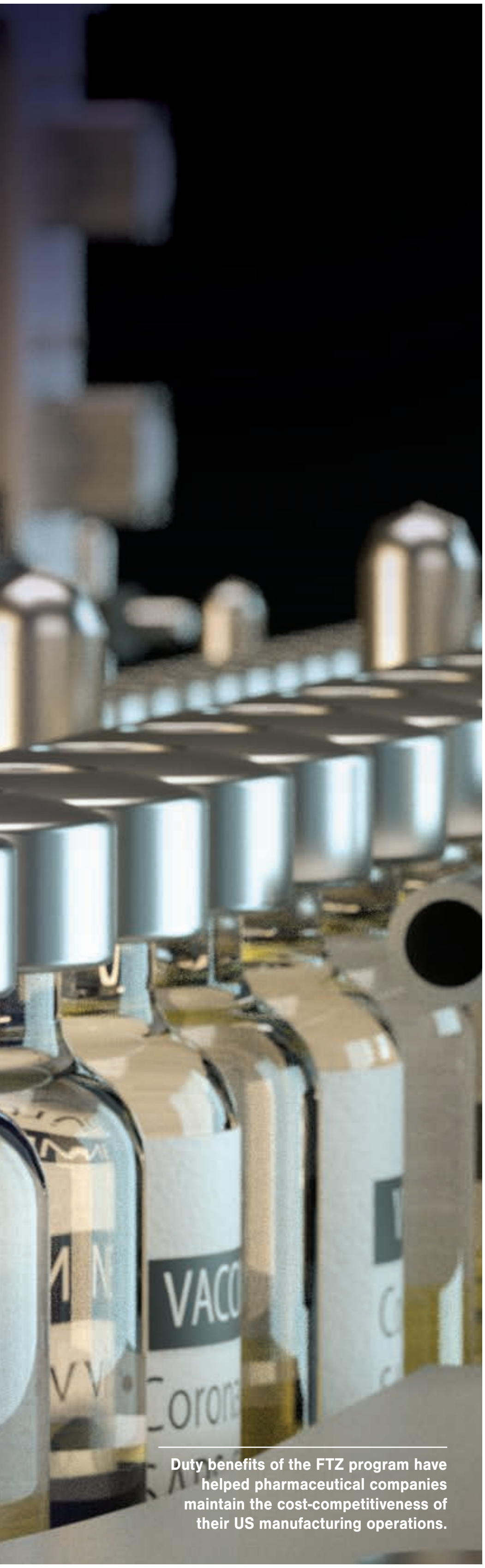

Duty benefits of the FTZ program have helped pharmaceutical companies maintain the cost-competitiveness of their US manufacturing operations.

THE GLOBAL COVID-19 pandemic created unprecedented challenges impacting the entire business community, including the National Association of Foreign-Trade Zones (NAFTZ) and its member company stakeholders in the US Foreign-Trade Zones (FTZ) program. As infection rates increased dramatically in March 2020 and the country largely shut down, NAFTZ was fortunate in being able to transition quickly to a virtual work environment. Like many associations, we at NAFTZ faced the difficult task of determining how best to support our members and effectively address the obstacles and challenges facing the industry.

As the pandemic spread in the spring of 2020, severe supply-chain bottlenecks quickly became a serious problem as consumer demand shrank, and domestic transportation networks slowed to a crawl. With companies facing critical supply chain disruptions and a growing stockpile of merchandise ordered and shipped before the onset of the pandemic that could not be easily moved or sold, we realized zones could help alleviate this situation by quickly compiling a nationwide list of approved and activated FTZ sites providing duty-free, temporary storage for surplus merchandise. In April 2020, NAFTZ launched an initiative to connect shippers needing storage space to FTZs with available warehouse or secure, open-yard capacity. This initiative is now a permanent NAFTZ member service.

Our FTZ storage initiative has continued to demonstrate its value in other emerging situations, such as the escalated effort over the past year to prevent goods produced with forced labor from entering the US market. US Customs and Border Protection (CBP) issues Withhold Release Orders (WROs) on imported merchandise suspected of being produced with forced labor. These goods may only be released into US commerce if the importer can prove to CBP that the goods were not produced with forced labor. After considerable effort, we succeeded in persuading CBP headquarters to allow the temporary, secure storage of WRO merchandise in an FTZ pending a final forced-labor determination, thus providing importers additional cost-effective storage options. WRO merchandise stored in an FTZ is subject to stringent rules on segregation, identification, tracking, export, and destruction.

During the long lockdown, NAFTZ launched another member service with the addition of a jobs site to provide a needed and easily accessible link between prospective employers in the FTZ sector and jobseekers. This service has become particularly valuable as we emerge from the pandemic, with many companies finding it difficult to fill open positions and connect with a qualified candidate pool.

The FTZ program demonstrated additional value during the pandemic in helping facilitate distribution of the COVID-19 vaccine. Duty benefits of the FTZ program have generally helped pharmaceutical companies, such as Pfizer, maintain the cost-competitiveness of their US manufacturing operations, and this industry has recently experienced significant growth in FTZ activity. As Pfizer was developing its COVID-19 vaccine in 2020, the special rules of the FTZ program allowed the company to expedite distribution of the vaccine (manufactured by its partner, BioNTech, in Germany) by holding inventory in its Kalamazoo, Michigan, zone and shipping immediately upon receiving emergency-use authorization from the US Food and Drug Administration. Using the FTZ in this manner significantly reduced transit time, expense, and uncertainty in getting needed vaccine quickly to health-care facilities.

Meanwhile, medical-supply companies have relied on their FTZ operations throughout the course of the pandemic to store and efficiently distribute huge shipments of mostly Asia-manufactured personal protection equipment (PPE). In addition, other pharmaceutical companies are using their FTZ operations to manufacture medications for treatment of the coronavirus disease 2019 (COVID-19) and other high-risk pathogens.

During the long lockdown, we also confronted a substantial challenge in a virtual environment of managing an exceptional number of legislative and regulatory issues with Congress and the administration that directly and uniquely impacted FTZs. One of these issues is how Sec. 301/232/201 and other trade-action tariffs should be applied to FTZ merchandise when initiated, increased, decreased, or eliminated, to avoid discriminatory treatment and inconsistencies with the program's rules and objectives. We also made progress on long-overdue updates to the Foreign-Trade Zones Act, CBP, and FTZ Board regulations governing the FTZ program and the CBP in-bond process and worked to eliminate discriminatory and unnecessary North American Free Trade Agreement restrictions on FTZs carried over into the United States-Mexico-Canada Agreement and implementing legislation. We leveraged the use of FTZs and the program's rules to help prevent trade in illicit goods, including those made with forced labor, and worked with CBP to address outstanding issues with the e214 process for admitting goods into an

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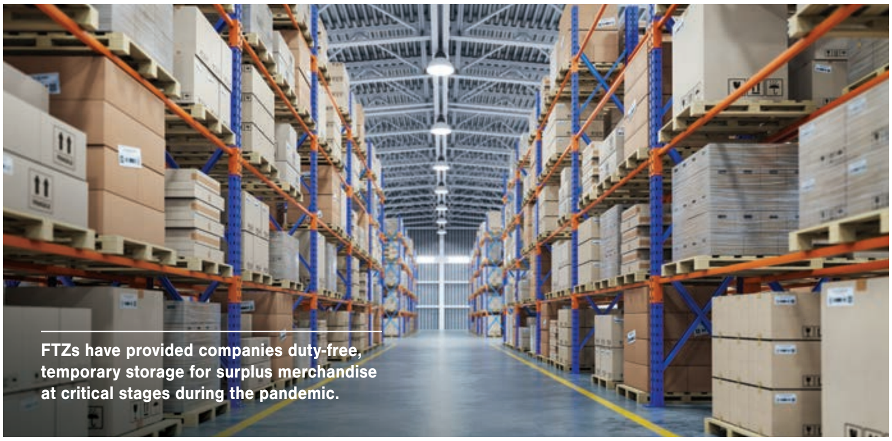

FTZs have provided companies duty-free, temporary storage for surplus merchandise at critical stages during the pandemic.

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FTZ. Additionally, we continued a coalition-led effort to reverse the adverse impact on FTZ distributors from current Sec. 321 *de minimis* entry rules. Notwithstanding this challenging environment, NAFTZ was able to work closely and effectively with members of Congress and agencies to advance our policy goals.

As another consequence of the pandemic, we recognized that many NAFTZ members were facing considerable financial challenges that, as with many other trade associations, portended a significant adverse impact on membership numbers and event attendance, two key sources of revenue. The fact that NAFTZ experienced a relatively small drop in member numbers while maintaining our dues structure indicated the continued value for stakeholders from the FTZ program and NAFTZ membership. In particular, NAFTZ continued to serve as an important connection between our members and the agencies with regulatory responsibility over the FTZ program, particularly CBP and the FTZ Board.

Finally, as with many associations, the pandemic forced NAFTZ to undertake a rapid pivot from live conferences to a virtual format, beginning with our Spring Seminar in May 2020. While conducting virtual conferences presented many unprecedented and significant challenges, we were able to continue offering our full educational content, including presentations by key government officials and industry experts. NAFTZ was among the first to adopt new and innovative ideas on format, with the program broken into daily, two-hour segments interspersed with short contests, games, and a concluding entertainment event to ensure audience attention, participation, and engagement. We also reduced registration fees and relied on sponsorships to supplement event revenue. As a result, our virtual conferences were well attended and received high marks for content — yet another indication of the value provided by the association and the FTZ program to the stakeholder community during a very trying period.

At this point, we, like everyone, look forward to returning to a semblance of normalcy. We have learned many important lessons over the past 15 months, including the value of the NAFTZ and FTZ program to our members and to the entire country and how to deliver and enhance that value in a time of crisis. ■

Erik Autor is president of the National Association of Foreign-Trade Zones in Washington, DC.

Playing a pivotal role in North American trade

THE PORT OF Brownsville's proximity to Mexico uniquely positions the port to serve as the key transshipment gateway delivering goods and materials to nearby multinational manufacturing centers on both sides of the border. This has led the port to rank among the leading US steel ports, moving more steel into Mexico than any domestic competitor. In 2020, the port moved more than 3 million tons of steel across the southern border.

In addition to growing exports of steel, recently implemented Mexican oil reforms are contributing to the uptick in cargo crossing the border. Ultra-low sulfur diesel, premium gasoline, and specialty lubricants make the trip southbound with increasing volumes and frequencies. Fuel imports, like No. 6 fuel, travel northbound by unimpeded rail crossings to the port as well.

These increases firmly entrench the port's foreign-trade zone as a consistent leader among its peers. In the latest report to Congress, FTZ No. 62 ranked No. 2 for the value of exported goods out of 193 FTZs in the United States, reaching $4.3 billion for the reporting period. This is the eighth year in a row the Port of Brownsville's FTZ ranks in the top three in the nation for the value of exports.

For the fiscal period ending Dec. 31, 2020, the port set new high water marks of success with 11.6 million short tons of total cargo and more than $37 million in total operating revenue.

According to a Martin Associates report, cargo activity at the port's marine terminals and rig repair operations support $3 billion in total Texas economic results, creating more than 51,000 jobs. Of those, 8,500 local and regional direct, indirect, and induced jobs are generated at the port by marine cargo vessel activity and ship and rig repair. Those jobs infuse more than $2.6 billion into the regional economy annually. These impacts distinguish the port as the region's leading economic driver. ■

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FOREIGN-TRADE ZONES

The best US trade program

Witnessing five decades of extraordinary FTZ growth

By Marshall Miller

FOREIGN-TRADE ZONES (FTZS) are the only US trade program that requires investment in US land, buildings, equipment, highly skilled/high value-added employment, and materials to achieve significant US customs duty and associated financial savings. FTZ production provides "import substitution" of finished products made in US FTZs for domestic imports. In 1934, Congress structured a unique US trade law that encourages increased US employment and business activity by equalizing the customs duty rate applied to FTZ-finished products with imported products made in foreign countries. Unlike the North American Free Trade Agreement (NAFTA) or the US-Mexico-Canada Agreement, the 14 other US free trade agreements (FTAs) with 21 countries, and preferential trade programs like the Generalized System of Preferences, African Growth and Opportunity Act, and Caribbean Basin Initiative, US customs duty savings with the FTZ program can only be achieved by US investment and US employment — and not investment and employment in foreign countries. The FTZ program uniquely provides a legal structure to reduce US

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Motor vehicle manufacturing is one of the many industries benefiting from FTZs over time.

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import expenses for new, established, or reshored US production. It also provides a unique public/private partnership requiring direct engagement with the FTZ grantee (principally US port authorities, municipalities, state development agencies, and not-for-profit organizations) in this strong and very successful US economic development tool. Unlike many other government initiatives, the FTZ program does not involve any government subsidies.

Since I began my involvement in the FTZ program 53 years ago, I have witnessed startling growth in FTZ use and production encompassing a wide range of merchandise previously made in foreign countries. As many US companies examine reshoring and foreign-based firms decide to produce merchandise in the United States, the FTZ program provides a time-honored legal structure to reduce the cost of US reshoring and US production.

In 1973, six people met to create the National Association of Foreign Trade Zones (NAFTZ) with the goals of promoting the US Foreign-Trade Zone program globally, simplifying FTZ management, and educating FTZ grantees and operators. While Congress had passed the US Foreign Trade Zone statute in 1934, there was never any US government funding and staffing to promote the zone program and facilitate its growth. The NAFTZ was intent on helping make the zone program the best US trade program that uniquely requires US investment and employment to achieve financial savings. Every major element of FTZ management was designed and implemented in a cooperative effort between the NAFTZ, the Foreign-Trade Zones Board (FTZ Board), and US Customs and Border Protection (CBP) and, its predecessor, the US Customs Service (Customs).

In 1970, the FTZ Board had approved 13 zone projects and seven subzones located in six states and Puerto Rico, with 1,246 firms employing 1,461 US workers. At that time, 11 percent of the merchandise received in zones was domestic, with total receipts of $105 million and $15.6 million in exports. In the 1970s, the NAFTZ succeeded in a five-year effort to update the Customs regulations to limit the Customs value of FTZ-manufactured products to the value of foreign material and not include the value of domestic labor and overhead (19 C.F.R. § 146.48(e), a departure from Customs' prior practice. To streamline management, the NAFTZ worked with Customs to create Customs Forms 214, 215, and 216, replacing five Customs forms. *Armco Steel Corporation v. Stans*, 303 F. Supp. 262 (S.D.N.Y. 1969); aff'd 431 F.2d 779 (2d Cir. 1970)) was the first major FTZ court case that confirmed the FTZ Board could authorize subzones and allow imported steel to be admitted into an FTZ to manufacture lighter aboard ship (LASH) barges duty-free. The first NAFTZ promotional focus was on zone status for major portions of US deep-water ports, large scale industrial parks, and the first subzones in Hawaii for petroleum refining and in Puerto Rico for chemical production. By the end of the decade, there were 48 new zone projects and six new subzones.

By 1980, the NAFTZ had achieved remarkable results in only seven years — 58 zone projects in 30 states and Puerto Rico and 14 subzones with 1,370 companies employing 11,700 US workers. At that time, 34 percent of the merchandise received in zones was domestic merchandise, with total receipts of $2.6 billion and $700 million in exports. In 10 years, this represented a 346 percent increase in zone projects, 100 percent increase in subzones, 701 percent increase in employment, and 5,000 percent increase in dollar volume — all a direct result of NAFTZ efforts.

The 1980s were a period of substantial changes to FTZ management, championed by the NAFTZ. The American economy needed a means to encourage foreign companies to open manufacturing and warehouse facilities in the United States, with investments in new plants, equipment, and employees. A major US impediment to new, necessary investment was the additional expense of higher Customs duties on parts as compared to directly competitive imported finished products. When a product produced overseas could be imported duty-free or at a low duty rate, why relocate production to the United States, where the US-made product and its parts were dutiable at a higher rate? The US FTZ program uniquely provided the opportunity to US and overseas motor vehicle and parts companies, pharmaceutical firms, electronic equipment companies, shipyards, petroleum refineries, and others to establish new or maintain and grow existing facilities and employment. The result was a significant expansion of FTZ production in the 1980s, including but not limited to the manufacture of the first IBM PCs/printers/ATMs in three FTZ production facilities in North Carolina; the manufacture of Apple computers in two manufacturing facilities in California and Colorado; the establishment of the NASSCO shipyard in San Diego and subsequently 38 other shipyards in the Gulf Coast and East Coast; the Eli Lilly pharmaceutical plant in Indiana; a wide range of US and foreign motor vehicle manufacturing plants, including General Motors/Ford/Chrysler, Kawasaki (motorcycles, police bikes, and jet skis), Volkswagen, Nissan, and Toyota in many states; the largest audio and videotape manufacturing plant in the world for Sony in Dothan, Alabama; AT&T telephones in Shreveport, Louisiana; Caterpillar construction machinery in Illinois; Bayer agricultural chemicals in Kansas City, Missouri, and subsequently over 20 chemical plants; Berg steel pipe production in Florida; General Electric–manufactured refrigerators, stoves, dishwashers, washing machines/dryers, wind turbines, and jet engines in Kentucky, Ohio, and Florida; petroleum refining for CITGO, Chevron, Valero, Marathon, Flint Hills, and others in Texas, Louisiana, and nationally; Winnebago motor homes in Iowa; Kawasaki industrial engines in Maryville, Missouri; IFF flavors and fragrances in New Jersey; Hitachi auto parts in Kentucky; and many others.

At that same time, the NAFTZ worked with industry to support a wide range of Customs

FOREIGN-TRADE ZONES

The increase in US FTZ activity from 1970 to today

	1970	2020
Zone projects:	13	297
Subzones:	7	1,035
Companies:	1,246	3,400
US worker employment:	1,461	478,500
Domestic receipts:	11 percent	59 percent
Total receipts:	$105.6 million	$624.9 billion
Exports:	$15.6 million	$94.2 billion

Source: National Association of Foreign-Trade Zones

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headquarters rulings issued in the 1980s that further facilitated the ability to manufacture product in US FTZs and support the new investment opportunities in the United States. To expedite activity, the NAFTZ worked with Customs to structure new FTZ Direct Delivery and Weekly Entry procedures. In conjunction with Customs headquarters, the NAFTZ helped create the first FTZ Manual in 1980, the first major amendment to the Customs FTZ Regulations in 1986, the first major update to the FTZ Board regulations, and multiple amendments to the Foreign-Trade Zones Act (e.g., recognizing "producibility" for petroleum-refining production and exempting FTZ merchandise from *ad valorem* personal property tax). One of the most significant NAFTZ-sponsored changes to the FTZ program was the Customs Audit-Inspection program that eliminated full-time, on-site Customs inspectors who were compensated by FTZ operators at each FTZ. As a result, a wide range of major industries increased FTZ utilization.

By 1990, there were 169 zone projects and 186 subzones located in 48 states and Puerto Rico, with 2,210 companies employing 216,350 US workers. At that time, 78 percent of the merchandise received in zones was domestic merchandise with total receipts of $90.5 billion and $11.6 billion in exports. Additional major NAFTZ initiatives in the 1990s included the FDA Weekly Entry Filing program, the Temporary Removal procedure to facilitate repair and testing, and production machinery legislation to allow the deferral and potential reduction of duty payments. Uniquely, the NAFTZ structured a key provision in NAFTA to define the "NAFTA territory" to include US FTZs, even though FTZs are uniquely outside the US Customs territory. Similar terminology was used in all US FTAs to confirm that FTA-qualified products could be produced in US FTZs and exported to FTA countries duty-free. The 1990s saw major new FTZ activities including Hewlett-Packard computers/printers; Nokia cell phones in Fort Worth, Texas; Deere-Hitachi in North Carolina; Kodak single use cameras, photocopiers, and many other products made in Rochester, New York; Imation data storage in multiple states; Stihl power tools in Virginia; BMW vehicles produced in South Carolina; over 50 pharmaceutical production plants for Bristol Myers Squibb, Merck, Abbott, and others; Mercedes vehicles produced in Alabama; many more similar motor vehicle and parts firms; and a significant increase in petroleum production.

By 2000, FTZ activity had grown to 244 zone projects and 458 subzones in all 50 states and Puerto Rico, with 2,420 companies employing 340,000 US workers. At that time, 64 percent of the merchandise received into the zones was domestic merchandise with total receipts of $238 billion and $15 billion in exports. This decade was marked by continued significant expansion of the FTZ program. An amendment to the FTZ Act permitted weekly Customs entry for warehousing and manufacturing. Following the 2008 global financial crisis, President Obama directed federal agencies to respond by facilitating and simplifying the process to secure FTZ status. As a result, the FTZ Board radically reduced the time to secure FTZ status from one year to 30 days or less and FTZ Board production manufacturing approval secured in four months with interim authority in 30 days. These FTZ Board actions alone significantly increased FTZ activity. Major industrial involvement included Intel integrated circuits in Arizona; AstraZeneca pharmaceuticals in Delaware; Vestas wind turbines in Colorado; Canon printer cartridges in Virginia; Makita power tools in Georgia; production of all large projection Sony televisions in New Stanton, Pennsylvania; Michelin tires in South Carolina; Black+Decker products in Fort Mill, South Carolina; Microchip Technology semiconductors in Arizona; Lam Resources wafer fabrication equipment in California; Rolls Royce engines in Indianapolis, Indiana, and Mt. Vernon, Ohio; Airbus aircraft in Alabama; Space Systems/Loral satellites in California; and many others.

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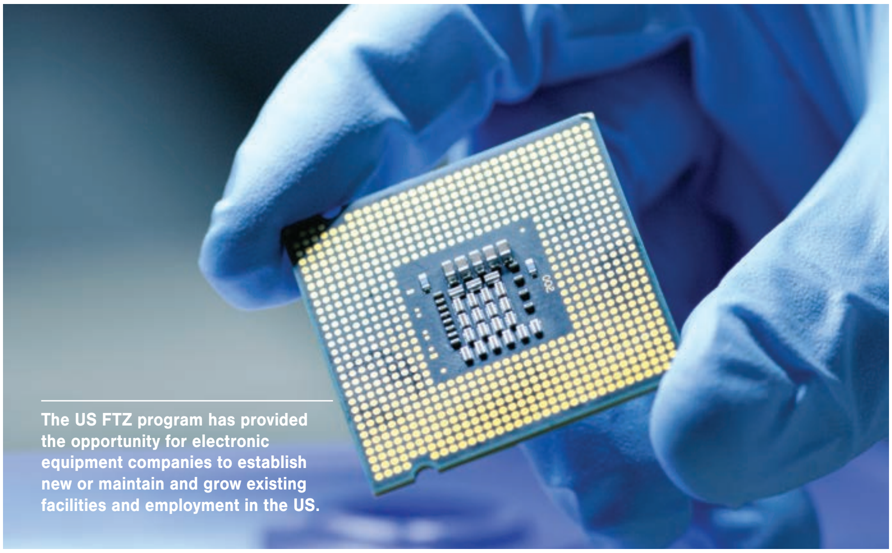

The US FTZ program has provided the opportunity for electronic equipment companies to establish new or maintain and grow existing facilities and employment in the US.

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Today, there are 297 zone projects and 1,035 subzones, with 3,400 companies employing 478,500 US workers. Fifty-nine percent of the merchandise received in the zones is domestic material with total receipts of $624.9 billion and $94.2 billion in exports. The increase in US FTZ activity is extraordinary from 1970 to today: zone projects from 13 to 297, subzones from seven to 1,035, companies from 1,246 to 3,400, US worker employment from 1,461 to 478,500, domestic receipts from 11 percent to 59 percent, total receipts from $105 million to $624.9 billion, and exports from $15.6 million to $94.2 billion.

The NAFTZ has a long and successful record of collaboration with the FTZ Board and CBP/Customs in structuring the only US trade program that supports reshoring by US companies and establishing new overseas firms' US production facilities through the reduction of US import expense. FTZ production results in American-made products using highly skilled/high value-added US employment in place of imported finished products and foreign labor. Today, 371,500 persons out of the total 478,500 are employed in US production operations. The unique public/private partnership with FTZ companies (FTZ operators and users) and the states, counties, cities, seaports, airports, and private not-for-profit corporations (FTZ grantees) — two of the main FTZ stakeholder groups that comprise the NAFTZ membership — has been the driving force behind the growth and success of the FTZ program. ■

Marshall Miller is general counsel to the National Association of Foreign-Trade Zones and president of Miller & Co. PC in Kansas City, Missouri.

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The White House Report

Supply chain report signals continued FTZ growth

By James Grogan and Christopher Cole

A NOTABLE LESSON from the COVID-19 pandemic is the exposure of the underlying fragility of global supply chains. Protecting and strengthening those supply chains has been a priority for the Biden administration, which, upon taking office, quickly ordered a 100-day review of critical US supply chains. On June 8, the White House issued its report pursuant to that review: "The White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth" (the White House Report). Supply chains in the following four key sectors were identified as being of particular national importance: semiconductor manufacturing and advanced packaging, large capacity batteries, critical minerals and materials, and pharmaceuticals and active pharmaceutical ingredients (APIs).

Companies in these sectors already use US Foreign-Trade Zones (FTZs) to some extent. The enhanced focus on investment in these sectors to encourage reshoring production portends a potentially significant increase in FTZ usage.

Recommendations detailed in the White House Report follow the 100-day review of supply chain issues conducted pursuant to President Biden's February 24 Executive Order 14017 that directed a "whole-of-government" approach to strengthening the resilience of critical US supply chains.

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The Biden administration's report on critical US supply chains recommends reshoring initiatives, which should lead to expanded FTZ growth.

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Large capacity batteries are one of the four critical sectors of the US economy identified by the White House report.

The White House Report lists a wide range of recommendations, including establishing a White House Supply Chain Disruptions Task Force as well as a public-private consortium for advanced manufacturing and onshoring of domestic essential medicines production. In addition, the report calls for the establishment of a US Trade Representative–led "Trade Strike Force" to combat foreign trade practices resulting in supply chain disruptions to the US economy.

The White House Report also included detailed reviews of four critical sectors of the US economy. Each review was led by a different Cabinet-level department.

Semiconductor manufacturing and advanced packaging (Department of Commerce)

The US semiconductor industry accounts for nearly half of global semiconductor revenue, yet the share of semiconductor manufacturing capacity on US soil has fallen from 37 percent 20 years ago and now stands at about 12 percent of global production. The Department of Commerce's analysis of the global semiconductor supply chain notes Taiwan — the global leader in production of the most advanced semiconductor chips — provides subsidies for fabrication facilities including 50 percent for land costs, 45 percent for construction and facilities, and 25 percent for semiconductor production, in addition to investments in research and development (R&D) and other incentives.

The review recommends that Congress support at least $50 billion in investments to advance domestic manufacturing of leading-edge semiconductors; expand capacity in mature node and memory production to support critical manufacturing, industrial, and defense applications; and promote R&D to ensure the next generation of semiconductors is developed and produced in the United States.

Large capacity batteries (Department of Energy)

Advanced, high-capacity batteries play an integral role in 21st-century technologies critical to the clean energy transition and national security capabilities around the world — from electric vehicles to stationary energy storage and defense applications. America relies heavily on importing inputs for fabricating advanced battery packs. The global lithium battery market is expected to grow by a factor of five to 10 by 2030.

Two vital components, lithium and cobalt, have over 60 percent of their production in one country — Australia for lithium and the Democratic Republic of the Congo for cobalt. Additionally, over 60 percent of the refining of these minerals occurs in China. Accordingly, the report identifies the stages of purification and refinement as the critical gap and vulnerability in this supply chain.

Critical minerals and materials (Department of Defense)

A "critical mineral" is a mineral identified to be a nonfuel mineral or mineral material essential to the economic and national security of the United States, from a supply chain that is vulnerable to disruption, and that serves an essential function in the manufacturing of a product the absence of which would have substantial consequences for the US economy or national security.

Strategic and critical materials are the building blocks of a thriving economy and a strong national defense. They can be found in nearly every electronic device, from personal computers to home appliances, and they support high value-added manufacturing and high-wage jobs in sectors such as automotive and aerospace. The report recommends the US government incentivize domestic and foreign production, processing, and recycling of strategic and critical materials.

Pharmaceuticals and APIs (Department of Health and Human Services)

Over 87 percent of generic API facilities are located abroad. This supply-chain system has helped reduce production costs by trillions of dollars in the past decade but has left the US health care system vulnerable to shortages of essential medicines. The report recommends US government agencies increase their funding

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Number of US FTZs with production authority in each critical sector

Critical sector	No. of US FTZs
Semiconductor manufacturing and advanced packaging:	5
Large capacity batteries:	3
Critical minerals and materials:	35
Pharmaceuticals and APIs:	66

Source: National Association of Foreign-Trade Zones © 2021 IHS Markit

of advanced manufacturing technologies to promote continuous manufacturing and the biomanufacturing of APIs. American Rescue Plan funds could be targeted to increase production of key pharmaceuticals and ingredients, including using both traditional manufacturing techniques and accelerating on-demand manufacturing capabilities for supportive care fluids, APIs, and finished dosage form drugs in modular, highly portable platforms.

The chart above illustrates the current number of operational US FTZs with some type of production authority in these four sectors. Two of the sectors (critical minerals and materials, pharmaceuticals and APIs) have substantial experience in the FTZ program, but the other two have seen only limited application for their products and inputs. However, one would expect to see future FTZ growth in all these sectors as companies adjust their supply chains in response to US reshoring initiatives, examine duty exposure for themselves and their critical supply chain partners, and begin to layer their tax and customs strategies more cohesively.

The goals of the FTZ program align squarely with many of the recommendations made in the White House Report. Increasing domestic employment and economic growth is a primary consideration by the Foreign-Trade Zones Board in approving establishment and use of an FTZ. Thus, companies operating in any of the critical sectors identified in the White House Report should be aware of the possible synergies when combining considerable cost-savings benefits from operating in an FTZ with the supply-chain and investment goals outlined in the White House Report. ■

James Grogan is an NAFTZ officer and director. He and co-author Christopher Cole are senior managers at EY's Global Trade practice.

Port Freeport is growing

PORT FREEPORT CURRENTLY ranks No. 15 among US ports in total foreign waterborne tonnage handled. Port Freeport is a deep-water port strategically situated in the industrial hub of Brazoria County, Texas, only 3 miles from the open waters of the Gulf of Mexico, 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.

Over the years, Port Freeport has experienced exponential growth and is undertaking strategic initiatives to maintain the expansion and provide the surrounding community with jobs and economic benefits. One of these initiatives includes the Freeport Harbor Channel Improvement Project, which will deepen and partially widen the channel from its current 46 feet to depths ranging from 51 to 56 feet mean lower low water. Dredging began in April 2021, and the project will take roughly five years to complete.

Port Freeport serves its customers and stakeholders through state-of-the-art infrastructure, OEM processing and multimodal terminal services, and competitive expansion options, while creating jobs as a leading economic catalyst for the region and state. A new container terminal was completed in 2014 and marked with the installation of two post-Panamax gantry cranes. Expansion of the terminal is scheduled for completion in 2022; it will feature an additional 928 feet of berth and will accommodate additional post-Panamax gantry cranes. In 2015, a vehicle storage and processing terminal was developed, and an expansion area was completed in 2020. The port's project cargo terminal has continuously served the petrochemical industry through construction and expansions in the surrounding areas. In 2019, Port Freeport completed the initial phase of rail development to serve a future multimodal industrial park.

These terminals, combined with a state highway system, railroad connectivity, and the Gulf Intracoastal Waterway, allow users of Port Freeport seamless connectivity between various modes of transportation for their supply chain.

Port Freeport is proud to be a fast-growing Texas port. As of 2015, more than $31 billion dollars of new projects have been or are being constructed in Brazoria County, and $18.5 billion dollars of those projects are along the Freeport Harbor Channel. Port Freeport envisions a bright future and will continue to invest in infrastructure and the surrounding community through job creation. ■

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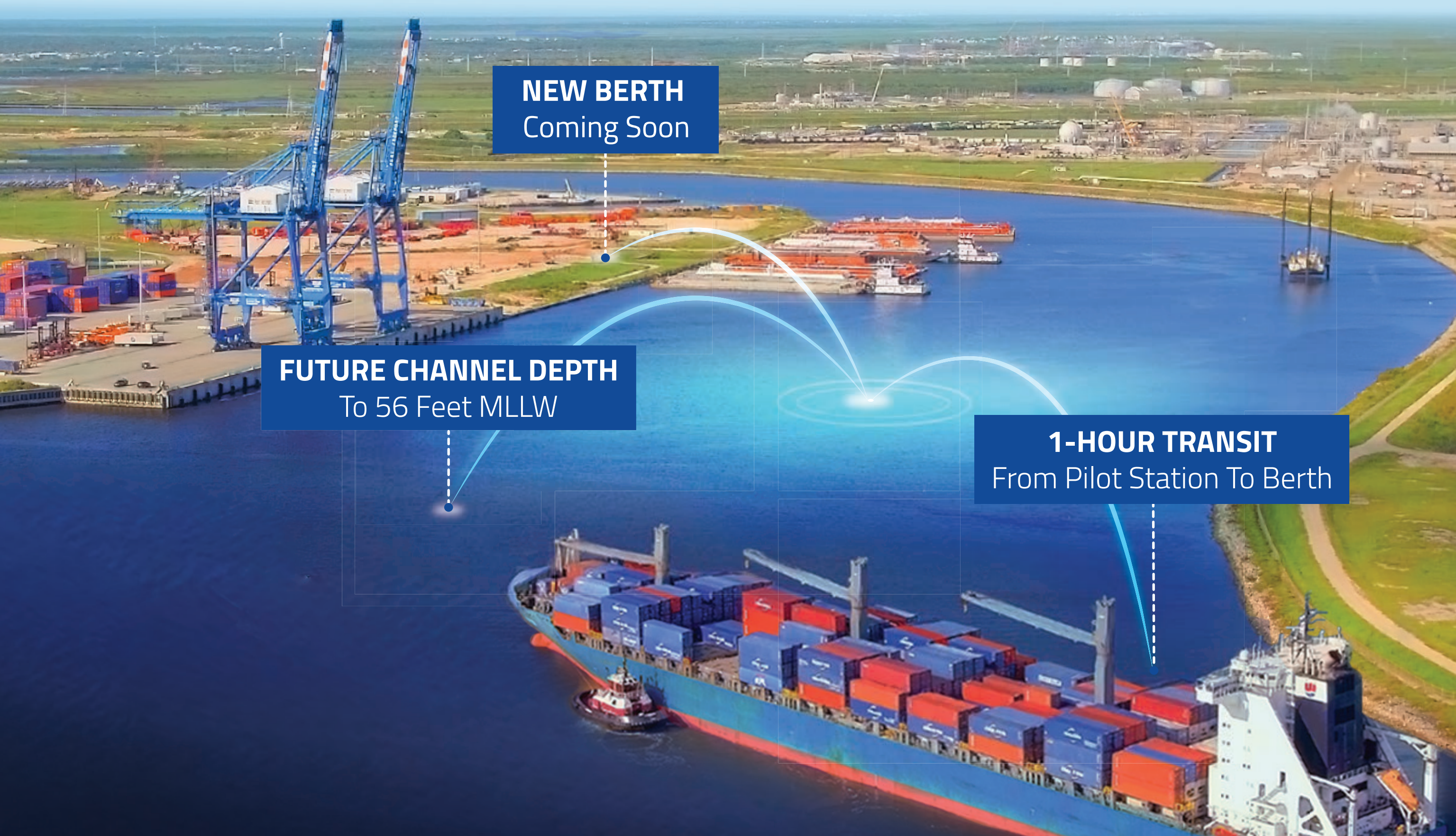

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FOREIGN-TRADE ZONES

New changes, new value

Time to take another look at FTZs

By Melissa Irmen

RECENT CHANGES IN the Foreign-Trade Zone (FTZ) program, combined with the pandemic-recovery trade environment, make this an excellent time for businesses to look at the program with a fresh perspective. Brokers, warehouse operators, and importers/exporters might all be surprised at the ways they can leverage this important program to reap unexpected benefits.

Congress created the US Foreign-Trade Zone (FTZ) program in 1934 as an economic tool during the Great Depression, and since that time, the program has continued to evolve to meet the growing demands of US business. When the program was first established, manufacturing was not permitted in zones. Not only is manufacturing now possible, but updates to FTZ regulations in 2012 simplified the process for receiving Production Authority from the Foreign-Trade Zones Board, making an essential FTZ duty benefit of inverted tariff relief more accessible to

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At an FTZ operation, import duties are not paid unless and until goods enter US commerce.

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companies whose finished goods have a lower duty rate than the imported components.

Another benefit of FTZs is the way in which consumption of goods is processed. In an FTZ, shipments destined for US commerce are reported to Customs and Border Protection (CBP) weekly, resulting in as few as 52 entries being filed per year, greatly reducing filing costs and the amount of Merchandise Processing Fees (MPF). This benefit was not always universally available and is still not a guaranteed privilege. However, it is now something all FTZ operators may request from CBP upon activation of FTZ operations.

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 initiation of the program. However, the ways in which companies benefit from this deferred and sometimes eliminated duty have evolved. The most recent example comes with the increased levying of Section 232 and Section 301 duties for certain commodities. For US importers dealing in goods subject to these duties, the ability to wait to pay the duty on the goods until they 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 an FTZ for sale to a non-US buyer avoids paying the duties entirely, which can also impact the decision whether 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 US.

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The cash-flow benefit of FTZs was in high demand during the recent supply-chain disruptions resulting from the global pandemic, particularly in the spring of 2020. Companies that had already ordered goods from foreign suppliers and had them en route to the US before the shutdown caused by the COVID-19 outbreak found that they did not have the expected demand for those goods, nor the storage capacity to take on unplanned extra inventory and manufacturing components. With the uncertainty of when or if the demand would return, paying duty on those goods became a financial risk. Storing the goods in an FTZ allowed companies to defer paying duty as the situation unfolded, thereby retaining cash for operational needs brought on by COVID-19 mitigation guidelines.

In this last example, many companies turned to an already established FTZ with warehouse and yard space for their goods. However, some decided to activate their own facilities as FTZs, benefiting from the current streamlined application procedures under the Alternative Site Framework (ASF). Before ASF, the application process was complex and time consuming, which presented a barrier of entry for some wanting to take advantage of the program. With ASF, companies located within a designated service area can apply to become an FTZ using a minor boundary modification process that has been known to take as little as one day! The activation step with CBP must still be completed and a method of inventory tracking and reporting successfully implemented, but, depending upon the complexity of the operation, this can also be done quickly. Economic development organizations acting as grantees in the FTZ program with ASF service areas can use this unique system to help diversify their local economies, generate new business, and retain and expand employment.

Even operational procedures for FTZs are more automated than in the past and have undergone recent improvements. Electronic filing of admissions has been available to FTZ operators for some time and was recently improved to provide better traceability throughout the process of updating data, mirroring similar procedures available to other US importers. Mandated electronic filing of in-bond shipments has simplified the bonded movement of merchandise, especially when exporting from zones. Ongoing implementation of CBP's compliance platform, the Automated Commercial Environment (ACE), has also standardized filing procedures, eliminating many port-specific filing requirements of the past. CBP has even reviewed and standardized guidelines to make the audit and compliance-review process for FTZs consistent across ports.

Any company importing goods into the US should look at the benefits of the FTZ program to evaluate the applicability to current circumstances, even if the return on investment may not have been there in the past. Events such as the pandemic, supply chain disruptions, and the changing tariff landscape have made us all realize that we need to be flexible and creative when it comes to seeking ways to reduce operational costs. While the Foreign-Trade Zone program certainly is not new, there are new business scenarios that support companies including an FTZ in their duty mitigation and economic development toolkits. ■

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