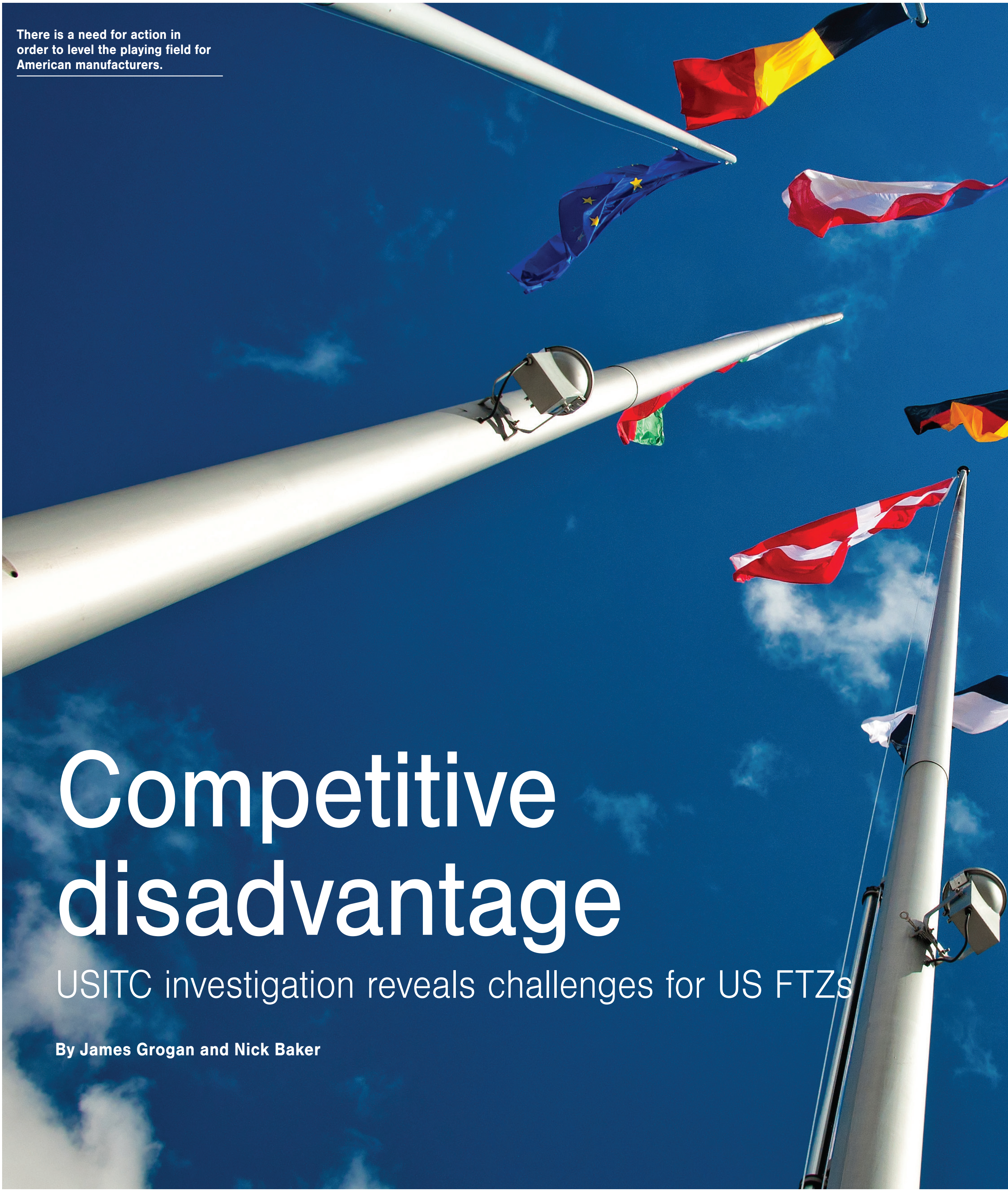
FOREIGN-TRADE ZONES



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There is a need for action in order to level the playing field for American manufacturers.

Competitive disadvantage

USITC investigation reveals challenges for US FTZs

By James Grogan and Nick Baker

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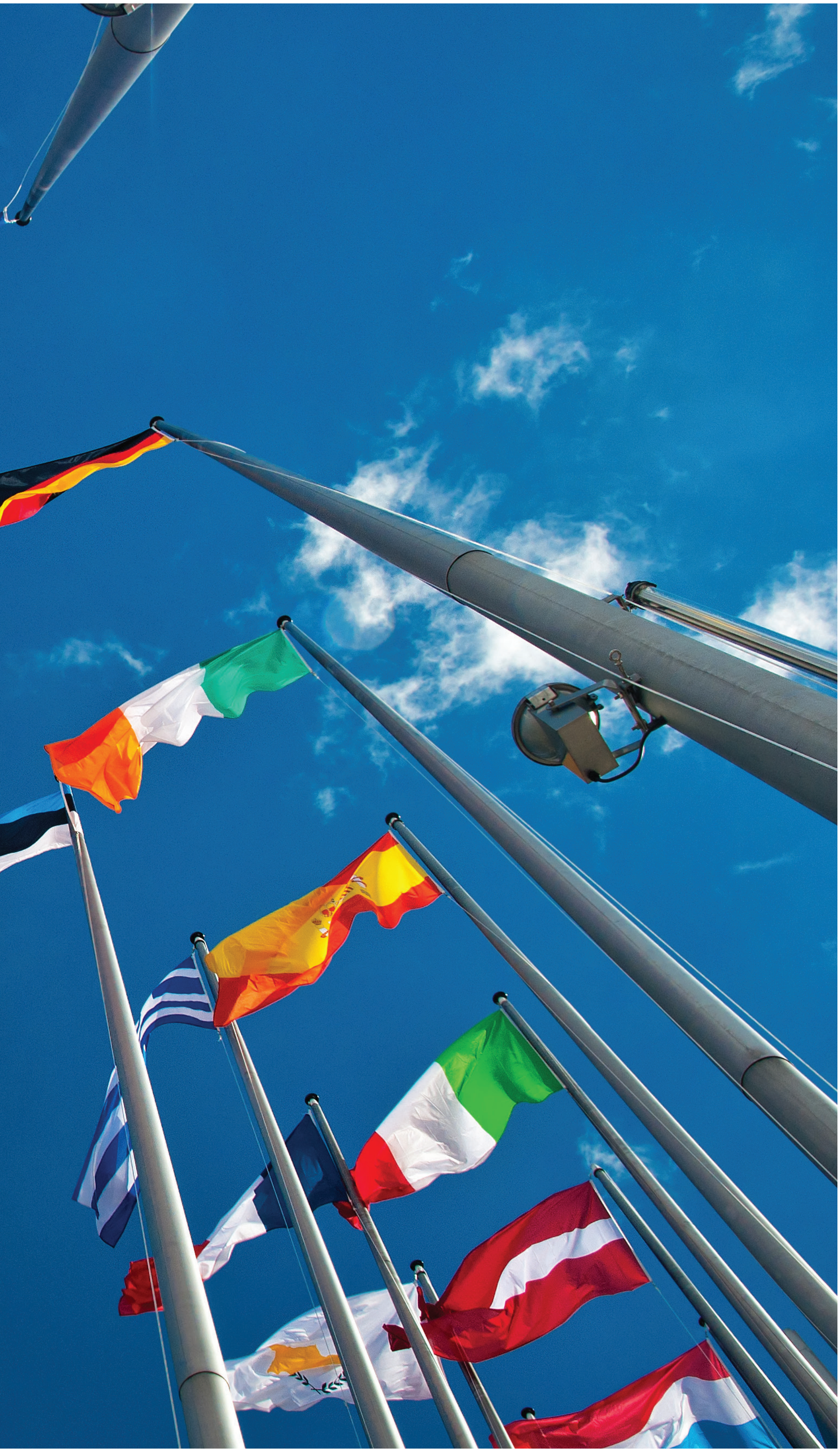

THE UNITED STATES INTERNATIONAL Trade Commission (USITC) Foreign-Trade Zones investigation, a groundbreaking study on the effects of trade policies and practices on US firms operating in FTZs and similar programs in Canada and Mexico, has shed light on the competitiveness of US FTZs and highlighted the challenges faced by these firms. This comprehensive investigation, initiated by the United States Trade Representative (USTR) in December 2021, involved extensive research, data collection and analysis. The National Association of Foreign-Trade Zones (NAFTZ) played a crucial role in supporting the investigation, providing resources, oral and written testimonies, and facilitating on-site visits to FTZs. The resulting report, published in May 2023, offers valuable insights into the state of US FTZs, summarizes key impacts on various industries and signals an opportunity to level the playing field in the future. Key takeaways include:

Abundance of comprehensive data
More than any study in the last 30 years, the report presents an extensive collection of trade data and statistics, including macro- and micro-level information on FTZ-type programs in the US, Canada and Mexico. It provides valuable insights into admission data, zone status splits, employment data, export splits and investment trends. Additionally, the report incorporates findings from other FTZ research and published literature, enhancing its credibility as a comprehensive resource.

Disparity with Mexico's FTZ-type programs
Mexico demonstrates significantly higher utilization of FTZ-type programs, particularly in the automotive sector. The IMMEX and PROSEC programs have incentivized manufacturing investment in Mexico, attracting a larger number of establishments and employees compared with the US FTZ program. This highlights a competitive disadvantage for US FTZs in the region and the need for action to level the playing field for American manufacturers.

Competitive disadvantage for US FTZs
Due to restrictions imposed by the USMCA, US FTZs face challenges hindering their competitiveness compared with firms operating under Mexico's FTZ-type programs. The requirement for US FTZs to pay duties on foreign-status materials used in production for USMCA exports creates a significant cost disadvantage, while Canadian and Mexican firms have multiple mechanisms to reduce or eliminate duty costs through similar regimes. This disadvantage directly impacts US FTZs'

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ability to benefit from duty reduction on exports to Canada and Mexico, the two largest export markets.

Challenges with the de minimis provision
The US de minimis provision, which offers duty-free access for small-value import shipments, poses a challenge for US FTZ warehousing and distribution operations. It creates disparity with Canadian and Mexican facilities that can import bulk shipments duty-free under FTZ-type programs and resell individual shipments into the US where such informal imports are also duty-free for consumers. Conversely, US FTZs are not permitted to utilize de minimis for withdrawals from FTZs, which incentivizes warehousing and distribution operations to move across the border, particularly for e-commerce.

FTZ-type programs have incentivized manufacturing investment in Mexico, attracting more establishments and employees compared with the US FTZ program.

Economic development and the “cluster” effect
US FTZs have an indirect “cluster” effect on economic development, stimulating additional employment and regional growth. Major FTZ investments attract customer and supplier firms, creating employment opportunities beyond the main FTZ operators themselves. This highlights the role of FTZs in supporting new manufacturing investment and fostering downstream economic benefits throughout supply chains.

Domestic content and US value add
The composition of US FTZ shipments reveals that a significant portion consists of US value add and domestic content, emphasizing the program’s focus on domestic job creation and economic development. This data underscores the vital role played by American workers and businesses in the FTZ ecosystem, dispelling misconceptions about the program’s purpose or risks it is being used contrary to broader US trade or economic goals.

The USITC FTZ investigation’s findings will guide future advocacy efforts by the NAFTZ, aiming to achieve parity for all US companies operating in FTZs and providing new opportunities for those seeking to enter the program. The NAFTZ plans to host additional webinars to discuss the report’s results and engage directly with its members. The report serves as a crucial resource in understanding the state of US FTZs and the challenges they face, contributing to ongoing efforts to improve, reshore and strengthen American competitiveness. ■

For more information on the report or upcoming advocacy initiatives, contact NAFTZ President Jeff Tafel or any member of the NAFTZ executive committee: Shane Williams, Shannon Fura, James Grogan and Eric Berry.

James Grogan is an NAFTZ officer and director. He and co-author Nick Baker lead FTI Consulting’s Customs, Trade and FTZ practice.

Port Freeport: The bigger picture

RANKED THE 17TH largest port in the nation based on foreign waterborne tonnage and 6th in Texas by the same measure, Port Freeport is making waves on the Gulf Coast. 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 350 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 positive economic catalyst for the region and state. One of these initiatives includes the Freeport Harbor Channel Improvement Project, comprised of four reaches, which will deepen and partially widen the channel from its current 46 feet to depths ranging from 51 to 56’ mean lower low water (MLLW). The final portion of the project is underway and 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 and multimodal terminal services, and Foreign Trade Zone No. 149. The initial construction of Velasco Container Terminal, completed in 2014, and includes 800 feet of berth, a container storage yard and two post-Panamax gantry cranes. The expansion of Velasco Terminal is underway, and the construction of a new berth was completed in May 2023 featuring an additional 927 linear feet of berth and an 85 ft. roll-on/roll-off platform. In 2015, a vehicle storage and processing terminal was created with over 6,000 vehicle parking spaces. An expansion area of 4,000 spaces was added in 2020. The initial phase of rail development was completed in 2019, and the expansion of the rail infrastructure completed in July 2023. In 2022, Volkswagen Group of America chose Port Freeport as its new home for Gulf Coast Operations.

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

For more information about Port Freeport, please visit www.portfreeport.com or call 800-362-5743.

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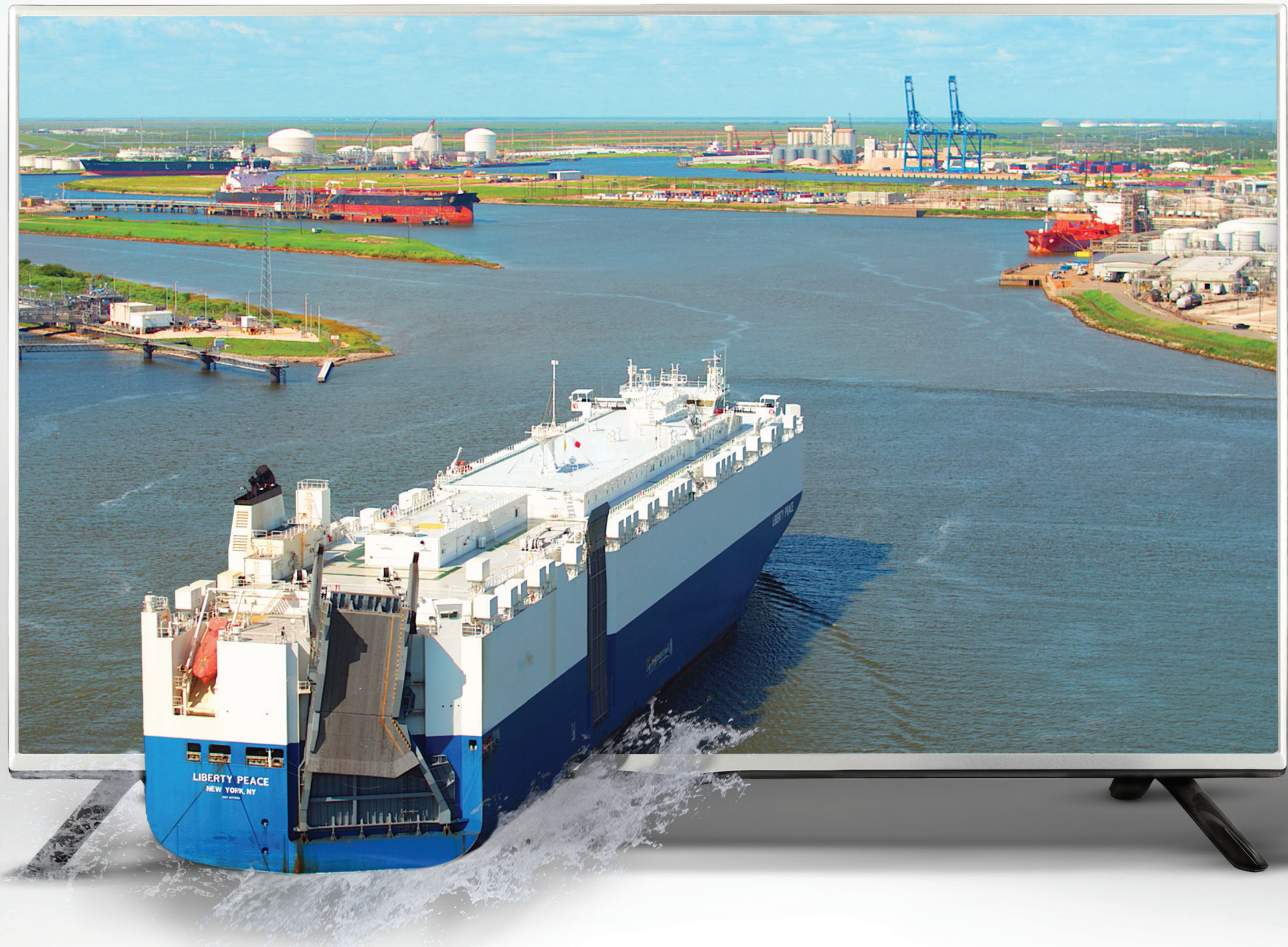
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Record activity, refined regulations

US FTZ program connects global businesses and local communities

By Jeffrey J. Tafel

AMERICA'S FOREIGN-TRADE ZONES (FTZ) program is open for business. Offering duty savings, supply chain efficiencies and enhanced security, the US FTZ program creates a profitable harbor for global companies active in the United States and markets around the world.

The program was enacted by Congress in 1934 during the Great Depression to help re-engage US businesses, large and small, with world markets. Today, the US FTZ program is attracting new applicant companies through streamlined regulations while generating record activity in terms of exports and employment.

To obtain the benefits of the program, companies operating in US FTZs partner with US Customs and Border Protection (CBP) and the US Foreign-Trade Zones Board to meet the mandated inventory control, recordkeeping, reporting and security requirements. From an operational perspective, 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 may be exempt from state and local ad valorem inventory taxes depending upon the jurisdiction involved.

For final products that enter the US market from an FTZ, duties can be reduced or

Port Houston delivers opportunities for foreign commerce

PORT HOUSTON IS the administrator of the No. 1 ranked FTZ in the US, Foreign Trade Zone 84 (FTZ 84), a leading zone supporting foreign commerce and driving regional prosperity.

Through Port Houston, customers have access to various storage facilities and manufacturing sites that benefit from reduced inventory tax rates and duty reductions. In Houston, FTZ 84 supports growing economic activity and drives job creation. General-purpose sites of FTZ 84 employ approximately 13,001 to 14,000 individuals and were responsible for approximately $10 billion in exports from facilities operating under FTZ procedures.

Port Houston owns, operates and manages the eight public wharves and terminals located along the Houston Ship Channel. This includes the area's largest breakbulk facility and two container terminals, the Barbours Cut and Bayport Container Terminals. The port also holds a dynamic and diverse real estate portfolio, consisting of 170 properties strategically located near the waterway.

Port Houston is ranked as the fifth-largest container port in the United States. It is the advocate and a strategic leader for the Houston Ship Channel, the busiest waterway in the country. The Houston Ship Channel complex and its more than 200 private and eight public facilities, collectively known as the Port of Houston, is an essential economic engine for the Houston region, the state of Texas, and the US. The Port of Houston supports 1.54 million jobs in Texas and 3.37 million jobs nationwide, as well as economic activity totaling $439 billion in Texas — nearly 20 percent of Texas' total gross domestic product (GDP) — and $906 billion in economic impact across the nation. ■

To learn more about Port Houston's FTZ 84 and how to begin the application process, visit: www.porthouston.com/ftz.

PORT HOUSTON℠

eliminated by benefiting from “inverted tariffs.” If US tariffs on imported raw materials or components are higher than the tariff on the final product, the zone user can, with certain exceptions, 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 can be eliminated entirely on goods that are re-exported or on imported inputs that are then re-exported as part of a final product. Companies can utilize the US FTZ program as a “land bridge” to export worldwide. Duties are also eliminated on imported goods that are then fully scrapped or destroyed in the production process.

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 $538.40 per entry.Through weekly entry, which is only available to FTZ-user companies, those payments can be reduced to one per week, resulting in significant savings for the user and a reduction in transactions for CBP. Weekly entry is among the reasons companies have established state-of-the-art FTZ distribution centers in the US.

Another benefit of the program is enhanced security. By design, FTZs are secure areas with controlled access, background screening of key employees and enhanced inventory and recordkeeping controls.

CBP considers participation in the FTZ program to be a “best practice” for its Customs Trade Partnership Against Terrorism (CTPAT) program.

As the only trade association focused specifically on the US FTZ program, the National Association of Foreign-Trade Zones (NAFTZ) provides members with high-quality education, shares best practices and connects members, a significant value in our changing economic environment.

Established 50 years ago, the association regularly meets with numerous federal departments and agencies that play a role in US zones and advocates with these same entities and elected officials to improve and protect FTZ benefits.

The US 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. ■

To learn more about how the NAFTZ supports the community of FTZ professionals, visit www.naftz.org.

Jeffrey J. Tafel, CAE, is president of the National Association of Foreign-Trade Zones (www.naftz.org), which represents 750 grantees, operator/user companies and service providers throughout the United States.

FOREIGN-TRADE ZONES

Advocating for US businesses

NAFTZ champions the interests of its members

By Jeremy Page and Shannon Fura

THE UNITED STATES' competitive position has rarely come under the scrutiny that it is facing now. Whether focused on the level of investment, ongoing productivity growth or job creation, how the US stacks up against its competition is an almost constant refrain. While there are many tools that may help chisel away at this problem, one often-ignored solution may be found in our own backyard — the Foreign-Trade Zones (FTZ) program.

As the chief proponent of the FTZ program, the National Association of Foreign-Trade Zones (NAFTZ) wears many hats. It provides a forum for members of the FTZ community to come together, share ideas and extend their network of contacts. It holds conferences and webinars to train and educate FTZ users, operators and grantees on the proper integration and management of a zone as part of their sourcing and distribution footprint. And, perhaps most importantly, it advocates.

While advocacy has always been a part of the NAFTZ's DNA, the increased use of trade as a foreign policy tool has amplified the need for the association to represent the interests of its members before the White House, Congress and various federal agencies that have, perhaps unwittingly, chipped away at the fabric of this valuable federal program, which has served to benefit US businesses on a bipartisan basis for more than 80 years.

NAFTZ's recent advocacy efforts to protect and promote the FTZ program can be divided into three issues, all of which are focused on ensuring US FTZs operate on a level playing field while fostering economic growth and job preservation and creation within the US.

Allowing US FTZ goods to qualify under USMCA

The first issue comes from the United States-Mexico-Canada Agreement (USMCA) and reflects a "fix" to a "fix" that should never have been made. Under USMCA's predecessor, the North American Free Trade Agreement (NAFTA), companies producing within an FTZ could not claim USMCA benefits at the time a finished good was withdrawn for entry into US commerce. This was because NAFTA's legislation excluded goods from qualifying for preferential tariff treatment based on

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a qualifying change in classification and/or satisfaction of regional value content (RVC) requirements under the governing rule of origin (ROO). As a result, although goods manufactured in a US FTZ that were subsequently shipped to Canada or Mexico could be designated as originating goods by satisfying the ROO, those same products were denied NAFTA benefits upon US entry.

The apparent reason for this decision was concern that companies would find a way around NAFTA's complex ROO and qualify goods for preferential treatment without the desired level of capital and human investment. As that concern was unconfirmed based on the number of years NAFTA was in effect, when the legislation initially adopted by Congress did not include the ROO restriction, optimism grew that the omission meant goods would now qualify for USMCA when withdrawn for domestic consumption. This would result in an expanded use of zones for manufacturing and an increased investment in job creation and economic development in the US. Instead, through an addendum to the implementing legislation advocated by the Office of the US Trade Representative (USTR), the bar to qualify zone-manufactured items as originating goods under USMCA's ROO was reinstated.

The NAFTZ believed that this reversal was without reason and contrary to the mandate of the association to promote investment in the US, so an advocacy effort was launched to have Congress rescind its decision. The need for this change cannot be overstated. Every day companies investigate the benefits of establishing manufacturing operations in the US, and that assessment often leads to a decision to produce in either Canada or Mexico and claim USMCA upon export to the US. By enabling goods manufactured within FTZs to qualify for preferential tariff treatment under USMCA's ROO, investment will expand, jobs will be created and the base of operations occurring through the FTZ program broadened, benefitting the US as a whole.

The increased use of trade as a foreign policy tool has amplified the need for the NAFTZ to represent the interests of its members before various federal agencies.

Removing USMCA's Duty Deferral limitation for FTZs

The second issue is the continued constraints imposed under USMCA's Duty Deferral rules. Another carryover from NAFTA, this provision requires that any foreign-status materials admitted into an FTZ for subsequent manufacture into finished goods that are then exported to Canada or Mexico must first be entered into US commerce with all duties and fees that would have otherwise been incurred at that time. While those items can benefit from any "inverted tariff" that might exist, the net effect is to neutralize the benefits to be realized under the FTZ program to the detriment of US-based investment overall. The adverse impact of this provision has only been intensified with the advent of Section 232 and 301 tariffs, as any material impacted by those provisions must be admitted into a zone in "privileged status." This causes them to remain subject to the imposition of punitive tariffs as a condition of export to Canada and/or Mexico.

Combined with the prohibition on qualifying goods under USMCA's ROO, the continued application of Duty Deferral results in a one-two punch to those incorporating a zone into their sourcing, production and distribution footprint. Where the ROO restriction dissuades use of a zone for subsequent domestic sale, the enforcement of Duty Deferral discourages use of a zone for subsequent export. Goods never destined for US commerce are penalized for being manufactured in the US when the same goods can instead be produced in Canada or Mexico and avoid the lion's share of tariffs, including no tariffs under either Section 232 or 301.

Encouraging production outside the US is exactly the opposite message that the US should be sending, particularly in these days of reshoring and de-risking from China. It's the inequity of the use of this provision that lies at the heart of the second prong of the NAFTZ's advocacy efforts.

Permitting the use of de minimis

Finally, the NAFTZ has been an active participant in efforts to secure de minimis benefits for goods withdrawn from FTZs for onward distribution into US commerce. De minimis has become quite the flashpoint with a number of members of Congress introducing bills seeking changes in the current de minimis policy. Presently, shipments of $800 or less can be imported informally as a result of changes made through the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), whereby the de minimis ceiling was increased from $200. Some representatives want the de minimis ceiling rolled back to the previous $200; others want a lower ceiling set, perhaps $50. Still, others want a reciprocal de minimis amount based on the ceiling imposed by the country of export while a last group wants de minimis eliminated overall. Then there is the China aspect, which proposes providing de minimis at some level but not for countries, such as China, who have been found to maintain unfair trade practices.

Working both independently and as a member of the Ship Safe Coalition, the NAFTZ has taken no position on the appropriate ceiling to be imposed. Instead the association's efforts have focused on the need to provide zone participants with the ability to benefit from de minimis for goods withdrawn from a zone for domestic consumption.

Under the law as currently written, de minimis is established based on importation, which does not coincide with the time of withdrawal from an FTZ. At the same time, distribution facilities operating cross-border in Mexico and Canada — as well as those in other countries worldwide — can benefit from the current de minimis provision with minimal restraints.

The NAFTZ strongly supports ongoing initiatives to modify the scope of the existing de minimis provision in order to encourage both the retention of existing distribution facilities as well as the expansion of the use of zones for e-commerce purposes and other order fulfillment.

Although these are the most prominent initiatives being pursued by the NAFTZ, the association is also involved in many other advocacy efforts, including working with representatives from participating government agencies and streamlining the zone admission to entry process; interfacing with US Customs and Border Protection and the US Foreign-Trade Zones Board to further facilitate legitimate trade; and supporting local communities in their interface with municipal, regional and statewide agencies as they establish and operate their FTZs. In all instances, the NAFTZ stands ready to advocate for the FTZ industry and the economic benefits it brings. ■

Jeremy Page and Shannon Fura are founding partners in the international trade law firm of Page • Fura, P.C.

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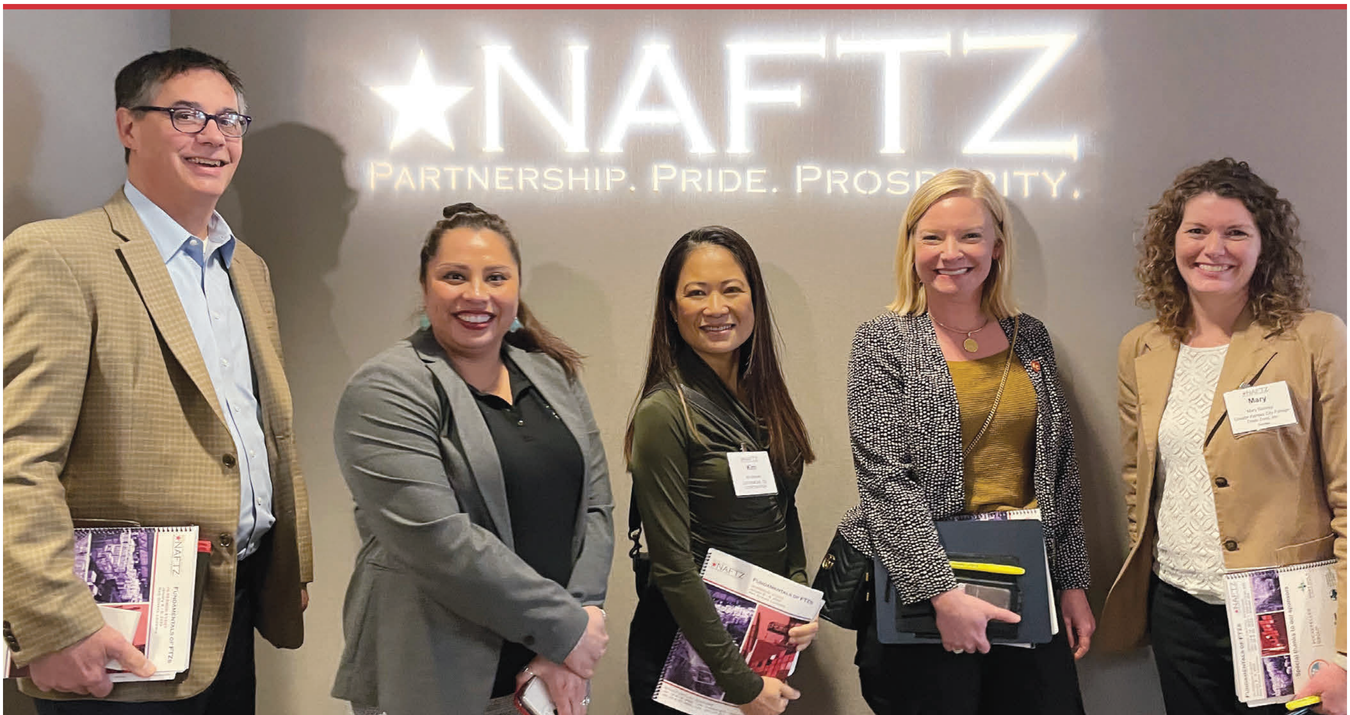

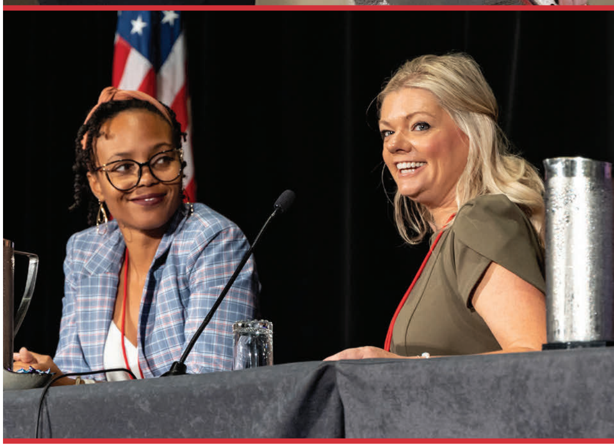

NAFTZ 2024 EVENTS

Fundamentals of FTZs
February 26–27, Washington, DC

Legislative Summit
February 27–28, Washington, DC

Spring Seminar
May 5–7, Long Beach, CA

Annual Conference & Exposition
September 8–11, New Orleans, LA

www.NAFTZ.org