



INTERNATIONAL TREATIES

BY REW GOODENOW, ESQ.

Foreign trade provides an important source of business for Nevada companies. Our clients engaged in foreign trade require advice on regulatory requirements and assistance in drafting agreements and tax planning. This presents opportunities for Nevada lawyers. Recently, Nevada entered into several international agreements that provide new opportunities for business in Nevada. On August 4, 2013, Governor Brian Sandoval signed an agreement with Mexico to further pursue bilateral trade between that region and the state of Nevada. An agreement with the province of Alberta, Canada to develop unmanned aerial drones has also created some excitement, recently. The drone agreement was signed during the recent U.S. Council of State Governments meeting in Las Vegas and lasts for three years. The drone industry is a growth industry, with more than simply military applications. Nevada has also applied to become one of the six Federal Aviation Administration-approved unmanned vehicle test sites in the United States. In 2009, Nevada entered into a Memorandum of Understanding with China on foreign trade.

The state of Nevada exercised a little-known or discussed right to enter into such agreements, provided in the Constitution of the United States. The authority to propose, negotiate and enter into treaties with other countries under U.S. law is reserved for the president of the United States with the advice and consent of a supermajority (two-thirds) of the United States Senate, under Art. II, Section 2, Clause 2 of the United States Constitution. The president also possesses statutorily limited trade agreement authority under 19 USC § 1351. The Office of the United States Trade Representative (USTR) administers U.S. trade agreements. Under Art. I, Sec. 10, Clause 3 of the U.S. Constitution, states may enter into compacts and agreements with another state or foreign power with the consent of Congress.

According to the Business Roundtable, free trade agreements have led to rapid export growth to partner countries. America's free trade agreement partners purchase 4.5 times more goods per capita from Nevada than non-free trade agreement countries did in 2012. Nevada exports tens of billions of dollars in goods and services annually, including metals and ores, casino machinery, semiconductors and travel services. Nevada's top export market for goods is Switzerland and its top market for services is Canada. Other leading markets include India and China.

Benefits from trade agreements will not always be obvious, and from some perspectives trade agreements may not be desirable. For example, when NAFTA was implemented in 1994, Nevada exports to Mexico grew 16 times over, and sales

to Canada went up from \$170.5 million to \$803 million. See *Las Vegas Review Journal*, Trade Deals have Benefits and Risks 10/12/11.

Still, imports may grow too, challenging U.S. jobs. The purpose of this article is not to comment on policy, but rather to point out opportunity.

In Nevada, a number of special benefits are available for our clients engaged in foreign trade.

Several foreign trade zones exist, with the option of also designating single-operator/user locations within certain large areas – all of Clark County, for example.

A company operating in a foreign trade zone may be able to reduce the U.S. import duties on assembled products by paying only the finished product duty rate. The option also exists to store imported merchandise without paying ad valorem taxes.

A listing of foreign trade zones and their benefits may be found on the State of Nevada Governor's Office of Economic Development (OED) website at: http://nv.diversifynevada.com/divisions/global_business_development/ForeignTradeZonesinNevada1.

To conduct any production activity in a foreign trade zone, a business should contact either the Las Vegas Development Authority or the Northern Nevada Development Authority, to review the request and then submit it to the Foreign Trade Zones Board (located in Washington, D.C. and available for contact at (202) 482-2862, or via e-mail at ftz@trade.gov), to designate the site as part of the foreign trade zone and to prepare the notification of production authority. The U.S. Foreign Trade Zones Board has simplified its procedures to make the benefits of the foreign trade zone program accessible to a broad range of companies. The notification process is 120 days. Application fees will depend upon the nature of the project. The foreign trade zone application process checklist is available at: <http://ia.ita.doc.gov/ftzpage/process.html>.

There are also programs to assist developing businesses engaged in international trade. The OED administers the Nevada International Trade Revenue Opportunities (NITRO) Market Entry Program for companies located in Nevada. Through the NITRO program, Nevada companies may apply to receive up to 50 percent reimbursement for eligible marketing expenses. The NITRO application process is described in more detail in a Client Manual available at: <http://NITRO.nv.gov>.

Other financial resources can be tapped by eligible Nevada businesses for use in international ventures. Industrial development revenue bonds are tax-exempt and may be used for approved businesses. The Silver State Opportunities Fund, a part of the Nevada Capital Investment Corporation program, is administered by private equity fund

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managers who work with capital investment firms to invest in select companies and innovative businesses.

A number of tax incentives are also available to businesses in Nevada. Abatement programs are available for sales and use taxes (NRS 360.750, 374.357), the Modified Business Tax, (NRS 363B.120)

and personal property tax (NRS 360.750, 361.0687). Green industry receives certain specific benefits under NRS 701A.210, in the form of property tax abatements for recycling. Each of these programs contains strict quantifications and an application process must be completed.

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For new employment, there exist several benefit programs. The Nevada Train Employees Now Program provides for training cost reimbursement, including certain materials and training resources, for qualified businesses. The Silver State Works program also provides potential training reimbursement, for the training of newly hired employees, of up to \$2,000 per employee. Job orders can be posted on the state's website at <http://www.silverstateworks.com>.

The powerful combination of recent trade agreements and trade friendly policies presents growing opportunities for our Nevada-based clients engaged in international trade. Recently, the OED announced that nearly 1,400 jobs and \$24 million in capital investment will flow into Nevada from increased international trade activity this year. Several new firms, including some in the banking and tech sector have located new facilities here. Nevada's lawyers can benefit from this increase in new business ventures, if we develop the skills and knowledge necessary for serving clients engaged in international trade. ■



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