

International Business in Utah: Brief Overview and Considerations for Utah Attorneys

by Jordan E. Toone

Recent efforts by political, business, and civic leaders to promote international business in Utah – such as approval of the Salt Lake Inland Port initiative, the \$3.3 billion expansion and modernization of the Salt Lake International Airport, and the reorganization of Salt Lake City’s Foreign Trade Zone #30 under the “Alternative Site Framework” – have brought the topic of international business in Utah to the forefront of public awareness. Utah attorneys – both transactional attorneys and litigators – have played and will continue to play an important role in shaping the public policy debates over how best to attract foreign investment and enable Utah business to compete in the global marketplace. As international business continues to expand in the Utah market, Utah attorneys must also continue to stay at the forefront of legal and market developments relevant to the cross-border transactional and international dispute resolution needs of their clients.

This article (I) provides a brief overview of the state of international business in Utah, highlighting recent international trade and foreign investment statistics relevant to the Utah market, (II) highlights key governmental, civic and business organizations in Utah that provide valuable resources and assistance to Utah businesses seeking to engage in international trade and to foreign investors seeking to enter the Utah market, (III) provides a brief overview of recent governmental initiatives designed to promote international business in Utah, and (IV) provides some general concluding observations with respect to the role of Utah attorneys in the continued growth of international business in Utah.

STATISTICS

International Trade

Data from the U.S. Department of Commerce, International Trade Administration, indicated that in 2017 Utah companies exported roughly \$11.6 billion in goods, putting Utah sixteenth among states for exports as a percentage of GDP. *State Export Data*, <http://tse.export.gov/tse/MapDisplay.aspx> (last visited Aug. 2, 2018). Although Utah’s exports have decreased by roughly 5% since 2014, Utah exports doubled between 2005 and 2015. *Id.* Business Roundtable estimates that Utah’s goods exports grew nearly three times faster than Utah’s GDP between 2003 and 2013. *How Utah’s Economy Benefits from International Trade & Investment*,

https://tradepartnership.com/wp-content/uploads/2015/01/UT_TRADE_2013.pdf (last visited Aug. 2, 2018). The top five export markets for Utah companies in 2017 were the United Kingdom (roughly 20% of the dollar value of Utah exports), Hong Kong (13.97%), Canada (10.39%), China (6.33%), and Mexico (5.90%). The top five categories of Utah exports in 2017 were primary metals (approximately 33.52% of the dollar value of Utah exports), computer electronics and products (15.92%), chemicals (9.83%), transportation equipment (8.14%), and processed foods (7.86%). According to the International Trade Administration, exports by Utah companies supported 51,267 jobs in the United States in 2016, representing an increase in roughly 12,000 jobs since 2006. Between 2004 and 2013, jobs related to international trade grew 2.2 times faster than total employment in Utah. Business Roundtable. It is estimated that approximately 374,963 Utah jobs – more than one in five jobs in Utah – is tied currently, directly or indirectly, to international trade. In 1992, only roughly one in ten jobs in Utah was tied to international trade.

The International Trade Administration estimates that 3,466 Utah companies exported goods in 2015, of which 2,917 (roughly 84% of all Utah exporters) were small and medium-sized businesses (SMEs). *International Trade Administration*. Of the 51,267 jobs supported by goods exports from Utah in 2016, 97% of such jobs were supported by exports involving manufactured goods. In addition, as noted by Governor Herbert in his recent Annual Economic Summit address in April of this year, since 2008, Utah’s value-added exports have grown 75%.

Bilateral and multilateral free trade agreements have played an important role in the expansion of international trade in Utah.

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Since 2007, exports from Utah to FTA markets have risen by 75%. In 2017, 27% of Utah exports were to countries that were parties to free trade agreements with the United States. It is unclear at this point the extent to which current political discussions in the United States regarding tariffs and trade imbalances will impact international trade in Utah.

Foreign Investment

In addition to international trade, Utah has seen an increase in foreign direct investment (FDI). The U.S. Department of Commerce, Bureau of Economic Analysis, estimates that FDI in Utah in 2017 directly supported 42,200 jobs in Utah. *Foreign Direct Investment in the United States (FDIUS)*, <https://www.bea.gov/international/di1fdiop.htm> (last visited Aug. 2, 2018). Although scholars have debated the extent to which FDI directly promotes economic growth, there are several factors that indicate that FDI in Utah has had a positive correlation with economic growth. For example, the Utah Division of Workforce Services has noted that in 2016, foreign-owned companies in Salt Lake County paid 32% higher wages than domestic companies.

According to the International Trade Administration, the top five sources of FDI in Utah in terms of number of employees employed by foreign-owned companies are the United Kingdom (19.19% of total employees employed in Utah by foreign-owned companies), France (12.56%), Germany (10.66%), Switzerland (8.77%), and Japan (7.11%). *International Trade Administration*. According to the U.S. Bureau of Economic Analysis, the top five sources of FDI in Utah in terms of number of announced greenfield projects in Utah are the United Kingdom (19% of announced greenfield projects), Sweden (14%), Germany (10%), Canada (10%), and Italy (8%). *U.S. Bureau of Economic Analysis*.

ORGANIZATIONS AND RESOURCES

The growth in international trade and foreign investment in Utah during the past decade can be attributed in part to the efforts of Utah's governmental, civic, and business leaders, and strong intra-organizational partnerships. Below is a summary of key governmental entities and private organizations that work to promote international trade and attract foreign investment in Utah.

World Trade Center Utah (WTC Utah) (wtcutah.com)

WTC Utah was established in 2006 by then-Governor Jon Huntsman, Jr. with the assistance of the Governor's Office of Economic Development and its then-Executive Director, Jason Perry. WTC Utah acts as the statewide voice of international business in Utah. In 2017, the Utah Governor's Office of Economic Development (GOED) contracted with WTC Utah to oversee Utah's international business promotion activities. WTC Utah is a certified member of the World Trade Centers Association, a network of over 300 World Trade Centers in over 100 countries throughout the world focused

on promoting international trade and foreign investment.

WTC Utah provides globally minded Utah companies with international business- and trade-related resources, including international market research, industry-based export reports, online export education trainings, and other trade resources for Utah business seeking to expand into foreign markets. WTC Utah hosts regular networking and informational events related to international trade for Utah business, including the Utah Global Forum, arguably the state's premier international business event, bringing together hundreds of business, government, and civic leaders involved in international business. Together with its partner organizations, WTC Utah organizes trade missions to various countries throughout the world. These trade missions are designed to enable Utah businesses to promote their products in trade-specific trade shows and to establish meaningful contacts in foreign markets. WTC Utah also partners with other organizations to provide various grants designed to provide financial assistance to small businesses in Utah seeking to sell their products in foreign markets, including the STEP Grant and the Export Acceleration Grant.

WTC Utah has announced a goal for Utah to double its exports over the next decade.

The Utah Governor's Office of Economic Development (GOED) (business.utah.gov)

The mandate of GOED is to, among other things, foster the creation and growth of Utah businesses. As noted above, GOED contracted with WTC Utah in 2017 to oversee Utah's international business promotion activities. GOED's International Diplomacy program, under the leadership of Director of Diplomacy and Protocol, Franz Kolb, functions as the official diplomatic arm of the State of Utah, hosting diplomatic visits from countries throughout the world. The International Diplomacy program leverages diplomatic relationships throughout the world to assist Utah businesses in their attempts to expand into foreign markets and to recruit foreign investors into the Utah market. As noted above, in partnership with WTC Utah, GOED also leads delegations comprised of Utah businesses and executives on various trade missions throughout the world.

U.S. Commercial Service Utah (www.export.gov/utah)

The U.S. Commercial Service is the lead trade promotion agency of the U.S. government, serving as a global network of international trade professionals in the United States and throughout the world. U.S. Commercial Service Utah provides Utah businesses with resources and connections designed to facilitate their entry into foreign markets and the removal of barriers to accessing foreign markets (e.g., procuring foreign government approvals). U.S. Commercial Service Utah provides SMEs and successful Utah businesses with trade counseling, market research, network development, and business matchmaking with trade and business professionals throughout the world.

Economic Development Corporation of Utah (EDC Utah) (edcutah.org)

Established in 1987, EDC Utah is a nonprofit organization whose mission is to “attract and grow competitive, high-value companies and spur the expansion of local Utah businesses.” <https://edcutah.org/about-us> (last visited Aug. 2, 2018). Tracing its roots to the Salt Lake Chamber of Commerce, EDC Utah is a collaborative effort between the public and private sectors in Utah to facilitate the growth of Utah businesses and to attract foreign investment in Utah. EDC Utah’s Global Strategy & Outreach (GS&O) team hosts recruiting missions, trade shows, and other informational events throughout the United States and overseas in an effort to recruit foreign business to invest in the Utah market. EDC Utah coordinates with other public and private organizations in Utah to accomplish its mission, and provides a valuable resource in the State’s efforts to recruit foreign businesses to Utah.

World Trade Association of Utah (WTA Utah) (www.wtaofutah.org)

WTA Utah is a non-profit with a mission to promote international trade and commerce in Utah. To that end, WTA Utah hosts monthly events, including luncheons, seminars, and workshops, on topics related to international business. WTA Utah offers Utah professionals a valuable resource to connect with other like-minded international business professionals in Utah and to stay current on relevant issues facing Utah businesses engaged in international commerce.

Local Government and Civic Organizations

Local governmental, business, and civic organizations have played an active role in Utah’s efforts to promote international business in Utah, including Salt Lake City, Salt Lake County, the Salt Lake Chamber of Commerce, Utah Technology Council, and Utah Science and Technology Research Initiative (USTAR).

For example, in 2017, Salt Lake County, in partnership with strategic partners and stakeholders, adopted the Global Trade & Investment Plan, a data-driven development plan designed to promote international trade and increase foreign investment in the Salt Lake metro region. Further details on the Salt Lake County Global Trade and Investment Plan are set forth below.

INITIATIVES

Governmental, business, and civic leaders in Utah have overseen several recent initiatives to promote and facilitate international business in Utah. Three of these initiatives – the Salt Lake Inland Port, the reorganizations of Salt Lake City’s Foreign Trade Zone #30 under the Alternative Site Framework, and the Salt Lake County Global Trade & Investment Plan – are briefly examined below.

Salt Lake Inland Port

Building on efforts of Utah business and governmental leaders dating back several decades, and following months of sometimes contentious negotiations, state and local governmental leaders struck a compromise in July of this year, approved during a recent special session of the Utah Legislature, to proceed with the planning and development of an inland port in the Northwest Quadrant in Salt Lake City. Despite the controversial start to the Inland Port Authority board meetings, and the threat of legal action regarding the constitutionality of the Inland Port Authority itself, the Inland Port is already being billed as the largest economic development project in the history of the state. The impact on the state economy, according to experts, could be significant. *See, e.g.,* Natalie Gochnour, Kem C. Gardner Policy Institute, *Salt Lake Inland Port Market Assessment*, August 2016 available at <http://gardner.utah.edu/wp-content/uploads/2016/10/IP-Brief-FINAL.pdf>; Cambridge Systematics, Inc., *Utah Inland Port – Feasibility Analysis*, Dec. 29, 2017, available at <http://wtcutah.com/wp-content/uploads/2018/01/Inland-Port.pdf>.

An inland port is a logistics hub of multimodal transportation assets located at a non-maritime location. Inland ports are typically designed around rail intermodal facilities, ideally with easy access to road, rail, and air transportation networks, and facilities. Inland, or “dry,” ports have been built in various inland locations throughout the country such as Kansas City, Missouri; Dallas, Texas; and Memphis, Tennessee. Inland ports serve as shipping hubs where cargo containers are processed, stored, and transferred. Inland ports can also enable goods to be processed and altered through value-added systems as such goods move through the global supply chain. When combined with a free trade zone (see below), inland ports can reduce the time and costs associated with international trade, while also having a potentially significant impact on the local economy.

The Inland Port Authority has just recently commenced its board meetings. The success of the Inland Port and its impact on the local economy remain to be seen, but, as noted above, there are several indications that the Inland Port will be an important contributor to Utah’s continued economic growth.

Free Trade Zone No. 30

The U.S. foreign trade zones (FTZ) program began following the passage of the Foreign-Trade Zones Act of 1934 (19 U.S.C. 81a-81u). (Interestingly, the Foreign-Trade Zones Act of 1934 was passed in part to mitigate the negative economic effects of the protectionist Smoot-Hawley Tariffs, named in part after Senator Red Smoot, a United States Senator from Utah.) FTZs are special geographic zones within the United States that are considered “outside” the commerce of the United States. FTZs operate under the jurisdiction and supervision of U.S. Customs and Border Protection (CBP). Goods imported from foreign markets into an FTZ are considered “outside” the

United States for customs duty purposes. FTZs enable companies to import foreign goods directly to an inland port, where such goods can be stored, cleaned, assembled, manipulated, relabeled, repackaged, repaired, stored, manufactured, and/or processed, and the customary CBP entry procedures, including levying of import duties and excise taxes, are deferred unless and until such foreign goods are transferred from the FTZ into the U.S. consumer market. In addition, in the event that goods in an FTZ are re-exported to a foreign market or transferred to another FTZ, no customs duties are assessed on such goods. FTZs and inland ports, together, facilitate efficiency in global supply chains and reduce the costs of international trade.

Salt Lake City has had an FTZ since the 1970s. Foreign Trade Zone No. 30 in Utah (the Salt Lake FTZ) was granted to Salt Lake City Corporation and is located on a site near the Salt Lake International Airport and the Union Pacific Intermodal Terminal. Until recently, Utah's FTZ was under the traditional site framework. Under the traditional site framework, Utah companies had to either be located within the area specially designated as the Foreign Trade Zone (the magnet site), or such companies had to create what is known as a "subzone." Under U.S. law, subzones can be created within a sixty-mile radius of the actual magnet site; however, there is a limit to the number and size of subzones approved under the traditional site framework.

In March of this year, the Department of Commerce announced its approval of Salt Lake City Corporation's application to reorganize the Salt Lake FTZ under the Alternative Site Framework (ASF). The ASF extends the benefits of the Salt Lake FTZ to any company within a sixty-mile radius of the Salt Lake FTZ (an area that encompasses all or portions of Salt Lake, Utah, Davis, Weber, Morgan, Box Elder, Summit, and Tooele Counties), subject only to a 2,000-acre statutory limit. In addition, the ASF enables Utah businesses located within the Salt Lake FTZ to secure FTZ status for warehousing and distribution operations within roughly thirty days of applying. Under the traditional site framework, approvals took up to one year.

EDC Utah has noted an increase in interest amongst Utah companies in the Salt Lake FTZ. Theresa Foxley, *Fox Files 'FTZ #30 – An example in partnership'*, <https://utahpolicy.com/index.php/features/featured-articles/16415-fox-files-ftz-30-an-example-in-partnership> (last visited Aug. 2, 2018). However, the benefits of the ASF are likely limited to companies exporting over \$1 million per year. UTAH BUSINESS, *Salt Lake's Foreign-Trade Zone #30 Makes Joining Easier for Utah Businesses*, <https://utahbusiness.com/salt-lakes-foreign-trade-zone-30-makes-joining-easier-for-utah-businesses/> (last visited Aug. 2, 2018). In any event, the ASF, together with the Inland Port, should provide significant incentives for Utah and foreign businesses to conduct international trade in Utah.

Global Cities Initiative / Global Trade & Investment Plan

As indicated above, in 2017, Salt Lake County published the Global Trade & Investment Plan to foster international trade and foreign investment in Salt Lake County. Salt Lake County is responsible for 69% of Utah's goods exports. The Global Trade & Investment Plan was developed in connection with the Global Cities Initiative, a joint project of the Brookings Institution and JP Morgan Chase, to assist business and civic leaders in promoting international business in their respective metropolitan areas. The goal of the Global Trade & Investment Plan, according to Salt Lake County, is to "[d]evelop a well-balanced economy that establishes Salt Lake County as both a premier destination for global businesses and a globally-fluent hub of innovation that creates an economic environment comprised of an expansive infrastructure, a diverse and educated workforce, and an active engagement with the global economy." *Global Trade & Investment Plan*, available at <http://slco.org/uploadedFiles/depot/frd/fEconDev/SLCoPresentation3.31.2017.pdf> (last visited Aug. 2, 2018).

Relying on findings from an extensive market assessment, the Global Trade & Investment Plan sets forth nine key findings that are organized into three interconnected categories: exporting, FDI, and talent recruitment. The Global Trade & Investment Plan sets forth the objectives, strategies and tactics to be employed by governmental, business and civic leaders to give effect to the objectives set forth in the Global Trade & Investment Plan. According to Stuart Clason, Division Director of Salt Lake County Regional Economic Development.

CONSIDERATIONS FOR UTAH ATTORNEYS AND CONCLUDING OBSERVATIONS

The continued expansion of international trade and foreign investment requires Utah attorneys capable of informing public debate on the legal framework and related policy considerations relevant to foreign investment and international trade in Utah. The continued expansion of international business in Utah also depends on the ongoing and, in some cases, increased ability of Utah attorneys to assist clients in navigating the risks and legal nuances concomitant to international business. In addition to providing clients engaged in international business with traditional corporate, commercial, and dispute resolution expertise, law firms, and Utah attorneys advising clients engaged in international business must continue to stay up to date on the various areas of the law relevant to international business, including, as applicable:

- international tax and structuring, including customs duties, taxes, tariffs and excise taxes;
- bilateral and multilateral free trade agreements, including the World Trade Organization (WTO), North American Free Trade Agreement (NAFTA) and Trans-Pacific Partnership (TPP), as may be amended from time to time;

- transfer pricing;
- Foreign Corrupt Practices Act and related anti-bribery laws;
- intellectual property and international law (including Trade Related Aspects of Intellectual Property Rights (TRIPS), Paris Convention for the Protection of Industrial Property, Patent Cooperation Treaty (PCT), and the Madrid Protocol);
- U.S. international trade regulations, including export controls (i.e., Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and Office of Foreign Assets Control (OFAC)), anti-boycott regulations and import regulations;
- competition law (e.g., EU Competition Law);
- privacy laws (e.g., the European Union General Data Protection Regulation (GDPR));
- international contract considerations, including choice of law, conflict of laws, jurisdiction and enforcement, force majeure, termination and currency;
- dispute resolution (e.g., the New York Convention, International Chamber of Commerce (ICC) and UNCITRAL rules and procedures);
- international sale of goods principles, including the United

Nations Convention of Contracts for the International Sale of Goods (CISG) (the international equivalent of the Uniform Commercial Code) and International Commercial Terms (INCOTERMS);

- anti-money laundering; and
- cultural considerations relevant to contract negotiation and dispute resolution.

Utah attorneys can also provide useful guidance to clients with respect to the various Utah-specific resources available to them in their international business activities, some of which are highlighted above.

Data from various state and federal agencies, together with anecdotal indicators from the author's own experience assisting clients with their international business needs, suggest that international trade and foreign investment will continue to increase in Utah. Utah governmental, business, and civic leaders have adopted several initiatives that are designed to both assist Utah companies seeking to compete in the global market place and to attract foreign investors seeking to enter the Utah market. Combined with Utah's strong economic growth, the available data and recent initiatives outlined herein suggest a continued – if not increased – need for skilled Utah attorneys capable of advising Utah and foreign clients on complex international business transactions.

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