Council Highlights

NATIONAL FOREIGN TRADE COUNCIL

Council Highlights is a bi-monthly summary of news and events of the National Foreign Trade Council exclusively for its members.

June/July 2008 Issue

A Word From the President

While the U.S. Government Delays, U.S. Business Makes a Difference in Colombia

As of May 20, 2008, it has been 546 days since the United States signed the U.S.-Colombia Free Trade Agreement, and in that time, over one billion dollars in tariffs have been imposed on U.S. exports to Colombia that would have been shipped duty free under the FTA.

As Congress waits and we in Washington make the case for the mutual economic benefit of free trade with Colombia for U.S. and Colombian workers, farmers and ranchers, American companies continue to provide economic opportunity in both the U.S. and Colombia.

Here are just a few examples of how NFTC members and U.S. business participate in the efforts that are ending the violence and restoring stability through initiatives that provide economic opportunity and alternatives to the most disadvantaged communities in Colombia. Our member companies are, in a myriad of ways, large and small, contributing to the process of rebuilding the country by providing Colombian workers economic alternatives and sustaining U.S. jobs at home.

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Inside this issue:

So Much Activity Still Awaiting Progress: The Fate of the U.S. Trade Agenda

Amid a stalemate and frequently self described Cold War between the Democrats and Republicans in Congress, the House and Senate and between Congress and the Administration, NFTC and the U.S. business community continue to pressure all sides to come to terms with the stalled U.S. trade agenda, which includes:

- Congressional consideration of the U.S.-Colombia FTA, which has been sent to Congress by the President but has been frozen in time with a House rule change removing the fast track authority time constraints for a vote;
- The U.S. – Korea FTA, which remains in limbo due to the controversy over beef imports, and is also under threat of failure if additional provisions for market access for U.S. autos are not crafted;
- Congressional reauthorization and expansion of Trade Adjustment Assistance, which has been passed by the House and is awaiting Senate action; and
- The U.S. – Panama FTA, which is also in limbo until the leader of the Panamanian parliament steps down at the end of his term in September, removing protests on the part of many U.S. lawmakers for his alleged role in the murder of a U.S. service member in Panama.

Add to this the House Speaker's signal that a comprehensive deal to move the agenda forward must also include some additional economic stimulus measures and the way forward is questionable at best during an election year where trade is being used as the scapegoat for a litany of economic ills and no candidate is making the case that U.S. exports are the strongest positive force in the U.S. economy today.

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News for Our Members

A Word from the President

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Citigroup – Creating Future Business Leaders, in Colombia since 1919: a joint effort by Citibank Colombia and Fundacion Junior Achievement Colombia provides a 12-month sequential, high quality educational experience of skill development, economics, finance and enterprise training to 3,895 public school youngsters from economically disadvantaged neighborhoods in Bogota. Citibank brings the "Banks in Action" program to 750 young people between the ages of 15 and 17. In this business simulation developed by Citibank and Junior Achievement, high school students assume the role of bankers and make banking decisions such as attracting deposits and making loans, setting interest rates and deciding how much to spend on marketing and research and development. By the end of 2006, Citibank's educational programs reached about 250,000 school-aged children from 147 public schools in Bogota. As many at-risk youth lack the opportunity for academic development, Citi makes it a point to invest in programs that educate the next generation. More than 500 students of the "Comuna Cuatro of Medellín (Moravia)" have returned to school through the program "School Searches for a Child." We have built and improved facilities in 16 schools located in remote zones throughout the country, benefiting over 20,000 students. Five thousand Colombians have joined Citi's literacy programs. Citi's commitment towards micro entrepreneurs takes place through the annual Citibank Accion Awards, which has played an important role in the creation of 220 small businesses and helped 1,300 micro entrepreneurs access micro credits. Additionally, Citibank Colombia contributed to the Operation Smile Foundation, which has provided 54 patients with integral care and surgeries.

Coca-Cola – Investing in Local Communities since 1927: In Colombia, 4 percent of the workforce is unionized while 31 percent of Coca-Cola bottler employees are union members. Coca-Cola bottlers enjoy extensive, normal relations with 8 unions in Colombia and currently have collective bargaining agreements in place covering wages, benefits and working conditions for all unionized workers. Community investment is aimed to aid children and to promote education, to provide relief (water, transportation) in times of natural disasters and to bring relief to victims of the country's internal violence. In 2007 The Coca-Cola Company co-funded a project led by the Vice President of Colombia to build houses made out of recycled material for underprivileged rural families, and joined in a project to provide clean drinking water and sanitary services for 300 homes inhabited by families who have been displaced from their farms by the violent conflict in Colombia. In 2005, The Coca-Cola Foundation committed US$10 million over 5 years to fund the Colombia Foundation for Education and Opportunity (www.fundacolombia.org), an organization that addresses the needs of victims of violence. Today more than 16,000 underprivileged youngsters in 14 different violence-stricken regions of Colombia are receiving technical education to provide legitimate job alternatives to ex-combatants who have de-mobilized from illegal armed groups. The Coca-Cola Company is a co-founder and large contributor in Colombia of United Way International and Junior Achievement International, and over the last several years has invested more than US$500,000 to the promotion of reading and writing skills among underprivileged children across the country. Since 1996, the Coca-Cola system in Colombia has supported different environmental initiatives – such as the Coastal Cleanup Program – which channel efforts to remove solid waste from Colombian rivers, parks, beaches and oceans, and also educate Colombian consumers about the importance of proper disposal of solid waste and about the promotion of recycling programs.

DuPont – Investing in People: In 2005, DuPont directly generated more than 300 jobs through private contractors in Colombia, with a similar number of jobs created indirectly. DuPont believes in the importance of helping its employees develop personally and professionally by offering employee training. DuPont also contributes to the development of the surrounding community, and in 2005, DuPont invested more than 128,000,000 pesos in social programs. DuPont de Colombia, S.A. helps children who attend school in the vicinity of the DuPont Barranquilla Plant by promoting a micro-enterprise where special-needs children produce hand-made paper. The program also provides academic and therapeutic support to the children.

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A Word from the President

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ExxonMobil – Improving Healthcare and Education for Women, in Colombia since 1917: In addition to its environmental initiatives, Exxon Mobil Colombia sees the vital importance of education and health programs for Colombian women and does so in partnership with public and private organizations. For example, ExxonMobil, in partnership with the Juan Felipe Gomez Escobar Foundation, opened doors to hundreds of teenage mothers, providing education in several trades that would allow them to work while they care for their children. In Cartagena, ExxonMobil joined the department of Bolivar, Cementos Argos, and the Juan Felipe Gomes Escobar Foundation to redesign and build a new maternity room at the Rafael Calvo Clinic, benefiting more than 4,000 women in Cartagena every year. Through its partnership with the Women in Management (WIM) Global Program, designed to strengthen women's management and leadership abilities to create sustainable and positive changes, the company sponsors 25 Colombian women each year by providing them will full scholarships and expenses to complete this innovative program.

IBM – Fostering Education and Economic Development: IBM initiatives address challenges faced by Colombian youth in the job market. IBM's "*KidSmart Early Learning*" program promotes teachers' professional development and students' education in Bogota, Medellin and elsewhere. More than 300 computers have been donated, benefiting more than 8,000 children and 1,200 teachers. IBM's "*On Demand Community*" initiative supports IBM employees volunteering in local not-for-profit organizations and public schools. Currently, more than 40% of IBM Colombia employees participate in the program. Besides partnering with public schools, IBM has also established partnerships with key Colombian museums, which enable them to become part of a global science network which offers the local community an opportunity to participate in virtual exhibits and educational activities. IBM's "*Reading Companion*" initiative focuses on teaching English as a second language to students in more than 30 public schools in Colombia.

Merck & Company - Improving Public Health and Access to Care: Colombian subsidiary Merck Sharp & Dohme (MSD) is a leader in clinical research in the country. Since 1990, it has performed more than 140 clinical studies in Colombia on diverse diseases in more than 40 Colombian institutions such as public and private hospitals, clinics and research centers, which makes of the investment in clinical investigation in Colombia one of the greatest in Latin America. Currently, the company works with 5 investigation centers in very well-known Colombian institutions. MSD Colombia co-founded 'Corporación Transparencia por Colombia', an initiative to promote transparency, integrity and ethics throughout the country. In 2001, MSD Colombia initiated a 65% reduction in prices for HIV/AIDS drugs in Colombia as part of a worldwide program to improve the access to the care and treatment of this disease in developing countries. Since 1996, Merck has donated Mectizan tablets to Colombia for the treatment of Onchocercosis, or River Blindness. Treatment is provided twice a year to cover the 1163 known infected people in the municipality of López de Micay, Cauca, the only locus of infection known in the country, achieving 99% coverage.

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The National Foreign Trade Council is a leading business organization advocating an open, rules-based global trading system. Founded in 1914 by a broad-based group of American companies, the NFTC now serves hundreds of member companies through its offices in Washington and New York.

News for Our Members

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In a program coordinated by the Colombian Society of Neonatology with a drug donation from MSD, 300 new born infants in the country have been treated to close the Patent Ductus Arteriosus (PDA), which may cause the death of those premature babies. MSD Colombia also periodically donates drugs to support emergencies in the country or the particular requirements of institutions that attend populations which need diverse treatments. To date, MSD has donated 5950 boxes and 30.000 pills to different institutions.

Pfizer – Supporting Education: Since 1999, Pfizer Colombia has been deeply committed to the Junior Achievement Program, an initiative to encourage and support education. Pfizer has contributed financial and human resources to this partnership with Colombia Emprendedora (Entrepreneurial Colombia), the foundation in charge of the project, which has benefited over 100,000 children in more than 140 public schools in Bogota and Cali. Pfizer Colombia and its employees have also been working since 2002 with Fundacion Formemos to support the education of children all over the country who have been displaced by violence. Pfizer has contributed $450,000 to the project, which has benefited over 150 displaced children, providing them with adequate housing and living conditions, as well as technical education in farming and cattle-raising.

Phillip Morris International – Supporting Demobilization: Coltabaco, an affiliate of Phillip Morris International, is opening new economic opportunities for demobilized men and women who once were members of paramilitary and guerrilla groups. The opportunities supported by Coltabaco include providing jobs, healthcare benefits, housing and education for reintegrated people and their families. Among these initiatives are “Citizen Route,” which provides education for demobilized people, and “Tecnovo Projects,” which markets products manufactured by reintegrated workers. In 2007, Coltabaco invested $844,695 in these and other corporate social responsibility projects.

Chevron – Stimulating Economic Growth: In partnership with Governacion de La Guajira, Artesanias de Colombia Fonwayuu, the Pan American Development Foundation, and Fundacion Bima, Chevron signed a two-year agreement to produce, diversify and commercialize Wayuu handicraft. The objective is to stimulate local economic growth in La Guajira through human and institutional capacity building. Through this agreement, Chevron donated the prime material – thread and textile mills – to produce handicrafts, as well as offering courses in commercialization. As a result of the company’s initiative, the Wayuu artisans attended a series of workshops offered in the areas of design, commercialization, marketing, and sales. They also received support in contacting different commercial institutions to market their products in different fairs around the country and through the Fundacion Bima. Chevron continues to offer workshops in marketing and sales to guarantee the program’s sustainability.

**Thanks to our members’ providing this information to us on their activities in Colombia as well as to the Latin America Trade Coalition and information collected by the Colombian-American Chamber of Commerce and the Association of American Chambers of Commerce in Latin America.*

News for Our Members

New Zealand Signs First Developed-Nation Free Trade Agreement with China

On April 7, 2008, after 15 rounds of negotiations over three years, New Zealand Prime Minister Helen Clark and Chinese Premier Wen Jiabao witnessed the signing of a Free Trade Agreement between New Zealand and China. Over time, the FTA will result in the elimination of tariffs on 96 per cent of New Zealand's exports to China and is estimated to lift New Zealand's export revenue from China by between US$180 to US$280 million every year.

The FTA contains measures relating to services, customs procedures and cooperation, sanitary and phytosanitary measures, technical barriers to trade and intellectual property. It provides enhanced in-country protections for investors and access to binding arbitration procedures. More favorable provisions negotiated by either country in future FTAs with third parties will be extended to the other country. The FTA also establishes robust dispute settlement mechanisms and contains protections to preserve both countries' domestic regulatory and policy-making flexibility.

In addition to the FTA, a binding memorandum of understanding on labor was signed with the intention of improving understanding of labor matters, encouraging dialogue, and promoting sound labor policies and practices.

A binding agreement on environmental cooperation was also signed in addition to the FTA with the aim of encouraging sound environmental practices and improving the capacity of each country to address environmental matters through cooperation and dialogue.

The FTA provides temporary entry rights for a limited number of Chinese skilled workers (a maximum of 1,800 at any one time) to the New Zealand labor market provided they meet certain conditions, and alongside the FTA, New Zealand has established a working holiday scheme with China that provides for a maximum of 1000 skilled Chinese per year to enter New Zealand and engage in tourism and temporary employment.

The Agreement has been submitted to the New Zealand Parliament for consideration. As part of this process, the Foreign Affairs, Defence and Trade Select Committee (FADTC) has called for public submissions on the FTA. Once FADTC has completed its consideration of the FTA and associated National Interest Analysis (NIA) implementing legislation will be required before the FTA can enter into force. It is speculated that the legislation could pass parliament as early as the end of this summer.

Detailed information on the New Zealand-China FTA can be found at: www.chinafta.govt.nz.

So Much Activity Still Awaiting Progress: The Fate of the U.S. Trade Agenda

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In this environment that the U.S. business community is pressing forward on all fronts, through the Latin America Trade Coalition, the Korea FTA coalition, and a newly forming TAA (Trade And American) Competitiveness Coalition to call for Congressional and administration leaders to find a way forward and remain focused on the economic cost of freezing America's leadership in the global economy. As other articles in this issue demonstrate, trade liberalization is moving full speed ahead in the rest of the world. The U.S. cannot afford to opt out.

News for Our Members

U.S. to Participate in "P-4 Talks on Investment and Financial Services in June

The Trans-Pacific Strategic Economic Partnership Agreement (P4) is the first multi-party trade agreement linking Asia, the Pacific and Latin America. All four members (Brunei Darussalam, Chile, New Zealand and Singapore) are members of APEC (Asia Pacific Economic Cooperation).

The Agreement, which entered into force in 2006, includes provisions on market access and related rules (including customs procedures, rules of origin, sanitary and phytosanitary measures, technical barriers to trade, and trade remedies) for goods trade; trade in services; intellectual property; government procurement; competition policy; and dispute settlement. The P4 countries will this year negotiate the remaining chapters of this agreement relating to financial services and investment. All P4 members are also parties to an Environment Cooperation Agreement and a Memorandum of Understanding on Labour Cooperation

Because the existing P-4 agreement in force has much the same basis as the U.S FTAs with Singapore and Chile, and Article 20.6 provides that the Agreement is open to accession on terms to be agreed among the Parties, the United States announced in February that it would join the negotiations on the investment and financial services chapters and undertake its own internal exploratory process, including informal consultations with Congress on the possibility of the U.S. negotiating to sign on to the full P-4 agreement. Such a move would not only greatly increase U.S. participation in the evolving trade architecture of the Asia-Pacific region but would also provide an impetus for broader participation in the P-4 agreement by other countries in the region.

The United States, Singapore, New Zealand, Chile and Brunei will meet next in mid-June, 2008 in Queenstown, New Zealand, for negotiations on the financial services and investment chapters.

Supreme Court Decision in *American Isuzu v. Ntsebeza*

On May 12 the Supreme Court upheld the October 2007 decision by the Second Circuit Court of Appeals to remand the South Africa apartheid case, now known as *American Isuzu Motors., Inc. et al. v. Lungisile Ntsebeza,* first filed in 2002, to the Federal District Court for the Southern District of New York. Four members of the Court (Roberts, Alito, Breyer and Kennedy) recused themselves because they hold shares in defendant companies or have other connections to them. In the absence of a quorum of six Justices the Court let the Circuit Court decision stand. Some press coverage (for example, a CNN headline "Supreme Court Upholds Apartheid Era Lawsuit") of this decision has been misleading. *The Court did not rule on the merits of the case and its decision did not set a precedent.*

Some background may be helpful. In June, 2002, New Jersey attorney Edward Fagan filed suit in Federal District Court in New York against Credit Suisse, UBS and Citigroup for $50 billion for aiding and abetting apartheid in violation of international law.

The case was brought under the 1789 alien tort statute which has been used to litigate private party complicity in human rights abuses by foreign governments. In November of 2002 Washington attorney Michael Hausfeld filed a similar suit on behalf of the Khulumani Support Group for $400 billion for 87 South African plaintiffs against 23 U.S. and EU corporations. The cases were consolidated the following year. In November, 2004 Judge Sprizzo of the New York Federal District Court dismissed the case, which the plaintiffs then appealed to the Second Circuit Court of Appeals. They heard the case in January, 2006. Their ruling to send the case back to District Court more than a year and a half later in October 2007 was a surprise to many who thought for a variety of reasons, including the Supreme Court's 2004 decision in *Sosa v. Alvarez Machain,* which cited Judge Sprizzo's ruling, that his decision would be upheld.

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Supreme Court Decision in *American Isuzu v. Ntsebeza*

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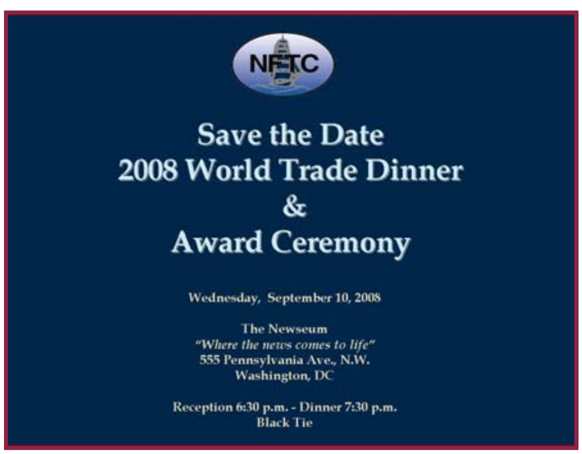
The defendants, therefore, decided to ask the Supreme Court to take the case immediately rather than to wait for the District Court to rehear it and then appeal it again. This decision was based not only on the merits of the case and the South African government's strong and repeatedly stated opposition to the case, but also on the significant broader implications for the conduct of international business if the Sprizzo ruling were not upheld. This is because of uncertainly about corporate liability to charges of aiding and betting actions of governments over which companies have no control. A petition for *certiorari* was filed with the Supreme Court in January, 2008, asking the Court to hear the case. Amicus briefs in favor of the petition were filed by the U.S. Department of Justice, as well as a coalition of U.S. business organizations.

The May 12 decision to let the Second Circuit ruling stand *does not* mean that the Court ruled in favor of the plaintiffs. It *does* mean that the process goes back to square one where it began in 2002. Judge Sprizzo will hear the case on July 8, essentially *de novo*, and in due course will issue another ruling which will likely be appealed. One issue will be questions raised by the Second Circuit as to whether the South African government's position is really their position. Since the case will probably be litigated for at least another two to three years, the Supreme Court's decision not to grant certiorari means an extended period of uncertainty about corporate liability for aiding and abetting under U.S. law. It also means an extended period of controversy about the liability of foreign multinationals for the policy of apartheid in South Africa. Contact Dan O'Flaherty, doflaherty@nftc.org for additional information.

International Center for Trade and Sustainable Development (ICTSD)

The ICTSD, a Geneva-based non-governmental organization that advises developing countries on trade and development issues, led a delegation of 8 WTO Ambassadors to Washington April 29-May 2, 2008. The purpose of the trip was to have a dialogue with American business, labor, NGOs and policy makers on trade policy issues, including the importance of concluding a successful Doha Round.

The NFTC hosted a luncheon for its member companies with the delegation on Wednesday, April 30th at the Metropolitan Club. It was the second time the NFTC helped an ICTSD delegation engage with the American business community on issue of common concern. This year, much of the discussion focused on the current US political landscape and the seemingly protectionist comments by US politicians in congress and in the Presidential race.



Update on Implementation and Development of pan-European Pension Arrangements—Opportunities and Challenges

Pension law and practice is experiencing an unprecedented period of change in Europe. New developments in this area are creating a positive environment for implementation of pan-European pension arrangements. As a result, many multinational companies are now progressing toward a pan-European pension strategy. Recently, the food manufacturer Nestlé disclosed at a conference held in April 2008 stated that "it sees the future of its pensions in pan-European pension funds." [1]

The IORP Directive

The Institutions for Occupational Retirement Provision (IORP) Directive [2]sets up a structure that permits multinational companies to establish pan-European pension arrangements. Approved by the European Parliament in March 2003, ratified by the European Council of Economic and Finance Ministers in May 2003 and officially published in the Official Journal of the European Union in September 2003, the IORP Directive requires member states to allow companies resident in their jurisdictions to sponsor IORPs in other member states and vice versa.

Each member state had a period of two years until September 23, 2005 to transpose the Directive into its national legislation. By that date only four of the member states had complied. The process of implementation was lengthy, and as of June 2007, transposition of the IORP Directive in each of the 27 EU member states is now complete. The European Commission will now turn in 2008 to a review of the IORP Directive and ensuring compliance and proper enforcement of the IORP Directive by the member states.

The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)[3] has been monitoring developments within the member states. The differences in occupational pensions' legal status in each of the member states and in the management of IORPs have proven to be the greatest challenge. CEIOPS released on March 31, 2008, a comprehensive report that provides an in-depth analysis of IORP Directive. The report incorporates comments from member state supervisors on areas that have been problematic due to interpretation and implementation differences across member states. While the advantages of implementing pan-European pension arrangements include reduced costs, improved governance and better risk management, companies considering such a step should be aware of the CEIOPS findings set out in this report.

The CEIOPS report, *Initial Review of Key Aspects of the Implementation of the IORP Directive*, essentially represents the practical experience of participating member states. While the report confirms that the supervisory process is working under the IORP directive, it states there are "some areas where action appears to be needed for clarity and for supervisory convergence."

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1 See, IPE Report, *Nestle goes pan-European step-by-step* (April 18, 2008)

2 Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision.

3 Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision.

Update on Implementation and Development of pan-European Pension Arrangements—Opportunities and Challenges

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The report also notes that member states have “definitional differences” and that clarification is required in four areas: cross-border activity, subordinated loans, ring-fencing and investment regulations. A copy of the report is available online at www.ceiops.org

Tax Considerations

On a parallel track to the IORP Directive, several European Court of Justice (ECJ) rulings have added momentum to the removal of tax barriers. Elimination of these barriers assists in implementation of the IORP Directive wherein the ECJ has asserted the principle of non-discrimination.

In *Danner* (C-136/00) and *Skandia v. Ramstedt* (C-422/01), the discriminatory tax treatment of contributions to non-domestic pension plans were found to be incompatible with the European Commission Treaty. Member states are not permitted to treat pension plans established cross-border differently than domestic plans simply because the former was established in another member state. More recently, in the matter *European Commission v. Belgium* (C-433/04), the ECJ ruled that it was against European law for the Belgian government to tax the transfer of the capital built up in a Belgian pension fund to a pension fund established in another member state when a transfer to another Belgian pension fund would attract no tax. The ECJ also confirmed earlier rulings that contributions to pension funds located in other member states must be tax deductible on the same basis as contributions to domestic pension funds.

The European Commission has also taken an assertive stance in its dealings with the member states and has launched infringement proceedings against several member states to dismantle unjustifiable tax discrimination legislation. The European Commission has sent formal requests to these member states to amend their tax legislation, under which pension contributions paid to foreign funds are not tax-deductible whereas contributions paid to domestic funds are tax deductible.

On January 31, 2008, the European Commission issued a letter of formal notice to Estonia, requesting that it amend national legislation in order to comply with Community law. On March 26, 2008, the Estonian government amended its domestic legislation, to come into effect on January 1, 2009. Infringement proceedings against Estonia have thus been closed. Cases against Hungary, Latvia and United Kingdom have also been closed.

Infringement proceedings remain ongoing, however, against Czech Republic, Denmark, Finland, Germany, Italy, Lithuania, Netherlands, Poland, Portugal, Slovenia, Spain and Sweden. Cases against Austria and France are being assessed.

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News for Our Members

NFTC Leads Delegation to Geneva

Members of the NFTC's WTO Project joined an American Business Community for Doha (ABCDoha) Delegation trip to Geneva April 14-16, 2008. During the trip, the 20 member strong delegation met with WTO Director Lamy (see photo) as well as with 9 other WTO Ambassadors, including the Chairs of the NAMA (industrial tariffs), Services and Rules negotiations. The message was simple. Time is running out for completion of the Doha Round. Negotiators must begin real negotiations in earnest so as to substantially complete the Round by the end of 2008. Moreover, for the American business community to support the outcome it must be ambitious and provide new and substantial market access in agriculture, NAMA and services – the three pillars of the Round.

The delegation left Geneva with a degree of optimism. Many sensed a positive "buzz" within the WTO about getting down to business with an eye towards moving the negotiations to the horizontal stages first at the senior official level and ultimately at the Ministerial level. There was general agreement amongst the ambassadors about the process going forward and predictions of a possible breakthrough on the so-called modalities on agriculture and NAMA by the end of May.

Regrettably, progress stalled and, to some, the negotiations took a turn for the worse. The negotiating chairs on Agriculture and NAMA issued long anticipated new texts for consideration on May 19, 2008. While the new text on agriculture reflected real progress in reaching consensus on many issues, the NAMA text was a disappointment. At the time, the NFTC issued a press release commenting that "while the stage has been set for a breakthrough on agriculture, NAMA seems to be a text in search of a negotiation". It went on to say that there were only 226 days left in 2008 (now fewer) and negotiators in Geneva needed to make good use of them.

At this point, WTO Delegations are continuing to review and comment on the new texts which now also include releases on the Services and Rules negotiations. By and large, reactions are not positive. It is anticipated that the senior level horizontal process will begin the week of June 9th. Most do not think a Ministerial meeting could take place before July.

On May 28th, US Trade Representative, Susan Schwab, warned:

> *"New draft texts on agriculture and nonagriculture market access… are disappointing because they do not move us closer to a deal that will contribute to economic growth and development . Both texts put more emphasis on exceptions and exclusions at the expense of market access…The Bush Administration remains committed to getting a Doha agreement this year… But a Doha agreement will not come at any price, cannot Come at any price, and a successful breakthrough in the coming weeks is only going to be possible if we find a negotiating path that leads to real market opening contributions by both developed and advanced developing countries."*

Tax Treaty Survey Results

The NFTC conducts an annual tax treaty survey of our members. The survey continues to be an important tool for NFTC members to communicate their tax treaty wish list and issues to the U.S. Treasury and the IRS. An overview of the *2008 NFTC Tax Treaty Survey* responses follows.

Country Priorities

While there was little change in the ranking of the most significant countries to NFTC member companies who responded to the survey ("respondents"), one country broke ahead as the priority for the most number of respondents, and the countries in the top tier shifted. As has happened in the past, the countries that rank in the top two tiers (those that were selected by the most respondents) were clustered in groups of four or five; thereafter, a significant drop in votes per country occurs.

- The country that was identified as the most important to respondents with 81% of the vote was Brazil--permanent establishment, and residence were the greatest concerns, followed very closely by interest, royalty and dividend withholding.

The countries that were identified as the next most significant to respondents with 65% of the votes (these countries were also most frequently listed as the first or second most important country by respondents) are: Canada, China and India, and new this year in this category, Singapore. The negotiation items that were listed as most significant in each country are:

- Canada: reducing withholding rates on interest and dividends were all significant, followed by royalties;
- China: reducing withholding rates on interest, royalties, and dividends were uniformly important;
- India: permanent establishment was the most important, followed by reducing withholding rates on interest, dividends and royalties,
- Singapore (elevated to the top tier this year): permanent establishment, interest, dividends and royalty withholding were uniformly important.

The countries that were included in the second tier (with 46-50% of the votes) were Taiwan, Argentina, South Korea and Mexico. The priority of the countries in the second tier remained the same as in 2007, except for the moving of Singapore out of the second tier. The items that were selected as most important for these countries are:

- Taiwan: again, interest, royalties and dividend withholding were uniformly important;
- Argentina: reducing withholding rates on interest and dividends were all significant, followed closely by permanent establishment;
- South Korea: reducing withholding rates on interest, dividends and royalties were uniformly important, followed by permanent establishment and gains;
- Mexico: gains, interest withholding and royalties were important, followed by permanent establishment.

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Tax Treaty Survey Results

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The countries that comprise the third tier garnered significantly fewer votes. Receiving between 20-303% of the votes were: Italy, Spain, Russia, Saudi Arabia, Chile, Kuwait, Columbia, Turkey, and Germany. The items that were selected as the most important for these countries are:

- Italy: interest, dividends, business profits and permanent establishments were all uniformly important;
- Spain: reducing withholding on royalties and interest;
- Russia: business profits and permanent establishment;
- Saudi Arabia: dividend withholding;
- Chile: dividend withholding;
- Kuwait: permanent establishment followed by withholding on interest and dividends;
- Columbia: interest, royalty and dividend withholding;
- Turkey: permanent establishment, business profits, royalty, dividends and the mutual agreement process;
- Germany: dividend, royalty and interest withholding.

The fourth tier of countries received only 15% of the votes. These countries in order of significance: Angola, France, Malaysia, and Thailand. The remaining countries received only one or two votes each.

Question Responses

Question #1 asked respondents to expand upon any tax treaty negotiation issues that were noted in the selection of countries and items.

- The most frequently cited response was the enhancement of the U.S. tax treaty network to countries in which multinational corporations have significant business activities: Singapore, Brazil, and China were mentioned most frequently.
- Respondents also reiterated the importance of eliminating withholding taxes on interest, royalties and dividends.
- Problems were encountered in permanent establishment interpretations in Canada, India, China, and Kuwait. India was cited as taking particularly aggressive positions on permanent establishment.
- The Middle East and sub-Saharan Africa also were cited as areas where tax treaties could reduce the potential for permanent establishment abuse.
- Respondents also recommended doing regional treaties, based on a new regional "model" tax treaty, with some of these areas. After a regional treaty was in place, the U.S. could adopt a more robust treaty with specific countries.
- Respondents also recommended updating some of the oldest U.S. treaties, e.g. Philippines and Egypt, as part of this process.

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Tax Treaty Survey Results

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- Respondents outlined problems with Mexico and its characterization of income. Mexico also changed its characterization of payments for software to expand the types of payments subject to withholding tax.
- Binding arbitration and more efficient mutual agreement procedures were also referred to in several responses (to this question and question #2); respondents noted that significant delays were encountered in resolving examinations and that settlements were often held hostage unless taxpayers waived access to mutual agreement procedures.
- There was recognition that the ratification of the recently signed protocol with Canada could alleviate many of the problems the companies are currently facing there.

Question #2 focused on tax treaty implementation issues, asking respondents to provide details about examinations, settlement problems, and procedural issues encountered in obtaining tax treaty benefits.

- Onerous procedures encountered to receive reduced tax treaty withholding rates were cited, particularly in Italy, Singapore, Portugal, China and the U.K.
- The expansion by certain countries of what constitutes a permanent establishment and the attribution of profits to that permanent establishment (sometime attributable to misinterpretation by tax authorities) is another issue of significant concern to respondents.
- The inability of the MAP and Competent Authority to resolve issues of double taxation was cited frequently with reference to India, Mexico, Canada, Germany and Japan.

Thank you again to those that took the time to respond to the *2008 NFTC Tax Treaty Survey*, your responses provided valuable information. The cleansed information has been provided to the U.S. Treasury and the Internal Revenue Service officials with responsibilities in the tax treaty area.

Update on Implementation and Development of pan-European Pension Arrangements—Opportunities and Challenges

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Conclusion:

A single Europe-wide pension plan, along the lines envisaged in the IORP Directive, would offer considerable advantages to a multinational corporation, including:

- Giving employers the choice of operating either national or pan-European pension arrangements and designing arrangements that meet the needs of their employees
- Easing regional transfer costs facilitating employee mobility throughout the member states
- Streamlining administrative costs as the scheme would only require a single administrator to oversee the arrangement across several European countries
- Creating greater cross-border investment opportunities

USA*Engage Announces Honorees for Annual Event

USA*Engage will honor retiring Senator Chuck Hagel (R-NE) and Congressman Earl Blumenauer (D-OR) for their support of international trade and engagement at its 11th annual event on June 25th.

Senator Hagel has long been a strong supporter of U.S. global engagement and free trade. He has also been a consistent champion of diplomacy. In a 2007 letter, Senator Hagel called on President Bush to "offer direct, unconditional and comprehensive talks on Iran." Senator Hagel has also cosponsored efforts to reform the way in which U.S. sanctions are administered.

Congressman Blumenauer has voted against new unilateral U.S. sanctions efforts against Cuba and Iran and has sought to promote engagement abroad. As a new member of the House Ways and Means Committee, he has been a strong supporter of a bipartisan trade policy and voted in favor of the U.S.-Peru free trade agreement. Congressman Blumenauer wrote that the Peru agreement "was a groundbreaking agreement that helps workers in Oregon and Peru, protects the environment and strengthens our economy."

Senator Hagel and Congressman Blumenauer have consistently received high marks on USA*Engage's scorecard of congressional voting records.

The lunch will be held on Wednesday, June 25 on Capitol Hill.

Update on Implementation and Development of pan-European Pension Arrangements—Opportunities and Challenges

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There are options, as well, regarding where companies set up pan-European plans. For a company that already maintains a plan in a particular jurisdiction, but has groups of other employees in different member states, it may be sensible to convert the plan to pan-European status. On the other hand, there may be reasons to set up a new pan-European plan in a particular member state.

Various member states are working to attract new pension business by stressing the advantages of their regulatory or low tax systems. In practice, the choice of home plan will probably be determined by matters of common sense and simplicity. Clearly, countries that have a clear regulatory system and a community of specialist advisers are likely to prove attractive. Touting qualities such as these, Belgium, Ireland, Luxembourg and Netherlands promote their jurisdictions as prime locations for establishment of pan-European pension arrangements.

For years, the concept of a pan-European pension arrangement was under discussion without a clear path to becoming reality. Now that a structure is in place, companies operating pension arrangements in the European Union will wish to consider this vehicle. Multinational companies are currently exploring different locations and possibilities to offer streamlined benefits plans in Europe —while realizing economies of scale in workplace pension provision.

About the Author:
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Annual International Human Resources Conference, July 16 & 17, 2008, New York

Global Workforce Management: Driving Engagement Across Borders & Cultures

The NFTC will host its 15th annual International Human Resources management conference in New York City at the New York Athletic Club. This year's conference will focus on the sourcing, development, engagement and retention of business talent around the world. The faculty will include senior corporate human resource management colleagues from such multinational companies as: Alcatel-Lucent North America, Colgate-Palmolive, General Electric, HSBC and others. Additionally speakers will include subject matter experts from: AIRINC, Cartus, CIGNA International Expatriate Benefits, DDI and KPMG.

For further details on the agenda and registration go to www.nftc.org or contact Sandra Rodriguez at either srodriguez@nftc.org or (212) 399 7128.

New Members

Verizon Communications Inc.: As the second largest US telecommunications provider in the United States, Verizon serves a pivotal role as a new member of the NFTC. Providing access to high speed internet connections, long-distance telephone service, among other amenities, Verizon's role in the development of small to midsized businesses in the US is reflected profoundly in its operations in 28 States across the US. Its wireless phone service, a joint venture with Vodafone Group, known officially as Cellco Partnership, services a staggering 65 million customers and ranks as the second largest provider of wireless phone service in the country. On the global front, Verizon is actively involved in providing necessary IT provisions for Multinational Corporations and government clients. As such, the NFTC is proud to have Verizon as a member.

Sasol North America Inc.: A truly multinational corporation, subsidiary Sasol North American Inc. is member to South African diversified chemical giant Sasol Limited's Olefins and Surfactants unit (which itself is based in Germany). The division is responsible for producing a wide variety of commodity and specialty chemical products. Among the selection include alcohols, alumina, paraffin's, specialty surfactants, and fatty acid esters that are used in an assortment of other products. Possessing an R&D facility in the United States, Sasol has positioned itself to emerge as a vital player in the global commodities market with respect to specialized chemical production. The NFTC warmly welcomes Sasol into its fold and looks forward to developing its relationship.

Sanofi Aventis Company: As Europe's largest pharmaceutical company, Sanofi Aventis carries with it a powerful reputation in the pharmacy community. Producers of such hallmark medicines as Ambien, Allegra, and Insulin brand Lantus, Sanofi Aventis continues to push the envelope in innovation and brand development. The NFTC looks forward to helping this meet the demands of an ever growing market and pharmaceutical sector. With great enthusiasm, the NFTC looks forward to working with Sanofi Aventis.

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News for Our Members

New Members

(Continued from page 15)

Aker Solutions: is a global provider of engineering services, technology products and integrated solutions. The company provides design, construction, and operation of industrial facilities for the energy, metals and mining, and process industries. They are deeply committed towards benefiting their customers, shareholders, employees and societies in which they operate. Aker Solutions is part of Aker ASA, a group of premier companies with a focus on energy, maritime and marine-resources industries. NFTC welcomes Aker Solutions as an International Human Resources member.

AstraZeneca International is a leading global pharmaceutical company specializing in drugs for gastrointestinal, cardiovascular, neurology, and oncology therapeutic areas. AstraZeneca seeks to encourage an innovative corporate culture which not only leads to the discovery of more innovative and effective medicines, but contributes to all aspects of its business. Additionally, AstraZeneca is active in over 100 countries and works to ensure that they continue to be welcomed as a valued member of the global community. NFTC welcomes AstraZeneca as an International Tax, Trade & Finance and Human Resources member.

Development Dimensions International (DDI) is a Professional Services firm which specializes in helping companies to hire better people faster and develop professional talent. DDI has the global resources necessary to implement human resources efforts globally and effectively. DDI boasts an impressive list of clients which includes Microsoft, Coca-Cola, and Microsoft. They have 75 offices in more than 25 countries. NFTC welcomes DDI as a new member and a proud sponsor of the 2008 International Human Resources Conference.

General Mills is a household name with a global reach. General Mills is the World's sixth-largest food company, which markets in over 100 countries. Their ability to consistently offer healthy and delicious food options has translated into General Mills holding either the No. 1 or No. 2 position in nearly every position in which they compete. NFTC is proud to welcome General Mills as a new member.

Science Applications International Corporation (SAIC) is a Fortune 500 science, engineering, and technology application company that uses their wealth of experience and in-depth knowledge to solve problems of critical importance to the nation and the world. Founded by J. Robert Beyster, Ph.D., and a small group of scientists in 1969, their ability to address their clients technology related needs has allowed them to expand over the years to 44,000 employees in 150 offices around the world. SAIC's commitment to delivering best-value services and solutions based on innovative applications of science and technology has consistently translated into success. NFTC welcomes SAIC as a new International Human Resources member.

Next Tax Lunch Forum Scheduled for June 17th

The next NFTC Tax Luncheon Forum to discuss current international tax issues will be held on Tuesday, June 17, at 12:00 p.m. ET, at the NFTC offices, 1625 K Street, NW, Suite 200, Washington, DC. We are very pleased to announce that Avril Haines and David Willkie, of the Senate Foreign Relations Committee, have been invited to speak to us about the pending tax treaties before the Senate Foreign Relations Committee. Please join us for this informative discussion and come prepared for a lively dialogue. Please join us for this informative discussion and come prepared for a lively dialogue. If you would like to attend please complete the attached response form to attend or participate in the conference call and return it by Friday, June 13th

For more information contact Catherine Schultz, at cschultz@nftc.org or 202/887-0278.

Calendar of Events

Date	Event	Location
June 6, 2008	US-Middle East Free Trade Coalition Meeting: Jordan Private Sector Dialog with MCC	Washington, DC
June 11, 2008	Inaugural Meeting of Russia 123 Coalition	Washington, DC
June 12-13, 2008	NFTC Board Meeting	Wilmington, DE
June 17, 2008	Tax Lunch Forum	Washington, DC
June 25, 2008	USA Engage Annual Meeting	Washington, DC
July 16, 2008	Tax Lunch Forum	Washington, DC
July 16-17, 2008	Annual IHR Management Conference	New York City
September 10, 2008	Annual World Trade Dinner and Award Ceremony	Washington, DC
September 10, 2008	Annual Meeting	Washington, DC
September 10, 2008	Board of Directors Meeting	Washington, DC
October 8, 2008	International Benefits Committee	New York City
October 8-10, 2008	Fall Tax Meeting	Wintergreen Resort, VA
November 12, 2008	Tax Lunch Forum	Washington, DC
December 10, 2008	Tax Lunch Forum	Washington, DC

Note: The Tax Steering Committee Meetings, Expatriate Management, Global Compensation, International Assignment Management, and International Benefits Committees are by invitation only. For information about them contact NFTC, (202) 887-0278 e-mail nftcinformation@nftc.org

This issue of Council Highlights brought to you by:

USA★ENGAGE

U.S.-Middle East Free Trade Coalition

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NATIONAL FOREIGN TRADE COUNCIL
ADVANCING GLOBAL COMMERCE FOR OVER 90 YEARS