

COUNCIL HIGHLIGHTS

NATIONAL FOREIGN TRADE COUNCIL

ADVANCING GLOBAL COMMERCE

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



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A Word From the President

Ok, time for another rant. (Since we only put out Council Highlights every other month, I suspect you've forgotten the last one, and thus can handle a new one.) The current battle over the tax extenders bill in the Congress is the best proof yet, if one needed any more, of the sorry state to which the legislative branch of our government has descended.

Do you remember that classic pamphlet from middle school or high school government classes, How a Bill Becomes Law? It describes the legislative process from a bill's introduction, through hearings, committee markup, floor debate and amendment, parallel action by the other body, House-Senate conference, and, ultimately, signature or veto. That was the way most of us learned how government operates, and, when I was on the Hill (1973-93) it bore some actual resemblance to the way things actually worked. I remember hearings where senators actually learned something, committee markups where there were actual amendments and votes on them, floor debate, again with actual amendments and time agreements for debating them, and then real conferences where offers were passed back and forth between the bodies, each of which would vote on them.

Ah, nostalgia for things that are no more. About all we seem to have left of the process these days is the presidential signing ceremony. Nowadays, if hearings are held at all on a bill, they're show pieces designed to demonstrate support for what the majority has already decided to do. Most important bills are drafted by House and Senate leadership with very little input from Members that might actually know something about the subject. If the committee is not bypassed completely with the bill going directly to the floor, the markup is virtually *pro forma*, with the majority generally opposing all amendments and the minority not offering them anyway and simply opposing the bill.

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Former NFTC Chairman Michael H. Jordan dies at 73

NFTC members are deeply saddened by the passing of former chairman Michael Jordan. He died on May 25 from complications related to cancer. Mike was 73. His career featured a succession of extremely challenging positions.

Following service in the Navy on Admiral Hyman Rickover's staff, he served as consultant and principal at McKinsey & Co. and then joined PepsiCo in 1974, where he held various senior executive positions, and retired in July 1992 as Chairman and CEO of its International Foods and Beverages Division.

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NFTC Encouraged By Results of U.S.-China High-Level Meeting

The U.S.-China Strategic and Economic Dialogue met in Beijing on May 24th and 25th with a large, high-level U.S. delegation conferring in this twice-yearly dialogue. The U.S. team of 200 officials included Secretaries Clinton, Geithner, Vilsak, Locke and USTR Kirk, along with a host of sub-cabinet officers. On May 28th the NFTC held one of its regular press lunches for about fifteen reporters from major news outlets to discuss the outcome of the S&ED in the context of increasingly difficult bilateral relations.

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News for Our Members

A Word From the President

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Floor action does not occur until some sort of deal is cut with the relevant parties, sometimes on both sides of the aisle, often not, at which point the bill is hustled to the floor and muscled through. Conferences are similarly virtual – the occasional actual meeting so Members can give speeches but with all real bargaining taking place behind closed doors among only a handful of concerned parties.

So, how did things get this way and what does it all mean for us, the people?

Books can, and no doubt will, be written on the reasons for the deterioration of the legislative process, and it is apparent there is plenty of blame to go around. The Democrats are now practicing exactly the strategies I've described, but they're strategies perfected by the Republicans after they took control of the Congress in the 1994 election. They are, in fact, consistent with the tactics used in parliamentary systems, where the majority party controls both the legislative process and the government, and thus drafts the bills, enacts them, and implements them. To paraphrase one experienced parliamentarian from such a system, "We would never be worried that no one in the minority supported the bill. If they had supported it, we would have thought something was wrong with it."

That's fine for parliamentary systems where the people view elections as having consequences and expect their government to follow through on its promises. While Americans have the same expectations, they also have a preference for bipartisanship and government from the center, and they have had, in recent times, a predilection for preferring split government – one party controlling the White House and the other one or both houses of Congress. Over two hundred years our political system evolved mechanisms to support that approach – encouraging people to work together to produce compromises in which each party tosses its more extreme members over the side in favor of a centrist product. In the last twenty years we seem to have lost that capability and moved to parliamentary tactics even though our political architecture has not changed. There's a lot more to be said on this, but not enough space in this column.

As for what it means, it has clearly contributed to the public's low opinion of Congress and to the latter's difficulty in getting anything done. Perhaps more important, it has produced a serious decline in product quality, and there is no better proof of that than the tax extenders bill.

Tax policy is complicated, as those who spend their lives working on it know very well, and the impact a particular proposal will have is often difficult to discern in advance. For that reason, tax bills have always benefitted from an open, transparent process where there are extensive hearings beforehand, open markups where Members can pursue their specific interests, and a free amendment process. In other words, doing it the old fashioned way. Through that process, affected parties, which currently include most of the NFTC's members, have plenty of time to study competing proposals and weigh in not only on their merit (or lack thereof) but also on whether they would work as intended or whether there are "ripple effects" that will produce consequences no one wants. In addition, through the old fashioned process, Members can advance their specific interests, offer their amendments, fight them out, win or lose, and come away with a feeling that they have participated in the process. Instead, what we have is a bill constructed without hearings, without consultation with any of the affected parties, and without any meaningful opportunity to affect the outcome. Many of the provisions being touted as closing loopholes, in fact are contradicting advice companies have previously received from the IRS and which they have acted on in good faith. The retroactive effective dates, also put in without consultation, punish companies for doing what the IRS told them they could do.

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International Trade & Export Finance

Second Round of Trans Pacific Partnership Negotiations Began Week of June 14th in San Francisco

Hundreds of trade negotiators from the eight nations (Australia, Brunei, Chile, New Zealand, Peru, Singapore, the United States and Vietnam) negotiating the Trans-Pacific Partnership (TPP) Agreement are meeting the week of June 14 in San Francisco for the second negotiating round of this plurilateral market opening trade agreement. The NFTC has joined with other U.S. companies and associations in the TPP Business Coalition to encourage an aggressive U.S. effort to craft a comprehensive, innovative “21st Century” agreement. The goal of the TPP is to simplify and integrate trade and investment among the partner countries, laying the groundwork for expansion to other large economies in the Asia Pacific region. To maintain momentum in the negotiations, which are still in the early stages, the TPP coalition recently called for all sectors to remain on the table for negotiation and an acceleration of effort that would conclude the agreement by the 2001 APEC Ministerial, hosted by the U.S. Additionally, the coalition calls for TPP partner countries to incorporate a standstill agreement to not adopt new trade or investment restrictions that would limit, beyond existing levels, the access of TPP countries to each other’s commercial and procurement markets or reduce levels of transparency or protections for intellectual property or investment that affects goods and services of the TPP countries. While it is not likely that text will be tabled in this second round, it is expected that detailed discussions on a range of horizontal issues outside of regular chapters will be discussed in depth. Horizontal issues include the treatment of small and medium size enterprises, regulatory coherence, and supply chain issues. Further discussions are likely to occur on how to treat existing bilateral agreements within the context of TPP as well as overall strategies for crafting a common set of rules of origin.

USTR has also taken the unprecedented step of including briefings by NGO’s during the negotiating round. The AFL-CIO is expected to make presentations to all negotiating groups and USTR will conduct daily briefings to civil society stakeholders in the context of Ambassador Kirk’s commitment to unprecedented outreach and communication with all interested U.S. parties in the negotiation of the TPP.

NFTC Encouraged By Results of U.S.-China High-Level Meeting

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In addition to Chinese currency valuation, the S&ED meetings focused on China’s “indigenous innovation” program which requires companies to be on approved local content lists in order to sell to the Chinese government and possibly also to state-owned enterprises. The purpose of this program is to encourage the development of Chinese technology; however, the result is likely to be discrimination against US and other foreign firms. US-China Business Council president, John Frisbie, who spoke at the press lunch, was optimistic about Chinese willingness to engage in more discussions before finalizing the program.

NFTC president Bill Reinsch struck a less optimistic note, saying, “we’ve seen a pretty clear change in favor of more state control over the economy. The trend, I think, is going to get worse.” Both Frisbie and Reinsch agreed that it is important to continue dialogue with China, especially at the fall meetings of the Joint Commission on Commerce and Trade (JCCT) in Washington. The JCCT deals with specific bilateral issues, often deriving from the S&ED, at the working level. Of this broad process of dealing with the increasingly muscular Chinese foreign commercial policy, Reinsch said, “When you launch a united front, it can make a difference.”

International Trade & Export Finance

Trade and American Competitiveness Coalition Spreads the Positive News on Free Trade

Every week since March 11th the U.S. Trade and American Competitiveness coalition, made up of major U.S. companies (including many NFTC members and trade associations including the NFTC), have been sending simple, clear, substantive one page messages to Congress and multiplier groups across the country. These weekly messages demonstrate how “Increased US Exports = More American Jobs” to counter the misinformation and misunderstanding that seems to permeate the view in Congress and among the public that trade is to blame for a myriad of difficulties. Weekly messages have been crafted by various associations and companies, including the NFTC, the Association of Equipment Manufacturers, the Coalition of Service Industries, the Emergency Committee for American Trade, the National Association of Manufacturers, the U.S. Chamber of Commerce, Citi, Wal-Mart, Caterpillar and others. These positive facts and figures demonstrate the vital importance of increased U.S. trade and investment to American companies, workers, farmers and ranchers. They also provide a library of factual information and data to Members of Congress to encourage them to move beyond the Congressional “time out” on trade to embrace a positive-market opening, trade agenda to put Americans back to work.

Messages of the week may be found in the “Issues Spotlight” section on the NFTC home page at www.nftc.org. Many companies are going beyond these messages of the week to Congress and crafting additional articles and fact sheets to share with their employees across the country. Here is an example of one such message by Caterpillar Corporation to their employees. For more information on the Trade and American Competitiveness Coalition or to become involved by volunteering to write a weekly message highlighting the importance of your sector or export success, contact Chuck Dittrich at cdittrich@nftc.org.

Former NFTC Chairman Michael H. Jordan dies at 73

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In addition to serving on numerous corporate boards, he was also deeply involved in the Center for Excellence in Education, founded by the late Admiral Rickover, and the United Negro College Fund. He served on the Center’s board beginning in 1986, and as its chairman from 1988-1992. In 1986, he joined the Board of the United Negro College Fund, and from 1994 to 2004, he served as its Chairman.

Michael Jordan was our chairman for a record four years – from 2002 through the end of 2006 – and played an important role in the NFTC’s expanding presence in the international trade and tax policy communities. He was a superb leader – there when we needed him, insightful with his advice, and always ready to help advance the organization’s interests. I know he will be deeply missed by his many friends at the NFTC.



He is survived by wife, Hilary Cecil-Jordan; his children, Kathryn (Kate) Donaldson, Stephen Jordan, Francesca and Alexander Cecil, his daughter-in-law, Jamie Gomez; his grandchildren, Hayley, AlekSandra, Clare and Iain Donaldson, and Damian and Elena Jordan. His son-in-law, Barton Donaldson, predeceased him in 2009.

We will be making a donation on behalf of the NFTC. For those who wish to honor his memory separately, the family has requested that donations be sent to the Center for Excellence in Education, 8201 Greensboro Drive, Suite 215, McLean, VA 22102, or the United Negro College Fund, 8260 Willow Oaks Corporate Drive, P. O. Box 10444, Fairfax, VA 22031.

International Trade & Export Finance

Free Trade Key to Cat's Future

Reprinted with permission of William Lane, Caterpillar Inc., Folks, May/June 2010

To view the full text with charts follow the URL:

[http://www.nftc.org/default/council_highlights/2010/Free Trade PDF.pdf](http://www.nftc.org/default/council_highlights/2010/Free_Trade_PDF.pdf)

An American manufacturing trade surplus? It's not something that's read about often, but in countries where the United States enjoys free-trade agreements, it's already a reality. And as the country moves toward World Trade Month in May, it's important to remember how everyone benefits from open and free markets around the world.

As every Caterpillar employee knows, American manufacturing remains strong and vital to the world economy. In fact, time and again, companies like Caterpillar show that given a level playing field and global footprint, both customers and companies benefit.

"When you look at the U.S. trade deficit, there are several undisputed facts. The United States has an impressive trade surplus in the service industry and in agriculture. At the same time, there is a big trade deficit in oil and an enormous trade deficit in manufactured goods," says Caterpillar Lobbyist Bill Lane. "But that doesn't tell the full story.

"What is almost always over looked is that as a group, the United States is running a big trade surplus in manufacturing goods with the 17 countries with which we have free trade agreements," said Lane. "It's no coincidence. This validates that when markets are truly open, American manufacturers do exceedingly well."

Caterpillar has a long history of advocacy for free trade, a powerful means for economic growth and global engagement. Exports from Caterpillar's U.S. operations generate thousands of jobs both domestically and globally every year. In 2010, the company is strengthening its commitment toward expanding global markets and will continue to promote policies that reduce or—better yet—eliminate trade and investment barriers so Caterpillar can better provide for its worldwide customer needs.

So what's the solution to the overall U.S. trade deficit?

"Some will say a good dose of protectionism is what is needed," Lane said. "But that would be defeatist, harmful to the economy, and catastrophic to Caterpillar's future. A better remedy is rather obvious. Produce more domestic energy and truly open foreign markets. As a first step, Congress should immediately pass the Colombia, Panama and Korea Free Trade Agreements."

Even though trade expansion is not a priority in the current political climate, the Obama Administration has set forth bold goals to double exports in the next five years. Supportive of that goal, Caterpillar employees and the Governmental Affairs team continue to encourage policymakers to open foreign markets and oppose protectionism as the best path to export growth. After all, with 95 percent of Caterpillar's potential customers living outside the United States, and a proven success in free-trade nations, it only makes sense to have open markets so Caterpillar can reach them.

Throughout 2010, Caterpillar will continue advocating trade agreements that could have an immediate impact on U.S. jobs. For more information on Caterpillar's position on free trade, as well as other important issues, check out the Governmental Affairs website at <https://gov.cat.com>. Available there are monthly updates on the "Free Trade Lobbyist" blog and up-to-date information on the state of play in Washington, D.C.

International Trade & Export Finance

Former WTO Ambassador Stuart Harbinson to Serve as Chief Advisor to NFTC's WTO Working Group

The NFTC recently announced that Ambassador Stuart Harbinson will serve as the new representative and chief advisor to the Council's WTO Project in Geneva, Switzerland, in his capacity as senior trade policy advisor at Winston & Strawn LLP. As the successor to Ambassador John Weekes – who retired after serving for eight years as the NFTC's WTO advisor – Harbinson brings to the NFTC decades of senior-level experience in international trade and WTO-related issues.

“We are very pleased to welcome Ambassador Harbinson as our representative in Geneva, and we have no doubt that he will provide invaluable leadership to our WTO Working Group,” said NFTC President Bill Reinsch, “Ambassador Harbinson has been an ardent supporter of the rules-based trading system and we value his commitment to the successful conclusion of the Doha Round and to the advancement of global economic growth.”

As senior trade policy advisor to Winston & Strawn, Ambassador Harbinson advises the firm's international trade lawyers on all trade policy issues, with a focus on cases involving the World Trade Organization. He has served as a senior-level WTO official in a variety of capacities, including as former special adviser to Director-General Pascal Lamy and as chief of staff to Director-General Supachai Panitchpakdi. He previously represented Hong Kong as ambassador to the WTO for eight years and was elected several times as chairman of various important WTO bodies, including its overarching General Council. Harbinson has extensive experience overseeing both Doha Round preparation discussions and participating in WTO dispute settlement panels.

Immediately prior to joining Winston & Strawn, Harbinson served as senior trade advisor to the Secretary-General of the United Nations Conference on Trade and Development, where he provided strategic advice aimed to facilitate cooperation between the UN and the WTO.

“We value Ambassador Harbinson's public service and his extensive knowledge of the WTO,” said NFTC Vice President for Global Trade Issues Jake Colvin, “We look forward to working with Ambassador Harbinson to advance U.S. business interests in supporting the rules-based trading system.”

Global Innovation Forum

Washington, DC & Research Triangle Groups Collaborate on Innovation Policy Recommendations to President Obama, Governor Perdue

Innovation stakeholders suggest global mobility, trade policies key to creating U.S. jobs

In letters sent last month to President Obama and North Carolina Governor Beverly Perdue, National Foreign Trade Council Foundation (NFTC Foundation) President Bill Reinsch and Research Triangle Foundation President & CEO Rick Weddle outlined a series of recommendations for leveraging public policy to expand U.S. exports, encourage innovation and create high-wage jobs across the country. The recommendations were developed during a one-day workshop hosted by the NFTC Foundation's Global Innovation Forum in partnership with the Research Triangle Foundation on April 16th, which brought together a broad range of innovation stakeholders, including more than 20 CEOs, 90 inventors, academics, non-governmental organizations, and state and federal policymakers.



Senator Kay R. Hagan (D-NC)

During the event, which was held in Research Triangle Park, North Carolina, attendees identified several areas of concern for U.S. businesses, workers and entrepreneurs, including global trade barriers, counterfeiting and piracy, access to capital and cultivating and retaining entrepreneurs, innovators and talented employees. Immigration and visa policies were particularly high on the list of concerns of local business leaders. Based on the discussion, the letter details five key areas of focus for public policy, including:

- Improving U.S. immigration and global mobility policies;
- Creating a more open, rules-based, competitive trading environment by aggressively pursuing new trade agreements and enforcing existing regulations;
- Promoting the importance of the intellectual property rights system as a means to encourage innovation and provide a framework for advanced research collaboration and technology sharing;
- Improving access to capital, particularly for innovative small businesses and entrepreneurs; and
- Supporting efforts by emerging innovators, entrepreneurs and small businesses to engage the public policy process.

“We hope this feedback will be useful as you prioritize efforts to shape national innovation and trade policies to support your ambitious goal of doubling exports in five years,” wrote Reinsch and Weddle in the letter sent to the President.

The Research Triangle Park event was the first in a series of innovation policy discussions to be held around the country, made possible thanks to a grant from the GE Foundation to the NFTC Foundation. The next innovation discussion will take place at the Palo Alto Research Center in Palo Alto, California.

In addition to the Research Triangle Foundation, the North Carolina forum was held in partnership with the Nicholas Institute for Environmental Policy Solutions of Duke University, the Council for Entrepreneurial Development, the North Carolina Biotechnology Center and the North Carolina Sustainable Energy Association. In addition to the GE Foundation, Progress Energy, GlaxoSmithKline, ABB, IBM and Cisco also helped sponsor the event.

Global Innovation Forum

NFTC's Global Innovation Forum Hosts Roundtable in San Francisco on the Role of Intellectual Property for Early Stage Clean Technology Innovators

On April 22, 2010 the Global Innovation Forum hosted a roundtable discussion for early stage clean technology innovators to discuss winning strategies using intellectual assets to win public and private sector capital.

Sponsored by K&L Gates, the evening event featured keynote remarks by Julia Moody, Deputy Chief Counsel for Intellectual Property for the U.S. Department of Energy (DOE). Ms. Moody handles intellectual property matters for DOE program officials in the Office of Energy Efficiency and Renewable Energy (EERE). A panel then discussed in greater detail opportunities and challenges facing early-stage, clean technology companies, from the protection of the value of intellectual assets in the global economy to the role of IP in facilitating agreements among inventors, universities, governments, investors and manufacturers.

The panel included remarks by:

- Mark Stephen Chasan, Chairman and CEO, Transformative Capital and former Chairman and CEO of eMusic
- Chuck Holland, Partner, K&L Gates
- Luis Mejia, Stanford University Office of Technology Licensing
- Raymond Millien, Entrepreneur in Residence, Innovators Network and former General Counsel of Ocean Tomo and Group IP counsel of American Express

The event attracted more than 60 invited guests with more than 30 CEOs and Founders of Bay Area clean technology companies.

For information please contact John Stubbs at jstubbs@nftc.org.

GIF Launches Monthly Breakfast Series on Trade & Innovation

The world requires American innovation for survival, enjoys and benefits from American creations every day. American innovation provides clean energy, feeds the world, connects individuals through cultural and physical barriers to communication, enables people to live longer and healthier lives, entertains and educates literally billions of people. While many around the world benefit from innovative and creative technologies, products and services developed in the United States, American workers, families and communities do not enjoy the full benefit of having created and delivered this value.

U.S. companies need fair and predictable access to the 95% of the world's consumers that live outside of our borders. Unfortunately, the global marketplace is not always fair for American companies, and protectionism is on the rise around the world.

The Global Innovation Forum, a project of the National Foreign Trade Council Foundation, will kick off on June 8, 2010 a monthly breakfast series with top innovation and trade staffers from the U.S. Government to discuss barriers to trade for America's leading innovators. This session will feature remarks from Travis Sullivan, Director of Policy and Strategic Planning at the U.S. Department of Commerce. The breakfast is available to invited guests only, and features leading companies, associations, academics, think tanks, NGOs and labor organizations.

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Global Innovation Forum

GIF Launches Monthly Breakfast Series on Trade & Innovation

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On July 13, we'll be joined by Deputy USTR Demetrios Marantis. We will continue to schedule meetings for August, September, and so on. These meetings will begin at 8:00 a.m. and we will serve coffee and continental breakfast. We will begin with a speaker and follow with a meeting to discuss topical trade and innovation issues, identify work in progress, and explore areas of agreement and disagreement on how to address current challenges. The location for these meetings will change with the speakers, but the first one on June 8 will be at Sidley Austin at 1501 K St NW from 8:00 - 9:30 a.m.

Topics will include:

- Antitrust;
- Censorship;
- Customs;
- Government Procurement;
- Intellectual Property Protection;
- Privacy/Data Protection;
- Subsidies;
- Technical Standards;
- Visas; and
- a variety of other creative mechanisms governments are deploying in important markets around the world to unfairly disadvantage American innovators.

For information please contact John Stubbs at jstubbs@nftc.org.

A Word From the President

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It is no surprise that under these circumstances companies are upset, not only because the bill is going to cost them a boatload of money but because it does it without warning and in a way inconsistent with the tax planning advice they have been receiving from the government.

In addition, Members are upset because only a handful of them had any input into these provisions, and thus the vast majority in both parties have no great investment in the product or the process. The bill may well have passed by the time you read this – the spending provisions in it are politically attractive – but the legislative process will nonetheless have suffered another serious blow. Let's hope it's not a fatal one.

NFTC Takes a Position on “American Jobs and Closing Tax Loopholes Act of 2010

On May 20, 2010, the Chairmen of the House and Senate tax-writing committees introduced the “American Jobs and Closing Tax Loopholes Act of 2010” (H.R. 4213). The legislation was designed to be a compromise bill between the House and the Senate to move the extension of the expired tax provisions forward. The House had passed the tax extenders legislation in November 2009, and the Senate adopted the legislation in the Spring of 2010. The revenue offsets included in the original legislation were used to offset the cost of the health care reform legislation. The tax-writers needed to find new revenue to offset the extension of the tax provisions. The revenue offsets included in the H.R. 4213 were new, and had never been seen before by the business community. The NFTC weighed in with the lawmakers on the affect of the legislation on NFTC members:

NFTC Position

We support the inclusion in the extender legislation the following provisions that expired at the end of last year:

- An extension of the look-through rules for payments between related foreign corporations, and
- An extension of the exception from Subpart F for active financing income

However, we have grave concerns about the revenue offset provisions included in the “American Jobs and Closing Tax Loopholes Act of 2010” (H.R. 4213). The revenue offsets included in the extender legislation were developed in closed door meetings without input from the affected taxpayers. The U.S. international tax rules are complex and increasingly out of step with the rest of the world. These new revenue proposals will make American businesses less able to compete in foreign markets, will subject them to double taxation, and as a result may have significant negative consequences on worldwide American businesses and their U.S. employees. As such, these proposals should be thoughtfully considered only in the context of international tax reform rather than be quickly enacted as permanent revenue offsets for short term extensions of expiring tax provisions. In addition, the provisions are retroactive and will affect taxpayers who have relied on long standing rules in the tax code in doing their tax planning. Taxpayers need to be able to rely on certainty of tax rules when making business decisions and the retroactive application of adverse tax changes is unfair and will make it more difficult for American worldwide companies to compete in the global marketplace.

Foreign Tax Credit Splitter Provision

The retroactive effective date for the foreign tax credit splitter proposal, that is designed to prevent the so-called splitting of foreign taxes and foreign income, is both inappropriate and unfair. The proposed effective date means that the changes to the foreign tax credit rules would apply to foreign taxes that were paid by taxpayers long before the legislation was under consideration (much less enacted). Taxpayers should be entitled to rely on the foreign tax credit rules that were in place when they paid the foreign taxes.

The potential for foreign taxes and foreign income to be separated or “split” from each other was created by the U.S. tax law. U.S. tax rules determine which entity in a corporate group is treated as the taxpayer with respect to foreign taxes paid; U.S. tax rules also determine which entity is treated as earning the foreign income with respect to which such taxes were paid. The proposal would change these established rules and would impose those changes on a retroactive basis. The proposed retroactive effective date means that the changes to the foreign tax credit rules would apply to different taxpayers differently. The proposal thus would have an uneven effect.

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NFTC Takes a Position on “American Jobs and Closing Tax Loopholes Act of 2010

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Treasury and the IRS in 2007 communicated to taxpayers that any changes in this aspect of the foreign tax credit rules would be prospective only. Treasury and the IRS in 2006 issued proposed regulations aimed at requiring the matching of foreign taxes and foreign income. When originally issued in 2006, those proposed regulations were proposed to be effective for foreign taxes paid in taxable years beginning on or after 2007. When the government had not finalized the regulations by late in 2007, they recognized that retaining this effective date would make the regulations effectively retroactive. So, in November 2007, Treasury and the IRS issued a Notice stating that the regulations, when finalized, would be effective only for taxable years beginning after the date they are published in final form. It would be completely inconsistent with this history for legislation now to apply on a retroactive basis. And it would be particularly surprising for a statutory change to apply retroactively when the proposed regulatory guidance in this area would have been effective only prospectively.

Retroactive application of the provision also would be extremely difficult, if not impossible, for taxpayers to apply. Consider a taxpayer that has a group of business affiliates in a foreign country that file their tax returns in that country on a consolidated basis. If the provision applies retroactively, the taxpayer would have to try to figure out the separate income and foreign taxes associated with each of the entities for many past years. It would be very difficult, if not impossible, to obtain the necessary information and make the determinations that are required so many years after the year in which such taxes were paid.

Section 338 Covered Asset Acquisitions

American taxpayers utilize Section 338 in acquiring foreign companies to help level the playing field against foreign competitors. It is not a loophole and is a well recognized practice. The primary foreign competitors of many American worldwide companies are located in jurisdictions with territorial tax systems. The ability to make a Section 338 election on a foreign target helps American companies compete with those foreign competitors with respect to those targeted companies. The Section 338 election allows American companies to pay US tax on repatriations from those foreign targets on a more competitive basis, putting American companies on a more even playing field with their foreign competitors. From a policy perspective, American companies should be allowed depreciation and amortization deductions for the amounts paid to acquire a target in calculating E&P. The effects of a Section 338 election should not be changed except as part of comprehensive international tax reform that makes American companies more competitive with their foreign competitors. Retroactive application of this provision will make it even more difficult for taxpayers who are in the process of acquiring a foreign company, notwithstanding the limited transition relief provided in some (but not all) of these situations.

Limitation on the Use of Section 956

The IRS has ruled in unpublished guidance that bona fide loans that permit taxpayers to use Subpart F (specifically sec. 956), rather than a regular dividend, are permitted under current law. Thus, these transactions are hardly abusive. In FSA 950823, the IRS described a U.S. parent company that received a loan from its Japanese subsidiary. The FSA states that it is the position of the IRS that the affirmative use of Section 956 should not be challenged as long as the loan between the U.S. parent company and the Japanese subsidiary is a bona fide loan.

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NFTC Takes a Position on “American Jobs and Closing Tax Loopholes Act of 2010

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In FSA 961121a, CFC guaranteed the debt of its US parent in order to affirmatively trigger Section 956. In the FSA the IRS stated that if the loan guarantee is bona fide, the IRS will not challenge its validity for Section 956 purposes even if the only purpose for the guarantee was to cause an inclusion in current income under Subpart F. The CFC could decide to declare a dividend to give the U.S. shareholder the deemed paid foreign tax credit under Section 902. Thus, if the parties decide to achieve the same result by causing a deemed inclusion under Subpart F, the transaction is not considered abusive. Generally, the FSA states that the taxpayer will decide to use Subpart F, rather than declare a dividend, to avoid the withholding tax that would be imposed on the dividend in the CFC's country of incorporation. However, that the taxpayer planned the transaction at issue in a manner that will avoid foreign tax is not a factor that affects whether the transaction is valid for U.S. tax purposes.

These FSAs show that the IRS has long been aware of and indeed has blessed the affirmative use of Section 956. The bill would make this significant change in the law rather abruptly, having been only released shortly before final floor action. This is not a change that is limited to “abusive” or “aggressive” transactions. At a minimum, the change should be applied to Section 956 investments made in tax years beginning after December 31, 2010. Companies that have plans that may be undertaken in their current tax years should not be penalized with a retroactive effective date.

Conclusion

The international tax revenue raisers included in H.R. 4213 were never the subject of Congressional hearings. Many of them were never even included in any previous bill or budget proposal. They deal with complex international tax rules that can have significant inadvertent consequences on worldwide American businesses and U.S. employees. In many cases, the proposals target well-known planning techniques that the government has never suggested were abusive, and yet the proposals carry immediate or retroactive effective dates of the kind usually reserved for provisions that target clear abuses. These international tax revenue raisers should be thoughtfully considered only in the context of tax reform rather than as piecemeal permanent revenue raisers for short term extensions of expiring tax provisions. For taxpayers, the date of introduction of the legislation was the first time most of these provisions came to light. The effective dates included in the legislation penalize taxpayers who have acted in good faith and who have relied on the current tax code in planning their transactions. If Congress unadvisedly enacts these proposals without careful deliberation of the long term ramifications, it should at the very minimum make the effective date of these proposals prospective for taxable years beginning on or after December 31, 2010. Otherwise, American companies would unfairly face retroactive tax increases that would break long-standing tax policy that strongly favors making tax increases prospective only.

For more information, please contact Catherine Schultz, Vice President for Tax Policy, cschultz@nftc.org.

Iran Sanctions: History's Cunning Corridors

With the April 28th public meeting of House Senate conferees on HR 2194 and S 2799, the Groundhog Day odyssey of Iran sanctions legislation (“take five”) appeared to be reaching its appointed end. Predictably, the conferees outdid themselves rhetorically, echoing former President George Bush’s inclusion of Iran in the “axis of evil” facing the civilized world and confirming William Pfaff’s recent observation: “The nature of the US reaction to the September 11 attacks makes apparent that the new challenge to the United States was immediately fitted into a frame of ideas ideologically parallel to the cold war (the cold war itself having just ended).” Only Senator John Kerry (D-MA) invoked a modicum of common sense, when he asked that final Congressional action be predicated on passage of a fourth round of multilateral sanctions at the United Nations, a prospect that could not occur until June at the earliest.

Given the zeal of the bipartisan majority, conventional wisdom held that the conferees would complete their work and produce a final bill before the Memorial Day recess. Subsequent events, however, have proven the iron law of unintended consequences.

The Iran-Turkey-Brazil Joint Declaration of a nuclear fuel exchange modeled on the failed U.S. sponsored effort of last year was announced in Tehran on May 17th. The next day, Secretary of State Hillary Clinton declared that the permanent members of the UN Security Council and Germany had agreed on an (incomplete) text of a draft sanctions resolution. Senator Kerry’s admonition seemed suddenly prophetic.

On May 25th, Conference co-chairs Senator Chris Dodd (D-CT) and Representative Howard Berman (D-CA) issued a press release praising the value of “tough multilateral sanctions,” applauding the Obama national security team for their P5 plus 1 success, assuming the United Nations and the European Union Summit would follow through in June, and therefore delaying final Congressional action. They concluded: “We will use the coming weeks to ensure that our legislation is crafted to complement and augment those other actions as effectively as possible. We remain fully committed to passing a package of tough U.S. sanctions in the latter half of June, and after consultations with Senate Majority Leader Reid and House Majority Leader Hoyer, we expect that our legislation will be taken up and passed by both bodies in that time frame.”

On May 31st, Israel, the country that identifies the Islamic Republic of Iran as an “existential threat” acted, as reported by the Washington Post: “A nighttime Israeli naval operation to seize control of an aid flotilla headed for the Gaza Strip ended in a fatal melee on Monday as passengers battled with helicopter-borne Israeli commandos aboard a ship sailing on international waters. At least nine pro-Palestinian activists were killed. Turkey, which had dispatched the Mavi Marmara with hundreds of Turkish passengers, condemned Israel, recalled its ambassador and warned of irrevocable consequences to relations.”

What next?

At the least, the Israeli action complicates the consideration of Iran sanctions by the UN and the EU.

Despite the fog of politics and the unpredictability of events, however, the U.S. Congress will soldier on and bipartisanship will triumph with another re-writing of the Iran Sanctions Act, almost certainly according to the calendar that the co-chairs have announced. Whether U.S. unilateral sanctions will complement UN and EU sanctions or merely be stood up in their absence remains to be seen. USA*ENGAGE will continue to advocate that additional sanctions not involve collateral damage to U.S. companies and U.S. subsidiaries of foreign companies in full compliance with U.S. law.

For more information please contact Richard Sawaya, Director, USA*Engage, rsawaya@nftc.org.

International Human Resources

NFTC Hosts "Doing Business in China and The United States- Opportunities and Challenges Seminar"

On May 27, 2010 the NFTC hosted a seminar in New York City on establishing businesses in China and in the United States. The program included presentations on: the licensing process and regulatory requirements; employment and labor laws; staffing and retention; compensation and benefits; impact of country culture on the business environment; and three case studies.

The Faculty included subject matter experts and business professionals such as Edward Franco of Aon Consulting; Gus A. Giraldo of Cigna & CMC Life Insurance Company Ltd. (Shanghai); Dean Silverberg and William J. Milani of Epstein Becker Green Law; William P. Kelly of the NFTC; and Andrew Mao Xuejun and Lindmarie W. Coatman of China Merchants Bank New York.

Regarding the setting up of approved business activities there were quite a few similarities in Cigna's and China Merchant Bank's respective journey's which each took several years. In the case of Cigna a key factor was its selection of their local joint-venture partner, China Merchants Bank. Most of the attendees were interested in the HR challenges of establishing them self in China's market place.

The NFTC plans on holding similar programs later this year. For more information, contact Bill Sheridan at wsheridan@nftc.org.

Exploring the Future of Global Mobility and the Challenges of Attracting and Retaining Talent

The April 2010 meetings of the NFTC's Expatriate Management Committee and International Assignment Management Committee presentations were given by Eileen Mullaney, Mitch Schuckman and Carol Stubbings of PricewaterhouseCoopers (PWC) on the future of global mobility. The PWC study entitled "Talent Mobility 2020" explores how demographic trends around the world and the emergence of the "millennial" generation will have a significant impact on how companies source and compensate talent in the future. This report also studies how governments and businesses will work more closely together to enhance economic growth; and how technology will increasingly support complex compliance and regulatory requirements associated with international employees. The PwC findings were gathered from various surveys and studies as well as from interviews with talent mobility specialists spanning the globe.

Talent Mobility 2020: The next generation of international assignments

The year 2020 is only a decade away, yet the way our global workforce is sourced, organized, and managed will change radically by that time. An explosion of activity in emerging markets has contributed to a significant increase in the need for companies to move people and source talent from all around the world.

The future business world will be markedly different from that of today. Mobilization strategies will need to progress significantly to keep pace with change and the further increases in assignee numbers, and a radical rethink of policy and processes may be required.

PricewaterhouseCoopers' International Assignment Services practice is pleased to announce the availability our new thought leadership report "Talent Mobility 2020: The Next Generation of International Assignments," the fourth publication in our managing tomorrow's people series. Visit www.pwc.com/managingpeople2020 to download a copy of the report.

International Human Resources

Annual International Human Resources Forum-New York City-July 14 & 15, 2010

The NFTC's 16th annual International Human Resource Management Forum in New York City will be held at the New York Athletic Club on July 14 & 15, 2010. The Forum agenda includes a range of international business and related IHR topics:

- Talent Management: Assessing and Preparing For Cross-Border Business Assignments
- Brazil: "It's Finally Tomorrow"
- Hot Topics in Global Mobility Management: Navigating A Challenging Landscape
- Reductions in Force Across Borders
- Global Rewards Management: The Key To Talent Retention
- Social Media and Global Employers: Benefits and Risks
- Developing Future Global Business Leaders
- Global Wellness Programs and ROI
- Expatriate Spouse's and Partners: Support Mechanism's You Need to Know About Relocating a Headquarters to Panama: Lessons Learned

In addition to subject matter experts from Baker & McKenzie, Cartus, Cigna International Expatriate Benefits, Ernst & Young, HSBC and NetExpat the Faculty will include experienced business and international human resource management professionals from such companies as Accenture, Boston University, Bunge, China Merchants Bank, Citi, Doosan, IBM, Johnson & Johnson, MasterCard, Pioneer Natural Resources, Shell, Stryker, UBS, Unilever and VF Corporation.

For information about the Agenda and Registration go to www.nftc.org or contact Sandra Rodriguez at srodriguez@nftc.org.

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.

Calendar of Events

Date	Event	Location
July 14, 2010	Tax Lunch Forum - Speaker: TBA	Washington, DC
July 14-15, 2010	Annual International Human Resources Forum	New York City
June 29, 2010	Board of Directors Meeting	St Michaels, MD
September 21-23, 2010	International Assignment Management Committee*	San Francisco, CA
September 28-30, 2010	Expatriate Management Committee*	Boston, MA
September 29, 2010	Board of Directors Meeting	Washington, DC
September 29, 2010	Annual Meeting	Washington, DC
September 29, 2010	Annual World Trade Dinner and Award Ceremony - Organization of American States	Washington, DC
September 30 - October 1, 2010	Fall Tax Committee Meeting	TBD
October 6, 2010	International Benefits Committee	New York City
October 24-27, 2010	Save the Date: 2010 International District Export Council: "Capitalizing on America's Export Advantages: Green and Innovation"	Washington, DC
December 8, 2010	Tax Lunch Forum - Speaker: TBA	Washington, DC

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

Save the Date: 2010 World Trade Dinner Set for September 29, 2010

National Foreign Trade Council Foundation's Annual World Trade Dinner and Award Ceremony is scheduled for Wednesday, September 29, 2010 it will once again be held in Washington, D.C., this year at the Organization of American States, 17th Street & Constitution Avenue, NW, Washington, DC. We hope you will plan to be there. The NFTC's World Trade Dinner is a popular event for senior corporate and public officials and foreign dignitaries; a night featuring a formal address by our keynote speaker, presentation of our annual world trade award, and, of course, much socializing. Past speakers have included such respected figures as Peter Seilgmann, CEO Conservation International, U.S. House of Representatives member Gregory Meeks and Majority Leader Steny Hoyer; United States Trade Representative, Ambassador Susan Schwab; Secretary General of the United Nations, Kofi Annan; then UN-Ambassador John Negroponte, as well as several Heads of State.



Keynote Speaker 2009 World Trade Dinner, Peter Seligmann, Co-founder, Chairman of the Board and CEO of Conservation International

For company support opportunities or individual reservations contact Bill Kelly at 202-887-0278 or wkelly@nftc.org.

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