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

It's election time again, and that seems always to bring out the worst in people – both politicians and voters. As usual, voters are grumpy, and the politicians are pandering. No surprises there on either front. It is tempting at this point to launch into a rant about either the stupidity of one group or the other (or both) or an editorial on who ought to win, but I will spare you that and focus instead on an old truth that I've been talking about for years – the irrelevance of trade to election outcomes.

Trade is frequently raised as an election issue, usually by politicians decrying the loss of jobs to imports. Protectionism was good politics in the first part of the last century and into the Depression, and it continues to come up with some regularity every two or four years. We all went through the anti-Japan battles of the 1980s, and we are now seeing much the same thing with China – though there are clear differences between the two cases.

In addition to China, however, we are also now seeing a broader assault on trade policy, both rhetorically from Public Citizen and specifically in battles over the pending Free Trade Agreements, Buy America amendments, and various other measures. I could write a column on the wisdom, or lack thereof, of those arguments, but the more timely question is whether they will resonate with the public in this election cycle. In that regard, I think not. We have more than fifty years of polling data on this subject, from which I would argue we have learned two things – it is not hard to get the American people to produce a "protectionist" response to a generic question, but trade rarely emerges as a high-intensity issue in large campaigns. At least not as "trade" specifically.

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Rep. Camp Calls for Action on U.S. Trade Agenda in Keynote Address at World Trade Dinner

Rep. Camp delivering keynote address

In a keynote address delivered during the September 29th National Foreign Trade Council Foundation (NFTCF) World Trade Dinner and Award Ceremony, Ways & Means Committee Ranking Member Dave Camp (R-MI) issued a call to action on the U.S. trade agenda as a means to increase U.S. economic growth and create American jobs.

"Trade agreements are a sure-fire way to boost economic growth by creating new markets for U.S. goods and services without raising taxes or further increasing already bloated federal budgets," said Rep. Camp. "I am confident that, if we work together – employers and workers, Republicans and Democrats, Administration and Congress – we can demonstrate to the American people the value of trade, we can generate the support needed to increase exports and open new markets for our goods and services, and we can create a brighter economic future for generations to come."

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A Word From the President

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In other words, if you ask Americans if they support restricting imports to save jobs, a majority will say, "yes," but if you ask them to list the five most important problems the country faces, trade doesn't make the cut – at least not as trade.

Jobs and the economy are almost always number one, and trade is certainly part of that, but not the biggest part. And, while it is human nature to blame somebody else for one's problems, the American people have, over the years, shown themselves to be surprisingly sophisticated about what is actually going on out there. They know that the reasons for job loss are more complicated than simply "imports," and they look for solutions that are more realistic than protection. They also appear to know how to measure the whole of a candidate and not just his or her stance on an individual issue. Most important, they look for positive messages rather than negative ones. They may agree with those who argue that the country is going down the drain, but what they want from the candidates is a plan for turning that around not just a complaint.

One of the things Ronald Reagan demonstrated during his campaigns is that Americans respond to optimism, not pessimism, and protectionism is a profoundly pessimistic message. It essentially argues that we can't compete the way things are, so we need to change the rules or keep imports out. While the argument that we need to change the rules has a good bit of validity from a policy point of view, as a political message it has not made much headway. In the occasional Congressional race, particularly in a district with heavy organized labor representation and a closed plant or two, these arguments are influential, but at the national level or even the state level, they have had a harder time catching on.

There is no better current example of that than Ohio. The home of Sherrod Brown, Betty Sutton, a governor who just put in place a Buy America rule, and many highly stressed industries, Ohio can claim to be one of the most protectionist-minded states in the union; yet poll data suggests the voters there are about to elect Rob Portman – President Bush's U.S. Trade Representative – to the Senate and a Republican to the governorship.

There are no doubt counter-examples that can be cited, and there is no question that a good number of anti-trade candidates are going to be elected from both parties. But it is also clear pro-trade candidates are going to win as well, which suggests what I think we all know intuitively – trade is rarely the dispositive issue in a campaign. Candidates win because they project better images of competence, integrity and optimism than their competitors. They make people understand the challenges we all face and believe that they have a plan for meeting them head on and a commitment to surmounting them. They may be pro-trade or anti-trade, but either way, that won't be what gets them elected.

NFTC Participates in 2010 WTO Public Forum; Organizes Geneva Trip for WTO Project Members

For the first time in several years, the National Foreign Trade Council organized a panel at this year's public forum hosted by the World Trade Organization. NFTC Senior Advisor Ambassador Stuart Harbinson moderated a panel, "Beyond the Doha Round? Shaping the global trading system to encourage innovation and solve global challenges," in which NFTC President Bill Reinsch also participated.

The session explored the potential role of the WTO after the Doha Round in fostering innovation and as a means of solving major global challenges such as climate change, food security, energy security, healthcare, and food and product safety.

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Rep. Camp Calls for Action on U.S. Trade Agenda in Keynote Address at NFTC's Annual World Trade Dinner

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Rep. Camp outlined his vision for the national trade agenda, which includes:

- Completing the South Korea trade agreement before the end of the year;
- Finishing the "languishing" Colombia and Panama agreements within six months;
- Employing a robust and multipronged strategy to deal with China's trade abuses, including pursuit of WTO violations when they occur and the resuscitation of the bilateral investment treaty negotiations; and
- Actively engaging new trading partners to prevent the EU and others from getting a leg up on American made goods and services.

Rep. Dave Camp delivering NFTCF keynote address

Following his remarks, Rep. Camp was honored with the NFTC Foundation's 2010 World Trade Award for his leadership in building consensus and promoting the benefits of open trade and investment.

"Throughout his nearly two decades of service in the U.S. Congress, Dave Camp has been a thoughtful critic and a valued supporter of international trade. At the NFTC, we know that whether the subject is trade negotiating authority for the President, Congressional approval to implement FTAs, or assisting American workers in their transition to new jobs, Dave Camp's voice, his vote and his leadership always are critically important," said NFTC President Bill Reinsch. "Dave also understands how difficult it is for American companies to compete in the global marketplace. His leadership has been critical in fighting against new international tax law changes that will diminish American competitiveness and ultimately reduce American jobs."

The World Trade Award was established in 1937 by the Dollar Family of San Francisco in memory of Captain Robert Dollar, a pioneer in American shipping and world trade and a charter member of the NFTC. In 1938, Cordell Hull, then-Secretary of State, was the first recipient of the Award.

This year's NFTC Foundation dinner was held at the Organization of American States. The event was widely attended by policymakers, members of the business community, ambassadors and embassy officials from a number of countries, including Colombia, South Korea and Panama, among many others.

For the full text of Rep. Camp's speech please follow the URL: http://www.nftc.org/default/Press Release/2010/NFTC Foundation Annual Dinner 2010 Camp Remarks.pdf.

Bill Reinsch, NFTC; Rep. Dave Camp; Joann Piccolo, Tyco Electronics

Catherine Bennett, Tyco International; Geoffrey Gamble, DuPont; Fruszina Harsanyi

The Hercules Group, Team members

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NFTC Participates in 2010 WTO Public Forum; Organizes Geneva Trip for WTO Project Members

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He emphasized the new challenges that global supply chains and research platforms brought to bear on the trading system, underscoring the importance of trade facilitation and making certain that the WTO plays a constructive role in instilling trust in the safety and security of goods and services.

Thaddeus Burns, Senior Intellectual Property Counsel, General Electric, spoke about how intellectual property was not an end in itself, but a societal tool to develop technology, where clear rules have allowed GE to conduct research and development in centers around the world, including in India, China and Brazil.

Brazil's Permanent Representative to the WTO, Ambassador Roberto Carvalho de Azevêdo
spoke largely about innovation and intellectual property rights, noting that many developing WTO members were still assimilating the impact of the TRIPS Agreement.

Ricardo Meléndez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD) suggested that an innovation platform could be added to a future WTO agenda in a way which would bring together and integrate the relevant WTO provisions. A study or report by the WTO Secretariat, possibly in conjunction with other organizations, could be a basis for further reflection and action.

Members of NFTC's WTO Project working group are traveling to Geneva at the end of October to advocate for a successful conclusion to the Doha Round and to take the pulse of how emerging issues such as climate change, food security, and access to health services are being considered in Geneva. For more information, contact NFTC Vice President Jake Colvin, at jcolvin@nftc.org.

Governor Schwarzenegger Signs California Iran Sanctions Law Despite NFTC Opposition

On September 30, Governor Schwarzenegger signed into law an Iran sanctions bill, AB 1650, which the NFTC had opposed as unconstitutional in letters to the governor and contacts with its authors' staff. The new law authorizes divestment of state funds in companies with investments of $20 million or more in Iran's energy sector and prohibits the state from purchasing goods and services from such companies. The NFTC wrote the leadership of the legislature prior to enactment and then Governor Schwarzenegger on two recent occasions pointing out that the legislation is in conflict with the U.S. Supreme Court's 2000 ruling in *Crosby v. NFTC*, which held that the Supremacy Clause prohibits state governments from imposing procurement sanctions on companies conducting business in a foreign country. The California legislature relied on a provision in the recently passed federal Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA) as the basis for their action. While Title II of CISADA says that it is the sense of Congress to "support the decision" of state and local governments to "divest from, or prohibit investment of" their assets in companies investing more than $20 million in Iran's energy sector, it does not authorize the prohibition of procurement of goods and services by state or local governments from companies that engage in sanctionable activity. Furthermore, given the fact that it is illegal for U.S. companies to do business in Iran, any companies denied participating in California procurement would be foreign companies, many of which are based in the very countries from whose governments the U.S. is seeking cooperation to find a diplomatic solution to Iran's nuclear program.

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Governor Schwarzenegger Signs California Iran Sanctions Law Despite NFTC Opposition

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The NFTC believes section 2203 of the California law which states "a person that engages in investment activities in the energy sector of Iran is ineligible to, and shall not, bid on, submit a proposal for or enter into or renew, a contract with a public entity for goods or services" is directly in conflict with the *Crosby* decision. The NFTC will consult with member companies about the possibility of initiating litigation challenging that section of the California Iran sanctions law. For additional information contact Dan O'Flaherty at doflaherty@nftc.org.

NFTC to File Amicus Brief in ExxonMobil Alien Tort Statute Case

The NFTC will file an amicus brief in the District of Columbia Circuit Court of Appeals in the case of *John Doe v. ExxonMobil*, a case filed in 2001 under the Alien Tort Statute in which the plaintiffs allege that ExxonMobil aided and abetted human rights violations by the Indonesian security forces in Aceh territory. Importantly, in 2005 a Federal judge ruled that the plaintiffs' case could also proceed on the District of Columbia's local common tort law, including wrongful death, theft by coercion, and assault and battery. In 2009 the District Court granted ExxonMobil's motion to dismiss the case on the ground that the plaintiffs lacked standing and it is that ruling that is on appeal. The D.C. Circuit's decision in this case will set an important precedent for the use of state tort law, as well as the Federal Alien Tort Statute, to bring civil claims against U.S. corporations for aiding and abetting alleged human rights violations by governments – or, indeed, potentially their environmental policies. In this case the NFTC amicus brief will deal exclusively with the use of state common law to bring these cases, an issue of obvious importance for future litigation of alleged human rights violations.

At this point it is unlikely that there will be resolution in this Supreme Court term of the key ATS issues in which the NFTC is interested: corporate liability, aiding an abetting liability, purpose versus knowledge for aiding and abetting, extra-territoriality and clarification of the standards the Court set in its decision in the 2004 *Sosa v. Alvarez Machain* case.

On October 4 the Supreme Court denied certiorari in *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, thus bringing to an end a class action case brought in November, 2001 alleging Talisman's complicity in human rights violations by the Sudanese government in southern Sudan. The decision also foreclosed the possibility that *Talisman* would provide an occasion for a Supreme Court ruling. The same is true in the case of *Angel Villeda Aldana, v. Fresh Del Monte Produce,* in which it is expected that the Eleventh Circuit will deny the plaintiff's appeal, thereby ending the case.

The NFTC will pay close attention to developments surrounding the major September 17 ruling by the Second Circuit in *Kiobel, et al. v. Royal Dutch Shell, et al.* In that case the court ruled that the ATS does not authorize claims against corporations. In the case at hand, the court dismissed for lack of subject matter jurisdiction claims that Shell assisted the Nigerian government in human rights violations. But the potential ramifications of Kiobel are enormous. First, unless it is overturned by the Supreme Court, *Kiobel* puts an end to ATS lawsuits in the Second Circuit where the bulk of ATS suits have been filed. Second, there is near certainty that the Second Circuit's ruling will be appealed to the Supreme Court. Clearly, the chances for certiorari would be increased if another circuit issues a decision in conflict with *Kiobel.* If the decision in *Kiobel* survives the inevitable challenges at the Supreme Court, it would put an end to ATS suits against corporations. For additional information contact Dan O'Flaherty at doflaherty@nftc.org.

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NFTC Participates in Review of Obama Administration Negotiations with Russia on WTO Accession

The NFTC participated in two meetings in late September and early October with Chris Wilson, the Assistant U.S. Trade Representative for Russia, on progress made in negotiations over Russia's implementation of outstanding commitments made in the November 2006 bilateral agreement for Russia's WTO accession. The coming into force on July 1 of the customs union among Russia, Belarus and Kazakhstan complicated Russia's accession as well as negotiations with the U.S. over implementation of the U.S. trade agreements and side-letters. Further complications could arise if Kyrgyzstan and Tajikistan succeed in their intention to join the customs union. The creation of the customs union required revision of two-thirds of the draft Working Party report and incurred delays due to the resulting institutional reorganization of trade policy responsibility in the customs union.

Presidents Medvedev and Obama had set a September 30 deadline for Russia to finalize commitments that required changes in Russian legislation and regulation. In September the Duma did enact three of four new laws improving intellectual property rights protection and additional IPR law is expected to be enacted in October. This progress enabled members of the Working Party to make a positive report to their political superiors. Progress was also made on three other key issues: transparency of the Russian regulatory regime, the conditions and timing of notifications, and TRIMS in the auto sector. IPR enforcement will be a continuing priority for USTR. Less progress has been made on the treatment of encryption-containing goods, an issue on which the EU is also negotiating with Russia, and on which Russia has agreed not to request source codes, as well as the question of whether mass-marketed goods are subject to licensing. Preliminary discussions have begun on Russian agricultural subsidies, which Russia has agreed to phase out by 2015. Working Party meetings are scheduled for October 25 and December 6 to continue negotiations on outstanding issues.

Russian WTO accession still awaits the multilateral process, in particular to deal with market access for goods and services, as well as completion of bilateral agreements with the EU and Saudi Arabia. USTR reports that, despite a mention in the White House press release of the need for cooperation on Iran and Sudan, there has so far been no linkage with bilateral trade and WTO negotiations. For additional information contact Dan O'Flaherty at doflaherty@nftc.org.

NFTC Welcomes President Obama's Executive Order on Export Controls

On August 31 President Obama signed an executive order to reform the U.S. export control system. Since the Export Administration Act expired in 1994, export control regulations have been renewed annually by executive order under the International Emergency Economic Powers Act. The President announced four changes in the current regime: (1) new criteria for the Commerce Control List and U.S. Munitions List that build higher walls around the most crucial controlled items and lower walls around less critical items. This will involve moving many items from the USML to the less restrictive CCL with the ultimate goal of consolidation into a single list with a single set of licensing policies; (2) clear, concise rules for how licensing requirements are managed under a single set of licensing policies for both lists; (3) an executive order establishing a new Export Enforcement Coordination Center to strengthen enforcement and eliminate gaps and duplication in enforcement; and (4) a decision to transition all licensing agencies into a single IT system to manage all controls. In briefing the business community Michael Froman, deputy national security advisor to the President for international economic affairs, emphasized that the White House review does not contemplate changes in existing sanctions programs or programs directed at individual regimes. He also acknowledged that full consolidation of the export control system will require legislation and that the Administration has been working closely with Members and congressional staff. For additional information contact Bill Reinsch at breinsch@nftc.org or Dan O'Flaherty at doflaherty@nftc.org.

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NFTC and USA*Engage to File Amicus Brief in Florida Sanctions Case

The NFTC continues to weigh in with Federal courts whenever the core principle of Federal supremacy to make foreign policy is challenged by state-legislated sanctions that conflict with the 2000 Supreme Court decision in *Crosby v. NFTC*. Therefore, on October 1 the NFTC and USA*Engage petitioned the Eleventh Circuit Court of Appeals to file an amicus brief in the case, *Faculty Senate of Florida International University, et al. v. John Winn, et el. and State of Florida.* The amicus will support the plaintiffs in their constitutional challenge to the Florida Travel Act, which prohibits the use of state funds for scholarly travel to countries on the State Department terrorist list, specifically to prevent scholarly travel to Cuba. The District Court in this case decided that the state could not limit private funding for Cuba travel, but could limit the use of state funds for Cuba travel. The NFTC and USA*Engage will support the plaintiffs argument that the Travel Act conflicts with the *Crosby* holding that the Supremacy Clause precludes state governments from using their spending powers to impose sanctions on foreign countries that are harsher and less flexible than federal sanctions and that the Florida law conflicts with *Crosby* by "piling on" existing federal sanctions that the state deems to be insufficiently hardline. The NFTC and USA*Engage argue that "*Crosby* holds that States cannot trump federal foreign policy in this way and the panel decision is in direct conflict with that holding. *En Banc* review is therefore in order." For more information on this case contact Dan O'Flaherty at doflaherty@nftc.org.

USA*Engage

CISADA: What Now?

Following passage of the Comprehensive Iran Sanctions and Accountability Act (CISADA), USA*Engage interacted with the Administration on implementation, meeting with relevant officials at the Department of State and the Treasury. Broadly, State is responsible for conducting inquiries to determine sanctionable entities who have invested in Iran's energy sector or who have facilitated the sales of refined petroleum products to Iran. Treasury is responsible for the comprehensive financial sanctions upon financial institutions or related entities found to be contributing to Iran's energy sector, petroleum products imports, nuclear program, support for third country terrorism, or specified human rights abuses. Finally, the Government Accountability Office and NASA have issued interim Federal Acquisition Regulation (FAR) Certification Requirement and Procurement Prohibition Relating to Iran Sanctions for public comment

The informal "learn by doing" process underway at the Department of State reportedly involves direct conversation with enitities identified in the public domain to have engaged in sanctionable activities. Such entities may elect to give assurances that the facts are otherwise, or that they have ceased to, or will desist from sanctionable activities. Recently, the GAO identified five Chinese firms that may be engaged in sanctionable activities; it remains to be seen what will eventuate. That said, numerous interested parties have raised the China question: will Chinese entities fill the space in Iran's energy sector arguably enlarged by the U.S. led multilateral sanctions regime underway.

Among the most interested parties are Members of Congress. Hard on the heels of CISADA, House Foreign Affairs Committee chairman Howard Berman and Ranking Member Ileana Ros-Lehtinen announced formation of a Congressional Iran Sanctions Working Group – presumably to monitor the administration's zeal in implementing the letter of CISADA. In an edifying display of bi-partisanship Senators John Kyl and Chuck Schumer penned a letter to Secretary Clinton urging that the State Department immediately investigate and sanction three Chinese and one Turkish firm. Not content with the final outcome of CISADA, House Foreign Affairs Committee members Brad Sherman and Ron Klein have authored bills to tighten the U.S. unilateral sanctions further – in fact to undo the decisions made in the CISADA conference deliberations that avoided legislating unintended consequences for the U.S. corporate sector. Regardless of events on the ground as well as the results of the November elections, the appetite of Congressional players in both parties for such initiatives will remain unslaked. *(Continued on page 8)*

CISADA: What Now?

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In addition to close and constructive communication with the State Department concerning its areas of responsibility under CISADA, USA*Engage has focused its interaction with Treasury on maintaining the ability of U.S. entities to receive third country financing for humanitarian trade with Iran licensed by Treasury's Office of Foreign Assets Control (OFAC). While CISADA explicitly reaffirms the export of agricultural commodities, food, medicine, medical devices and other humanitarian trade, OFAC's Iranian Transactions Regulations were silent on the issue, in distinction from the EU sanction implementing regulations that make continued financing of humanitarian trade automatic. In a recent public presentation, Treasury Undersecretary Stuart Levey affirmed the importance of such trade as part of U.S. policy that sanctions not harm the Iranian people and made mention of OFAC's rigorous licensing process. Subsequently, USA*Engage has requested that Treasury issue a public statement in an appropriate venue that mirrors the EU exception.

All of this begs the substantive issue of the actual consequences of the sanctions regime now placed on Iran. Initial informed reports indicate two things. One: the sanctions effects will be felt by ordinary Iranians for the most part in the form increased prices for goods or straitened commercial circumstances within the private sector already deformed by domestic mismanagement. Two: the sanctions will not deter the decision-makers in Iran -- including the leaders of the so-called opposition, who were in fact among the principal architects of the re-initiation of Iran's nuclear program in the 1990s – from pursuing Iran's nuclear program. For more information on CISADA contact Richard Sawaya at rsawaya@nftc.org.

USA*Engage, NFTC Honor Senator Dodd for Leadership on U.S. Cuba Policy, Multilateral Approach to Iran Sanctions

USA*Engage and the NFTC honored Senator Christopher J. Dodd (D-CT) for his more than 35 years of leadership on issues related to international trade, diplomacy and U.S. global engagement at the 13th annual USA*Engage luncheon on September 21st. During the luncheon, Senator Dodd was recognized for his commitment to reforming U.S. Cuba policy and advocating a multilateral approach to imposing sanctions against the Iranian regime.

Colin McGinnis, Senior Policy Advisor at US Senator Chris Dodd, Banking Cmte. chairman

"As a man who cares deeply about U.S. relations with Latin America, he has been a real champion for improving our Cuba policy. Senator Dodd has clearly understood and pointed out repeatedly that engagement and trade with Cuba can actually advance U.S. national security and that helping families get together and supporting humanitarian issues is the right thing to do," said USA*Engage Co-Chair Del Renigar, who also serves as Senior Counsel for International Policy & Trade at General Electric.

"He brought that same passion and that same reasonableness to the Iran sanctions debate....Although USA*Engage continues to have fundamental concerns about unilateral sanctions, their appropriateness and their effectiveness, at the end of the day, we truly and deeply appreciate Senator Dodd's championing a more multilateral and a more reasonable approach, as he has done throughout his career," said Renigar.

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USA*Engage, NFTC Honor Senator Dodd for Leadership on U.S. Cuba Policy, Multilateral Approach to Iran Sanctions

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In addition to being honored for his commitment to multilateralism and rethinking U.S. policy toward Cuba, Senator Dodd was praised for his long career in public service. From his days as a Peace Corps volunteer in the Dominican Republic to his stewardship over Latin America and the Peace Corps on the Senate Foreign Relations Committee, Senator Dodd has consistently advocated U.S. global engagement.

Del Renigar , Co-Chairman, USA*Engage and Richard Sawaya, Director, USA*Engage

"The United States achieves much more when it works with its friends and constructively engages countries with which it disagrees," said Senator Chris Dodd. "Negotiations and constructive dialogue should not be viewed as gifts to our enemies, but rather as key tools in our nation's foreign policy arsenal to advance America's interest in the world. One of our next steps should be to end our isolationist policy toward Cuba, which has not brought about positive change and has sacrificed the freedom of American citizens to travel to and trade with Cuba."

"Senator Dodd's commitment to advancing U.S. interests with the help of our friends and allies is commendable, and we are grateful for his leadership on issues related to international engagement and diplomacy," said USA*Engage Director Richard Sawaya. "He is a true statesman and will be sorely missed when he retires this year."

International Human Resources

Tenth Annual International Human Resource Management Forum

The NFTC will hold its tenth annual International Human Resource Management Forum at The Houstonian Hotel on March 2-3, 2011. The central theme will be understanding and managing the international business and human resource management challenges in the next decade. The agenda will include sessions on:

- The impact of global demographic trends on staffing and talent retention
- Sourcing and retaining business mission-critical staff in "challenging" geographies
- Responding to competition from BRIC-based Multi-National Companies
- The increasing complex world of compliance-what the 2010 UK Bribery Act means
- Local National Employee benefits and compensation plans
- Updates on key markets, including Africa, Brazil, China, Libya and the Middle East
- Security and risk management

Details on the agenda and registration will be posted to the NFTC website, www.nftc.org, or contact Bill Sheridan at wsheridan@nftc.org.

The Fall 2010 Tax Committee Meeting is a Big Hit with NFTC Members

The NFTC Tax Committee held its annual Fall Tax Meeting in Washington, D.C. on September 30-October 1, 2010. Many NFTC members attended the meeting.

William Wilkins, Chief Counsel, Internal Revenue Service

IRS Chief Counsel, Bill Wilkins was the keynote luncheon speaker. Mr. Wilkins discussed recent IRS rulings including those dealing with uncertain tax positions and the codification of economic substance. Mr. Wilkins also discussed the change that occurred on Friday in the renaming of the Large and Mid-Sized Business (LMSB) division to the Large Business and International (LBandI) unit that will focus more on transfer pricing and the international operations of worldwide American companies.

The first panel of the tax meeting consisted of budget deficit experts, Dr. Doug Holtz-Eakin, President of the American Action Forum, and Mr. Michael Linden, Associate Director for Tax and Budget Policy at the Center for American Progress. Drew Lyon of PricewaterhouseCooper moderated the discussion. The discussion focused on the growing national debt and possible solutions to the debt crisis. Dr. Holtz-Eakin explained the size of the debt and said that all options, spending cuts and tax increases, should be on the table in the search for solutions. Current government spending is too high, and should be curtailed. Significant changes will be necessary to get the budget deficits under control. It is not possible to increase taxes high enough to eliminate the debt. All non-discretionary programs should be reviewed, with Americans making choices in how changes should be made to Social Security, Medicare and Medicaid. Mr. Linden agreed that the budget deficits should be brought under control, but disagreed with Dr. Holtz-Eakin on the remedy. Mr. Linden believes that the individual tax burden on Americans is too low, and that corporations are also not paying their fair share of taxes. Mr. Linden would like to see more revenue raised from the current tax system, and would like to see discretionary spending brought under control. The panelists had a lively debate on the way to bring the deficit under control.

The second panel consisted on Ms. Manal Corwin, International Tax Counsel, U.S. Department of Treasury, Mr. Michael Danilack, Deputy Commissioner (International), Large and Mid-Sized Business Division, IRS, and Mr. Douglas O'Donnell, Director, Tax Treaty Administration and International Coordination, IRS. The panel was moderated by Peter Barnes of General Electric, co-chair of the NFTC Tax Treaty Working Group. Mr. Danilack explained that the reason the LMSB division was being revised was to better integrate the Competent Authority and the division with what is happening in the field. By working more closely with the field operations, hopefully the MAP process will work better and be able to respond to taxpayers concerns more quickly. Mr. Danilack outlined the growth plan for the new LBand I division and explained how many new employees will be hired in the coming months. There will be a transfer pricing practice, and they are currently searching for a head of that new division.

Ms. Corwin said that Treasury is strongly opposed to a provision enacted on Wednesday, September 29th, by the House that was introduced by Mr. Doggett, and was designed to curtail treaty shopping. The Doggett provision will affect domestic companies as well and in-bound companies and will override many existing U.S bilateral tax treaties. Treasury will begin to update the U.S. Model Treaty and Ms. Corwin asked for comments from the business community. Ms. Corwin discussed the status of the pending treaties. Tax treaties have been signed with Switzerland, Luxembourg, Hungary and Chile, and negotiations are about finished with Poland. Negotiations with Spain began in July and Treasury is revisiting the U.K. treaty under the plan to revisit that treaty every five years.

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The Fall 2010 Tax Committee Meeting is a Big Hit with NFTC Members

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Ms. Corwin discussed the status of the pending treaties. Tax treaties have been signed with Switzerland, Luxembourg, Hungary and Chile, and negotiations are about finished with Poland. Negotiations with Spain began in July and Treasury is revisiting the U.K. treaty under the plan to revisit that treaty every five years. Ms. Corwin discussed the fact that the business community and the government of Singapore wants to enter into treaty negotiations, but that Treasury is still not convinced that there is any evidence of double taxation that will be eliminated by a treaty. She continues to ask the business community for evidence of double taxation. Other treaties discussed by Ms. Corwin:

- India—although discussions are taking place, it is unlikely that any agreement will be reached;
- S. Korea—there is now a new head of tax treaties who might be more willing to engage in discussions with Treasury;
- Vietnam—Treasury will have an informal discussion with them, but their tax treaty model is very far from the U.S. Model Tax Treaty;
- Norway—the negotiations were very far along, but are stalled over issues that are extremely difficult to resolve;
- Canada—there are discussions on an MOU on arbitration, and Treasury is hopeful that an understanding can be reached sometime soon;
- Argentina—would like a TIEA more than a tax treaty;
- Taiwan—the State Department position has not changed, so no treaty negotiations can begin, this is tied up with the China policy and is unlikely to change anytime soon.

Mr. O'Donnell said that there is a new C.A. in India who originally seemed more cooperative, but that did not last. There is a meeting in India in November, but Mr. O'Donnell does not expect much cooperation from the Indians. Mr. O'Donnell said that there are still many cases pending with Canada, and he expects that many will wind up in arbitration since the two year deadline for settling cases is fast approaching. Mr. Danilack was more optimistic that some of the cases could still be resolved before going to arbitration. Mr. Danilack told companies that if they are experiencing problems in any country, to let the LBand I know so that they can get involved, even in side conversations. There is a lot of work going on internationally and many opportunities for side conversations to potentially work out some problems that business is facing.

The third panel focused on the competitiveness of worldwide American companies. The panel consisted on Karl Schmalz, ExxonMobil, Phillip Morrison, Deloitte & Touche, Bill Sample, Microsoft, and Norm Richter, Baxter International. Tom Roesser of Microsoft, Chairman of the NFTC Tax Committee, moderated the panel. Mr. Schmalz explained the current competitive position of the American oil and gas industry and how legislation currently pending before Congress would significantly impact American companies, while not affecting their foreign competitors, even within the U.S. Mr. Morrison discussed the competitive nature of in-bound companies who invest in the United States, and how the U.S. should encourage more in-bound investment. Mr. Sample discussed the nature of competitiveness and how real policy choices must be made if the U.S. is going to retain competitive companies, and if new companies are to be encouraged to incorporate in the U.S.

Discussion on U.S. Business Competitiveness - Phillip Morrison, Deloitte & Touché; Bill Sample, Microsoft; Karl Schmalz, ExxonMobil; Tom Roesser, Microsoft

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The Fall 2010 Tax Committee Meeting is a Big Hit with NFTC Members

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Mr.Richter discussed the current tax code and how hard it is for American companies to make the case to Congress on why they should care about keeping American companies competitive. We are losing the sound-bite argument and need to find a better, more concise message to counter the political rhetoric that multinational corporations are moving jobs offshore.

The dinner speaker on Thursday night was Ms. Bernadette Budde, Senior Vice President for Political Analysis at the Business-Industry Political Action Committee. Ms. Budde gave an overview of the political possibilities after the November election, including how the tea party candidates might view American worldwide companies. She said that there could be some voting blocks of liberals and tea party members who might take sides against business interests. She also previewed some of the Governor races and some of the tighter Senate races.

The tax committee meeting resumed on Friday, October 1 with a discussion of the legislative agenda. Nick Giordano, Partner of Washington Counsel Ernst & Young was the moderator. The panel included John Merrick, Tax Counsel, Senate Finance Committee Majority Staff, David Olander, Chief Tax Counsel, House Ways and Means Committee Minority Staff, and Jim Lyon, Senate Finance Committee Minority Staff. Nick Giordano outlined the legislation that could be pending in the lame duck session that was not tax related, including the extension of unemployment benefits, the Medicare doctor fix, FAA reauthorization, food safety, 9/11 health and compensation and natural gas electric vehicles. He also discussed all of the pending tax items that are will have to be dealt with including the already expired tax provisions, the expiring Bush tax cuts from 2001 and 2003, and the estate tax. Mr. Olander said that the House Democratic leadership was trying to say that the Republicans held up consideration of the Bush tax cuts before the recent recess, but that the Democrats did not have the votes within their own party and never put forward a bill for consideration. Mr. Merrick said that the elections will affect what issues get dealt with in the lame duck session. The top priorities for Senate Democrats include the extension of the Bush tax cuts, and the extension of the expired tax provisions. He expects that the carried interest provision used to offset the revenue loss of the expired tax provisions will be revised to not affect corporate joint ventures. Senate Finance Committee Chairman Baucus will hold more hearings on fundamental tax reform, and additional input from the business community will be very helpful. Tax reform is a multi-year project, but reforming the corporate and international sections of the tax code is a high priority. When asked if the Dorgan runaway plant legislation would come up in the lame duck session, Mr. Merrick said that it was an election year message bill, and won't come up again. Senator Baucus voted against the Dorgan provision because it was not good policy and would hurt the competitiveness of U.S. business.

Mr. Lyon said that he expects less to get done in the lame duck session than many are anticipating. The continuing resolution will be a top priority to keep the government running. Mr. Lyon reminded participants that Senators Grassley, Baucus, Hatch and Schumer had negotiated a tax extender package that had bipartisan support and could have been adopted by the Senate, but that Senate Majority Leader Reid torpedoed it because it did not extend unemployment benefits for as long as he liked. The Republican position on the extension of the Bush tax cuts hasn't changed—they would like to see all of the tax cuts extended without being offset. Mr. Merrick said that the Democrats continue to believe that any extension of the top individual rates must be offset under the PAYGO rules. Mr. Olander believes that there will be one mega-tax bill that will be adopted that includes all of the tax provisions that must be dealt with. The first week that members are back following the election will be devoted to organizational and leadership meetings. The second part of the lame duck that begins in early December will deal with the pending legislation.

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The Fall 2010 Tax Committee Meeting is a Big Hit with NFTC Members

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When asked about how the Senate will deal with the legislation recently passed by the House on health benefits for 9/11 workers, offset by the Doggett tax treaty provision, Mr. Merrick said that Senator Baucus continues to oppose the Doggett provision, and new revenue must be found if the Senate is to act on the 9/11 legislation. In responding to a question about revenue offsets in lame duck, Mr. Merrick said that international loophole closers will continue to be on the table.

When asked what it will take for Congress to seriously consider tax reform, Mr. Merrick replied that although there are significant barriers to tax reform, Senator Baucus is committed to working through all the hurdles. Mr. Lyon said that tax reform is a noble goal and that the corporate tax rate should be reduced and a territorial system put in place to help American companies compete globally. Business must be involved in this process because the base will have to be broadened as part of tax reform.

The final panel discussed transfer pricing and tax controversy. The panelists included Richard Goldberg of Citigroup, Paul Manning of KPMG, David Ernick, Associate International Tax Counsel, U.S. Treasury Department, and Rocco Femia of Miller and Chevalier. Will Morris of G.E., and co-chair of the NFTC Non-U.S. Issues Working Group was the moderator. Mr. Morris discussed the current NGO involvement in transfer pricing and the push for country by country reporting. Mr. Goldberg explained the difficulties for financial institutions to benchmark arm's length interest rates. Mr. Manning discussed current tax controversy issues including the codification of economic substance, the disclosure of uncertain tax position rules, rules affecting U.S. multinationals investing in foreign subsidiaries, and cost sharing issues. Mr. Femia discussed the Administration's budget proposal on excess profits and the transfer of intangibles and why this is causing problems for the business community in dealing with Congress on this issue. There is a misperception that there is significant abuse in this area coupled with dissatisfaction among members of Congress with the current transfer pricing rules. Mr. Femia discussed the recent Ways and Means Committee hearing on transfer pricing, and how the high U.S. corporate tax rates are not adequately taken into account in the discussions. Mr. Ernick talked about the OECD transfer pricing project. He explained the issues that the OECD is reviewing including removing the hierarchy of transfer pricing methods, developing new guidance on performing comparability analysis and the application of the transactional profit methods.

All of the power point presentations by the speakers are available on the NFTC website at www.nftc.org .

Next NFTC Tax Lunch Forum—November 10, 2010

The next NFTC Tax Luncheon Forum to discuss current international tax issues will be held on Wednesday, November 10, 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 Steve Musher, Associate Chief Counsel, International, Internal Revenue Service has agreed to speak to us about pending regulatory issues and the IRS business plan. Please join us for this informative discussion and come prepared for a lively dialogue. Please complete the attached response form to attend or participate in the conference call and return it by Friday, November 5th.

Follow the URL to register: http://www.nftc.org/default/tax/Lunch%20Tax%20Forum%20Registration%20Sheet.pdf

Global Innovation Forum

NFTC's Global Innovation Forum Hosts Panel With USTR Ron Kirk and Silicon Valley Innovators

On September 8, 2010 the Global Innovation Forum of the National Foreign Trade Council hosted a public roundtable discussion with Silicon Valley leaders and the United States Trade Representative, Ambassador Ron Kirk. The event was held at Google's corporate headquarters in Maintain View, CA. This roundtable, moderated by USTR Ambassador Ron Kirk, featured leaders from Silicon Valley's most innovative companies:

Ambassador Ron Kirk, David Drummond, Bill Reinsch

- Gregg Alton, Executive Vice President, Corporate & Medical Affairs, Gilead Sciences
- David Drummond, Chief Legal Officer, Google
- Dan'l Lewin, Corporate Vice President for Strategic and Emerging Business Development, Microsoft
- Gail Maderis, President & CEO, BayBIO
- Steve Perlman, Founder, President & CEO, OnLive
- Elliot Schrage, VP of Global Communications, Marketing and Public Policy, Facebook

Panelists discussed a number of global challenges facing innovative companies in Silicon Valley and the importance of accessing foreign markets to continued growth across technology sectors.

Elliot Schrage, Steve Perlman, Gail Maderis, Dan'l Lewin, Gregg Alton & Ambassador Ron Kirk

"The panel demonstrated neatly the remarkable similarities in challenges facing technology innovators across a range of sectors – pharmaceuticals, software, Internet, clean tech and more – as they continue to sell American innovation in the global marketplace," said John Stubbs, Executive Director of the Global Innovation Forum. "At a high level, protecting the comparative advantages of the U.S. innovation economy requires open, predictable and enforceable trade rules."

"We applaud Ambassador Kirk for his commitment to availability and transparency, and for moderating this open and on-the-record event with Silicon Valley innovators." A complete webcast of the event is available at http://www.youtube.com/watch?v=Tl_crtEvWoM. For more information on this event contact John Stubbs at jstubbs@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.

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