Council Highlights

National Foreign Trade Council

"Advancing Global Commerce for Nearly a Century"

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

April-May 2011

Vol 11, Issue 3

A Word From the President

Every once in a while some interesting research comes out that makes us stop and think about what is really going on out there. One such piece was featured recently in a column in *The Washington Post* by Steven Pearlstein, who some of you will recall was our annual dinner speaker several years ago. The research he discussed, which has been done for the Council on Foreign Relations, is not out yet, but there appears to be enough of it available to allow for some conclusions.

To oversimplify, the paper concludes that global economic integration has, on the whole, been income producing but not job producing for Americans. This is a point I have been making for some time but have never had enough data to back it up. It is also, I believe at the core of the public's uneasiness about trade. They understand its benefits in the abstract but also see that it does not appear to be benefitting the economy in terms of job growth. The authors come to their conclusion by essentially dividing our economy into two – the "tradable" sector and the "non-tradable" sector, the former being largely manufacturing and services which can be exported and imported, and the latter being largely services that can only be performed inside the U.S. Looking at wealth and job creation in these two halves of our economy, the authors see a lot of the former in the tradable sector and a lot of the latter in the non-tradable sector, albeit at lower wage levels, suggesting a growing division in our economy.

Of course, it is more complicated than that. After a downturn in 2008-2009, America continues to manufacture more stuff than ever, albeit with fewer people. Some of our member companies, like Caterpillar, have invested significantly in onshore manufacturing. It is also worth noting that foreign companies have also invested significantly in manufacturing in the U.S., so it is not as if no manufacturing jobs were being created here.

(Continued on page 2)

NFTC Welcomes New Chairman Ambassador Alan Wolff

Ambassador Alan Wolff

The National Foreign Trade Council (NFTC) on March 1, 2011 announced the appointment of its new Chairman – Ambassador Alan Wolff, Co-Chair of Dewey & LeBoeuf's International Trade Practice Group. Wolff assumes the position effective March 1, 2011.

"For many years, we have been honored to work with Alan in his capacity as a member of the NFTC Board. On countless occasions Alan's trade expertise and counsel have helped to guide our work in several areas, from the promotion of bilateral and multilateral trade initiatives to shedding light on tariff and non-tariff trade barriers around the world to understanding how the trading system is changing," said NFTC President Bill Reinsch. "Alan's contributions to the NFTC and our member companies have been invaluable, and he will continue to provide thoughtful leadership in his new role as Chairman."

(Continued on page 3)

Inside this Issue:

1625 K Street, NW, Suite 200
Washington DC, 20006-1604
Phone: (202) 887-0278 | Fax: (202) 452-8160
If you have suggestions for articles or comments, please e-mail us at nftcinformation@nftc.org

A Word From the President

(Continued from page 1)

Nevertheless, the research highlights a trend the public has clearly perceived – the movement of manufacturing jobs offshore and the growth of service jobs here in lower wage scale sectors.

The response of some, including some in the Congress, has been to blame our trade or tax policies and/or to blame the companies that have moved some of their production offshore to better compete in foreign markets. To the authors' credit, however, their policy response is not to erect trade barriers but rather to discuss ways to shift the pattern of incentives so large companies, like our members, see advantages in growing production and employment in the United States. In approaching the problem that way, they also take another page from the NFTC book – carrots work better than sticks.

One of our major objections to the Administration's corporate tax proposals has been that they attempt to bludgeon global companies into submission by penalizing them for their overseas actions. It would be far more effective to provide a set of incentives for increasing investment here at home. Pearlstein takes the argument a step further by making the case for industrial policy, using the auto industry as an example. This is a conclusion that reasonable people will fight over, though I have a lot of sympathy for it personally, but that is not why this new study is important. It is important because it helps us better understand what is going on in the world and how a globally integrated economy actually works. As we understand that better, it will become easier to agree on appropriate responses.

Radiation Screening of Cargo From Japan

In March, a NFTC-member company had an air freight shipment from Japan delayed by U.S. Customs and Border Protection (CBP). Initial information, which turned out to be incorrect, was that the delay was caused by radioactivity screening procedures. The NFTC used its good offices and contacted CBP on behalf of the member, but the situation resolved itself without added intervention on our part.

We are pleased that we were able to alert CPB so soon after the reported delay because the mere mention of radioactivity has such great potential for rumors and misinformation. CPB subsequently has been reaching out to industry associations and trade groups to learn about private sector concerns and to explain CPB procedures in light of the still-unresolved nuclear reactor problems in Japan.

The NFTC participated in a conference call with CBP and the U.S. Coast Guard. A summary of the key points of that meeting follows. The "Maritime Message "issued jointly by CPB and the Coast Guard also is attached. We shall continue to follow this issue and to update members as needed.

CBP and Coast Guard officials on last night's call were both helpful and candid. They emphasized repeatedly their intention to conduct the radioactivity screening of cargo, passengers and baggage in a way that is as minimally disruptive to commerce as possible. Member companies with additional questions and concerned were encouraged to send them to CBP/Coast Guard, which they may do either directly, through their respective industry associations or through the NFTC. We will be happy to assist.

CBP and Coast Guard said that there presently is a very low risk of radiation from either travelers or from cargo imports.

(Continued on page 3)

News for Our Members

NFTC Welcomes New Chairman Ambassador Alan Wolff

(Continued from page 1)

Prior to heading up Dewey & LeBoeuf's international trade practice, from 1991 through September 2007, Wolff served as managing partner of Dewey Ballentine's Washington, DC office, prior to the firm's merger with LeBoeuf, Lamb, Greene & MacRae.

Wolff's extensive experience in international trade relations includes serving as U.S. Deputy Special Representative for Trade Negotiations in the Carter Administration between 1977-1979. In that position he held the rank of ambassador and played a key role in several U.S. international trade negotiations. He also served as General Counsel of the Office of the U.S. Trade Representative during the Nixon and Ford Administrations, and prior to that provided counsel on international monetary, trade and development policy issues at the Treasury Department.

"There could not be a better time than the present for expanding trade with major benefits for America. Not only are the free trade agreements with Korea, Colombia and Panama pending approval by the Congress, but near-term progress is surely to be made this year on a Trans-Pacific Partnership, embracing many of America's long time and closest trading partners as well as Vietnam and potentially Japan," said Wolff. "WTO accession of Russia is also a real possibility. It has been well over a decade since the United States successfully led major trade initiatives and 2011 marks a new beginning. The Council will be taking a strong role in all of these great enterprises."

Radiation Screening of Cargo From Japan

(Continued from page 2)

- The first vessel with Japanese cargo arrived in Long Beach, CA Wednesday, March 22 and was cleared when noharmful levels of radiation were detected. CBP also met with dock workers at Long Beach to explain the detection scanning protocols and to assure them about the safety of off-loading cargo. [Shippers who have future concerns about particular vessels or cargo may ask the CBP to do more detailed radiation screening.]

- To date, since the reactor failures in Japan, 175,000 air passengers have been screened upon arrival in the US. Only one passenger set off the radiation alarms and was determined to have been exposed to a very low level of radiation that is not considered to be harmful. That passenger was released.

- Similarly, 350,000 pieces of luggage have been screened and only 13 set off alarms. All 13 were determined to have very low, not harmful levels of radiation. There have been similar results with air cargo shipments.

- Protocol in place right now is for CBP to meet vessels dockside and do a general scan upon boarding. A sampling of containers will then be scanned and normal procedures will be used if no unusual radioactivity is detected. [This same sampling technique will be used for roll-on/roll-off vehicles as well as for cargo containers.] If higher than expected radiation levels are detected, there will be secondary scanning of the cargo or vehicles in that area of the ship, as well as of the vessel itself.

- The Coast Guard has issued a notice to mariners to stay at least 50 nautical miles away from the affected reactors. Ships entering US waters are required to file a Notice of Arrival and to inform the Coast Guard if they entered the prescribed zone of less than 50 nautical miles. In that case, the vessel will be subjected to additional screening. All vessels that enter US waters are subject to boarding by the Coast Guard and boarding personnel are equipped with radiation detectors.

For more information please feel free to contact Bill Kelly, at wkelly@nftc.org.

Free Trade Agreement Update: Korea Feels the Weight of Colombia and Panama; Breakthrough on Colombia

Korea:

While the Administration continues to profess its "imminent" submission of the Korea-U.S. Free Trade Agreement (KORUS) to Congress, there is an unusual shift in the traditional Congressional partisan calls for action in an effort to move all three agreements. Republicans (and some Democrats, such as Senate Finance Chairman Max Baucus) are now qualifying their calls for KORUS action by linking it to submission of Colombia and Panama, which runs the risk of slowing consideration of Korea. KORUS is not the only legislation caught up in the fight to free Panama and Colombia. We have already seen the expiration of Andean Trade Preferences, the renewal of expanded Trade Adjustment Assistance, and even the possible delay in confirmation of a new Secretary of Commerce (who will succeed Gary Locke who has been nominated as the next U.S. Ambassador to China), all in an effort to motivate the final actions the Administration deems necessary before it sends Colombia and Panama forward.

Meanwhile, Democrats led by House Ways and Means Ranking Member Sander Levin, have renewed calls about the urgency of Congress considering KORUS immediately, regardless of the status of the Colombia and Panama, irrespective of the fact that none have yet to be submitted to Congress.

Colombia:

Since the beginning of 2011, there has been a notable increase in meetings between U.S. and Colombian officials to address what the Administration has identified as the three areas of concern before the FTA can be sent to Congress: "the protection of internationally recognized labor rights, the prevention of violence against labor leaders, and the prosecution of the perpetrators of such violence."

The NFTC on April 6 welcomed the Obama Administration's announcement of a plan to resolve these issues standing in the way of approval of the U.S.-Colombia FTA. The "Action Plan Related to Labor Rights," which was agreed upon by both governments, will pave the way for Congressional consideration of the FTA in the coming months.

On April 7, Colombian President Juan Manuel Santos met with President Obama at the White House to approve the Action Plan. During a joint press briefing following their meeting in the Oval Office, President Santos said, "This is a very important event for Colombia. It's important not just because of our foreign trade but also because of our relationship with the United States and for the progress and development of Colombia. We're extremely pleased as a result because this is part of the development plan that we're working on for Colombia to achieve development and even better progress with social justice…The action plan that is giving the green light to the free trade agreement is one that establishes stronger defense of workers -- physical defense of workers. And in it, we put down in black and white objectives, and along with those objectives, a date for each one."

In addition to Congressional pressure and implied delay of KORUS until all three are submitted, the economic reality of the U.S. being left out of preferential relationships in Colombia is beginning to be felt as Colombia's agreement with Mercosur cuts into U.S. agricultural exports, and Colombia's agreements with other nations move forward. Colombia's FTA with Canada, which was ratified by Canada last Spring, has this month received the necessary approval of Colombia's constitutional court, so will likely enter into force by July of this year, while the EU, Colombia and Peru have initialed their trilateral FTA this month in preparation for imminent signing.

(Continued on page 5)

Free Trade Agreement Update: Korea Feels the Weight of Colombia and Panama; Few Outstanding Issues Remain for Latin FTA's

(Continued from page 4)

Panama:

Traditionally, when there has been agreement in principle among trading partners on outstanding issues, especially ones outside of the direct text of the agreement, FTAs were passed by Congress and the President used his certification obligations to assure final details were enacted before FTAs entered into force, sometimes up to a year after Congressional passage. Not so in the case of Panama. Panama has implemented around half a dozen changes to its labor regulations through executive decree, but two actions which require legislative action are still in process, keeping the Administration from sending the implementing legislation forward.

Panama signed a landmark Tax Information Exchange Agreement with the United States in November of 2010, and more recently agreed to undertake changes to extend full collective bargaining rights and other protections for workers in the Baru special economic zone. Deputy USTR Miriam Sapiro indicated in testimony before the House Ways and Means Trade Subcommittee that the Administration is still waiting for the Panamanian legislature to pass the pending legislation on these two issues. While Chairman Kevin Brady (R-TX) expressed frustration with holding submission to Congress, stating that Panama's actions are "more than enough to allow congressional consideration of the agreement."

Throughout this tug of war, both sides do seem to agree on several things, that passage of KORUS is long overdue, further delay creates harm to the U.S. economy, and that it will pass Congress once submitted. The difference in timing, if public statements by all sides are to be believed, has now come down to a matter of months, with key committees, such as House Ways and Means, giving a July deadline for consideration of all agreements and a range of senior Administration officials promising all FTAs being acted upon by the end of this year.

For more information on the FTAs contact Chuck Dittrich at cdittrich@nftc.org.

NFTC Lobbies for Russia PNTR

The NFTC, as part of a coalition led by the U.S.-Russia Business Council, is lobbying key Members of Congress to support granting Permanent Normal Trade Relations to Russia. While Russia may accede to the WTO in late summer or early fall, American companies would not have the benefit of the resulting enhanced market access until PNTR is passed. This requires exempting Russia from the Jackson-Vanik amendment to the 1974 Trade Act.

The amendment denies most-favored nation treatment to non-market economies that restrict human rights. In the case of the then-Soviet Union this meant freedom for Jewish citizens to emigrate. Since the Soviet Union no longer exists and Jewish emigration is no longer an issue, President Obama has called the amendment an anachronism. In June, 2010, the President along with Russian President Medvedev committed themselves to Russian entry into the WTO by the fall of 2011, and in early March during a visit to Moscow, Vice President Biden told the Russian leadership that Russian accession is at the top of the Administration's agenda.

PNTR for Russia, involving an exemption from Jackson-Vanik, faces obstacles in the Congress. Working Party negotiations in Geneva must first resolve outstanding issues on Russian policies affecting imports of pork, chicken and beef, intellectual property rights protection, sanitary and phytosanitary measures, and cyber security standards. The agreement of Georgia must be secured and Georgia's friends in Congress must be assured that the border issues will be resolved. Concern over censorship and human rights violations in Russia must be allayed.

(Continued on page 6)

NFTC Lobbies for Russia PNTR

(Continued from page 5)

There is some perception that PNTR for China turned out to be negative for the U.S. economy and that is an argument against PNTR for Russia. Finally, the importance to U.S. business and the American economy must be impressed on a Congress, many of whose members have paid little attention to those benefits and retain residual suspicions of Russia. Above all, the commercial profile of Russia needs to be raised. Many in Congress feel that if the three pending FTAs are approved, there will be little appetite to take up Russia PNTR in this session. Some go farther and argue that since 2012 is a presidential election year, PNTR may be a 2013 issue. Given the stakes especially for U.S. exporters, whose Russian markets could well be taken by European and Asian competitors as a result of delay, the NFTC will continue its efforts on behalf of PNTR for Russia.

For members interested in PNTR for Russia contact Dan O'Flaherty at doflaherty@nftc.org.

Tax Policy

NFTC Tax Lunch Forum Welcomes Joyce Meyer, Chief of Staff to House Budget Committee Chairman Paul Ryan

The NFTC welcomed Joyce Meyer, Chief of Staff to House Budget Committee Chairman Paul Ryan (R-WI), to the March 15 luncheon. Rep. Ryan is also a member of the House Ways and Means Committee. Ms. Meyer explained the current deficit and debt situation that the United States is facing. The current deficit is $1.6 trillion and the debt in $10.9 trillion. The House Budget Committee cannot begin to put together the budget until they receive the updated baseline numbers from the CBO. The Administration's budget was presented to Congress on February 14, two weeks later than mandated by law. The budget was late because of the last minute tax negotiations in December 2010. The Administration was not able to start their budget deliberations as early as usual, hence, the budget delivered to Congress was also late. Ms. Meyer explained that the Budget Committee usually completes the budget package by the start of the April recess, but since the Committee has yet to receive the CBO numbers, it will be difficult to keep to this timeframe, although that is still the Committee's intent. In recent interviews, Chairman Ryan has said that he will include entitlement reform in the budget package. Ms. Meyer confirmed that this is his intent, but she was unsure how the Senate would react to this.

Ms. Meyer said that Chairman Ryan has regular discussions with Senate Budget Committee Chairman Conrad. Both Chairmen were members of the Deficit Reduction Commission and are committed to reducing the deficit and getting entitlement spending under control. Chairman Conrad has said that it will be difficult to get entitlement reform through the Senate.

Ms. Meyer explained the difference between the continuing resolution (CR) being used to fund the government, and the budget process. The current CR will expire on April 8, and it will be difficult to get another short-term CR through the House with a majority of the Republicans voting for it. House Republicans want deeper spending cuts in discretionary programs before a final CR is agreed to. The Senate Democrats think that the House Republicans are cutting too deeply into essential programs. Finding a compromise between these two sides before the April 8 deadline will be very difficult. The House GOP leadership does not was a government shutdown. They remember the political blowback from the government shutdown under their watch in 1995. Ms. Meyer believes that many of the House GOP freshman understand the political ramifications of a shutdown, but it will be difficult for them to compromise on the spending cuts they feel are necessary.

(Continued on page 7)

NFTC Tax Lunch Forum Welcomes Joyce Meyer, Chief of Staff to House Budget Committee Chairman Paul Ryan

(Continued from page 6)

When asked how the House budget will deal with the issue of tax reform, Ms. Meyer said that no decision has been reached. House Ways and Means Committee Chairman Camp will continue to hold hearings on tax reform, but has not requested a revenue number be included in the Budget for tax reform. Any number would be included in the Committee letter to the Budget Committee, which had not been finalized. (Note: The Ways and Means Committee did send the letter to the Budget Committee later in the week after Ms. Meyer's comments). There has also been no decision on whether reconciliation instructions will be included in the budget. Ms. Meyer concluded by saying that until the Budget Committee receives that CBO baseline numbers, all final decisions on the budget are on hold.

For more information or to attend the next Tax Lunch Forum, contact Catherine Schultz at cschultz@nftc.org.

NFTC 2011 Tax Treaty Survey Results

Thank you to everyone who responded to the *2011 NFTC Tax Treaty Survey*. The survey continues to be an important tool for NFTC members to communicate their tax treaty wish list and issues to the U.S. Treasury and the IRS. An overview of the survey responses follows.

Country Priorities

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

- The country that was once again identified as the most important to respondents with 74% of the vote was Brazil--permanent establishment, and business profits were the greatest concerns, followed very closely by interest, royalty and dividend withholding and the MAP process.
- The country that received the second highest number with 70% of the vote was Spain, which moved up significantly from 2010 on the priority list. Permanent establishment, business profits, interest, dividends and royalty withholding were uniformly important. There was also a great deal of concern about the MAP process.

The countries that were identified as the next most significant to respondents with 37-66% of the votes (these countries were also most frequently listed as the first or second most important country by respondents) are: India, China, Argentina, Canada, Kuwait and the Netherlands. Canada once again is important due to treaty implementation concerns. Both India and China continue to be of great concern to a significant number of respondents. Kuwait and the Netherlands have moved up in significance to respondents. The negotiation items that were listed as most significant in each country are:

- India: permanent establishment was by far the biggest concern, followed by business profits, gains, interest, royalties and the MAP process;
- China: permanent establishment, business profits and reducing withholding rates on interest, royalties, and dividends were uniformly important;

(Continued on page 8)

NFTC 2011 Tax Treaty Survey Results

(Continued from page 7)

- Argentina: permanent establishment business profits and reducing withholding rates on interest and dividends were all significant
- Canada: permanent establishment, business profits, dividends and limitation on benefits were of concern
- Kuwait: permanent establishment, business profits, gains, interest, royalty and dividend withholding were important, followed by limitation on benefits concerns
- Netherlands: permanent establishment, business profits, interest, royalty and dividend withholding were all important

The countries that were included in the second tier (with 22-33% of the votes) were Singapore, Thailand, Saudi Arabia, Columbia, Taiwan, Japan and Yemen. The priority of the countries in the second tier shifted from 2010, as Singapore has dropped on the priority list from the top tier, and other countries dropped off this list altogether (South Korea, Switzerland, Russia and Vietnam). The items that were selected as most important for these countries are:

- Singapore: permanent establishment, business profits followed closely by interest, royalty and dividend withholding
- Thailand: permanent establishment, interest, royalty and dividend withholding were equally important
- Saudi Arabia: permanent establishment, business profits, and the MAP process
- Columbia: business profits, interest, royalty and dividend withholding
- Taiwan: business profits, interest, royalty and dividend withholding were uniformly important
- Japan: interest, royalty and dividend withholding and the MAP process were important
- Yemen: permanent establishment, business profits, interest and royalty withholding

The countries that comprise the third tier garnered significantly fewer votes. Receiving between 14-18% of the votes were: Angola, Chile, Indonesia, Trinidad/Tobago, Niger and the Philippines. The items that were selected as the most important for these countries are:

- Angola: permanent establishment, business profits, and dividend withholding were all important
- Chile: permanent establishment, business profits, interest and dividend withholding
- Indonesia: permanent establishment, business profits, interest and dividend withholding
- Trinidad/Tobago: permanent establishment, business profits, interest, royalty and dividend withholding
- Niger: permanent establishment, business profits, interest and dividend withholding and the MAP process
- Philippines: permanent establishment, interest and royalty withholding royalties and the MAP process

The remaining countries received only two to three votes each.

Question Responses

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

- The most frequently cited problem was the permanent establishment interpretations in India. India is taking very aggressive positions on permanent establishment (P.E) and revenue characterization. Respondents requested that the tax treaty with India be renegotiated to clarify what constitutes a permanent establishment and to change the overly restrictive clause in the current treaty. Expediting the MAP process and negotiating a binding mandatory arbitration provision were also seen as important.

(Continued on page 9)

NFTC 2011 Tax Treaty Survey Results

(Continued from page 8)

- The most frequently cited problem was the permanent establishment interpretations in India. India is taking very aggressive positions on permanent establishment (P.E) and revenue characterization. Respondents requested that the tax treaty with India be renegotiated to clarify what constitutes a permanent establishment and to change the overly restrictive clause in the current treaty. Expediting the MAP process and negotiating a binding mandatory arbitration provision were also seen as important.

- The Service P.E. provision in the U.S.-India treaty was also cited as a problem area. India has treaties with other countries where they have permitted a more extensive time frame for establishing a Service P.E. The U.S. treaty should have the same benefits as India gives to others.

- Respondents requested the enhancement of the U.S. tax treaty network to countries in which multinational corporations have significant business activities: Singapore, Brazil, and China were mentioned most frequently. Respondents cited business profits, royalties and dividends as priority areas with Singapore. The Chinese withholding rate was seen as placing an additional burden on companies operating in China.

- Respondents continued to want a treaty with Brazil. The inability of companies to pay out royalties is problematic. Companies complained that the transfer pricing rules in Brazil do not conform to OECD standards. Settlement at an administrative level is not legally possible and at the judicial level may take many years.

- Respondents continue to have issues with the administration of the treaty with Canada. Companies would prefer a zero percent withholding rate on dividends, coupled with the elimination of the hybrid provisions. Companies would also support an amendment to the LOB provisions to provide that companies that are part of a group with a substantial economic presence in each country be eligible for treaty relief.

- Respondents also reiterated the importance of eliminating withholding taxes on interest, royalties and dividends. Specific countries were cited as having high withholding rates, including Mexico and Turkey. The current U.S. Turkey treaty reduced dividend withholding to only 15%, which is the same as the Turkish domestic law rate, so the current treaty provides no benefit. Turkey has recently signed treaties where they have agreed to lower withholding rates (5%). Respondents would like to see the dividend lowered in the U.S.-Turkey treaty. Mexico expanded its definition of other income subject to withholding to include a variety of payments previously treated as business profits. Mexico also changed its characterization of payments for software to expand the types of payments subject to withholding tax.

- Problems were encountered in permanent establishment interpretations in China, Kuwait, Mexico, Malaysia and Angola. Kuwait is taking particularly aggressive positions on permanent establishment.

- Israel, Norway and Denmark are becoming increasingly aggressive on goodwill and business restructuring..

- The Middle East and sub-Saharan Africa also were cited as areas where tax treaties could reduce the potential for permanent establishment abuse. Respondents also recommended doing regional treaties, based on a new regional “model” tax treaty, with some of these areas. After a regional treaty was in place, the U.S. could adopt a more robust treaty with specific countries.

(Continued on page 10)

NFTC 2011 Tax Treaty Survey Results

(Continued from page 9)

- Respondents also recommended updating some of the oldest U.S. treaties, e.g. Philippines and Egypt, as part of this process.

- Binding arbitration and more efficient mutual agreement procedures were also referred to in several responses (to this question and question #2); respondents noted that significant delays were encountered in resolving examinations and that settlements were often held hostage unless taxpayers waived access to mutual agreement procedures. Many respondents would like to see binding arbitration provisions added to all future treaties. A mandatory arbitration provision with the U.K. was requested.

- Respondents requested a zero withholding rate with Japan. Respondents also had issues with the residence clause of the current treaty, specifically in substantiating the tax treatment of pass-through entities that are eligible for treaty benefits. Respondents requested that the L.O.B provision for withholding tax be changed to permit a taxpayer to satisfy the treaty conditions in one year, instead of the three preceding tax years included in the treaty.

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

- Onerous procedures encountered to receive reduced tax treaty withholding rates were cited, particularly in India, Italy, Singapore, Thailand, Portugal, China and the U.K.

- China has become particularly aggressive in disallowing treaty benefits for overseas investors.

- Respondents were concerned about two Canadian regulations: 1) Regulation 102 dealing with payroll withholding obligations is quite burdensome for development stage projects, 2) Regulation 105 imposes a 15% withholding tax on service income and companies must file a tax return to seek a refund of the costs.

- The expansion by certain countries of what constitutes a permanent establishment and the attribution of profits to that permanent establishment (sometime attributable to misinterpretation by tax authorities) is another issue of significant concern to respondents.

- Respondents requested that countries, such as Russia, be encouraged to adhere to their tax treaty clauses on the arms-length standard and permanent establishments, and that these countries do not use indirect taxes or other measures to override the treaty content.

- Respondents requested that the U.S. view be promoted that tax treaties are not purely for the avoidance of double taxation, but have a wider and more important goal, e.g. the bilateral agreement to the allocation of taxing rights, establish minimum thresholds before taxation rights accrue, facilitate cross border flows with minimal withholding taxes and establish procedures to resolve cross border disputes.

- The inability of the MAP and Competent Authority to resolve issues of double taxation was cited frequently with reference to India, Mexico, and Japan. Respondents cited numerous problems with India, both in its expansive view of what constitutes a permanent establishment, and how the MAP cases are processed. There is also concern that the proposed new Direct Tax Code could possibly override the tax treaty.

(Continued on page 11)

News for Our Members

NFTC 2011 Tax Treaty Survey Results

(Continued from page 10)

- The slowness of the MAP process with Canada has been problematic for many respondents. The process for obtaining an APA has also been very slow.

Thank you again to those that took the time to respond to the *2011 NFTC Tax Treaty Survey*, your responses provided valuable information. The cleansed information has been provided to the U.S. Treasury and the Internal Revenue Service officials with responsibilities in the tax treaty area.

For more information on the *2011 NFTC Tax Treaty Survey* contact Catherine Schultz at cschultz@nftc.org.

USA*Engage

Sanctions Update

On what major policy issue would one expect to find a letter signed by Senators Kyl, Menendez, Gillibrand, Moran, Casey, Graham, Cardin, Blunt, Nelson and Rubio? Why, of course, a letter to Secretary of State Clinton, copy to Secretary of Treasury Geithner strongly recommending investigation into CISADA malfeasance by Chinese, German, Venezuelan and Turkish "entities." The subsequent State Department announcement of sanctions applied to Belarusneft, "a state owned Belarusian energy company" will surely not slake the appetite of Congressional sanctions lovers for more findings and verdicts.

On the contrary, as noted in this space in the last issue, reliable reports continue to materialize that bipartisan "CISADA plus" legislation to put the Administration on Iran sanctions autopilot worldwide – perhaps even to include an effort to embargo sale of Iranian crude oil -- is being readied for introduction in the House Foreign Affairs Committee. For its part, the Administration insists on the efficacy of sanctions in its negotiating strategy with Iran, despite no evidence for this assertion.

Of course, the sudden publication of comprehensive financial sanctions on Libya – the executive order was not even enumerated – has stolen a march over the Iran file for the moment. The lack of a transition period for businesses to effect an orderly standstill is notable in comparison with the comprehensive sanctions ordered by the Reagan administration against Libya in 1986.

The fundamental algorithm – that the tumult in the Middle East pushes up oil prices over and above the pressure of demand on supply to the benefit of Iran's treasury by orders of magnitude over and above any constraints on production due to sanctions – seems lost in the din.

Finally, empirical evidence continues to accumulate that the aggressive imposition of CISADA's financial sanctions by the U.S. Treasury has undercut necessary third country financing for legal humanitarian trade licensed by the Office of Foreign Assets Control (OFAC).

Cuba embargo anyone?

For more information, contact Richard Sawaya, rsawaya@nftc.org.

NFTC Foundation to Take Trade Messages to Major Metropolitan Areas

The NFTC Foundation, the educational arm of the Council, is planning to hold a series of workshops with senior business, labor and community leaders in major metropolitan centers around the United States this year through its Global Innovation Forum.

Last year, the Foundation met with innovation clusters in Research Triangle Park North Carolina, Silicon Valley and Detroit thanks in part to a grant from the General Electric Foundation. This year, thanks to a new grant from the GE Foundation, the Council will focus on testing various messages related to the importance of trade to U.S. jobs and economic growth in major metro areas.

Workshops will engage a small group of senior community leaders from each city with select corporate executives, experts and officials from Washington, DC in a series of dialogues. Participants will highlight the broad scope of international trade and investment in the U.S. economy, discuss whether current measures of trade are sufficient to reflect increasingly complex global supply chains, and identify ways in which public policy can help American companies and workers tap into overseas demand, innovation and investment dollars. Discussion leaders will attempt to underscore in these workshops the growing role of international markets and investments in the lives of American workers and to the success or failure of U.S. businesses and entrepreneurs.

The Foundation plans to hold its first event this spring in Cincinnati, Ohio.

For more information on the Global Innovation Forums series, contact Jake Colvin at jcolvin@nftc.org.

GIF Breakfast Series

The Global Innovation Forum Breakfast Series continues to attract members of leading companies, NGOs, trade associations, and universities most active in the trade policy community for open dialogues on trade-related innovation issues. Recent speakers at the breakfast series include U.S. Executive-Director of the Transatlantic Business Dialogue (TABD) Kathryn Hauser, President of the Coalition for Employment through Exports John Hardy, and, most recently, Chief Trade Counsel for the House Ways and Means Committee Angela Ellard.

In January 2011, at the Center for Strategic and International Studies (CSIS), Ms. Hauser explained that TABD is advancing the transatlantic innovation agenda by actively supporting development of electric cars and “smart” grids. By prioritizing specific, tangible technological advances, Ms. Hauser argued promoting a broader transatlantic trade and innovation portfolio will be much easier. Also during the session with Ms. Hauser, Mr. Hardy discussed the need to develop data capable of explaining the “value-added” of many U.S. imports and exports. For example, the U.S. Export-Import Bank requires that 85% of the content of a product or service be made in the U.S., which misrepresents the full value-added of the majority of goods and services “imported” into the U.S. that use complex global supply chains (e.g. the iPod). Lowering that content requirement and developing data that better reflects global supply chain realities will go a long way toward improving U.S. government support for America’s most innovative and competitive companies. In an off-the-record discussion hosted by Google in February 2011, Ms. Ellard discussed the general trajectory of the U.S. trade agenda and participated in a Q&A session with GIF Breakfast Series attendees.

For more information, contact John Stubbs at jstubbs@nftc.org.

10th Annual Human Resource Management Forum-Houston-March 2-3

The 10th Annual Human Resource Management Forum-Houston-March 2-3 turned out to be even more lively and interesting than was anticipated when the agenda was developed in late 2010. The reactions to the events in Tunisia, Egypt, Bahrain and Libya were taking place during the forum which added to the value of the program.

The opening speaker was James Pierce, Chairman-Energy and Infrastructure Practices at Marsh Inc. Jim is an expert on corporate risk management. The focus of his presentation was on how corporations today have to be prepared for the unexpected (the Black Swan) whether it was events such as the global financial crisis, the oil spill in the Gulf of Mexico, or social upheaval in North Africa and the Middle East. In today's corporate environment executive management has to quickly respond to such events by involving colleagues in the General Counsel's office, the Chief Risk Management Officer, the Chief Human Resource Officer, and Corporate Communications as well as senior executive management.

Throughout the forum corporate panelists described how their respective companies were responding to these situations, some examples:

- Egypt: a major Engineering and Construction company had withdrawn their assignees and dependents in early January but by the end of February viewed the situation there as being stable enough to send the assignees back in.

- Bahrain: the tension between the Shia majority and the Sunni ruling family were just unfolding so at the time of the forum companies were not yet withdrawing assignees or families.

- Libya: the civil unrest had started about two weeks prior to the forum so companies were right in the midst of getting assignees and families out of harm's way.

- Managing Security Risks: in addition to Jim Pierce's presentation, Jason Dury, an International Security Manager with SAIC and Noella Reuter, a Manager of International Security and Crisis Management with TASC, provided an overview of security and crisis management preparation planning for such events as the 2010 earthquake in Haiti; terrorist actions in Pakistan; the mining near-disaster in Chile; responding to Somalian piracy; kidnapping in Colombia and Mexico and the on-going conflicts in Afghanistan and Iraq.

As the primary theme of this year's forum was "Global Workforce Management: Maximizing Opportunities and Managing Risks" the agenda included a report by Eileen Mullaney and Carrie Jones of PwC on their international study released in 2010 entitled "Talent Mobility 2020" which looked at global demographic and international assignment trends in 900 companies as well as PwC's annual global CEO surveys and a special survey of more than 4,000 "millenials".

The topics of talent management at such companies as Aramco, BP, Chevron, Fluor, Hess, Jacobs Engineering, KBR, Marathon Oil, Mustang Engineering and Pride International were also included on the agenda. Additionally human resource management programs in key countries and regions such as Africa, Brazil, China, India, Latin America and the Middle East were covered by experienced corporate international human resource management colleagues and subject matter experts from Marsh, PwC, Secor Group and Zurich International Insurance.

The subjects of compliance in areas of immigration, work permission, individual and corporate taxation and with the new U.K. Bribery Act were covered by subject matter experts Brendan Ryan and Cynthia Lange of Fragomen and Bill Dunn of PwC.

(Continued on page 14)

10th Annual Human Resource Management Forum-Houston-March 2-3

(Continued for page 13)

There were sessions on international benefits management led by speakers from Halliburton, Marsh, Wal-Mart International and Zurich International Insurance. Last but not least, Kathleen Van Der Wilk-Carleton of the Permits Foundation and Wayne Finger of Schlumberger described work being done to help gain opportunities for employment by spouses and life partners.

All together, as usual, the Houston forum was topical and interactive. The NFTC will host its 16th annual International Human Resource in New York City on July 14-15. The agenda is being developed at this time. Information on the agenda and registration will be posted to the NFTC website in the near future.

For more information contact Bill Sheridan at wsheridan@nftc.org.

New International Human Resource Management Working Committees

The NFTC has recently established two new International Human Resource Management working committees:

Global Talent Management Committee which focuses on all aspects of global workforce management including: sourcing, recruiting, placing, developing, rewarding and retaining business-critical talent. This committee was established in response to the pressures created by the effects of global demographic trends in "established" markets; the growth of business opportunities in "developing" markets where skilled local talent may not be readily available; and the competition from the BRIC countries for talent as well as for resources and customers. For more information on the Global Talent Committee contact either Grace O'Rourke at gorourke@nftc.org or Bill Sheridan at wsheridan@nftc.org Both can be reached at 212 399 7128. The next meeting will be in the Fall.

International Compensation & Benefits Committee (Houston), which is modeled after the long-running International Benefits Committee (New York City), focuses on the design, compliance and management of employer - provided international compensation and benefit plans for Local National as well as Expatriate staff. For more information on this working committee contact Bill Sheridan at either wsheridan@nftc.org or at 212 399 7128. The next meeting will be on April 26, 2011.

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

The NFTC will host its 16th annual International Human resources forum at the New York Athletic Club on July 14-15. In addition to subject matter experts from Aetna Global benefits, AIRINC, Cartus, International SOS and KPMG the faculty will include experienced business and human resource management professionals from academia, consumer products, the defense industry, financial services, manufacturing and pharmaceutical companies.

Information on the agenda and registration will be posted to the NFTC website by April 21 or you can contact Bill Sheridan at wsheridan@nftc.org or 212 399 7128.

Calendar of Events

Date	Event and Location
April 27-29	Expatriate Management Committee* - New Orleans, LA
May 11	Tax Lunch Forum - Speaker: TBA - Washington, DC
June 7	International Benefits Committee* - New York City
June 8	Tax Lunch Forum - Speaker: TBA (OECD/USCIB meeting is June 6-7) - Washington, DC
June 9-10	NFTC Board Meeting - Cambridge, MD
July 13	Tax Lunch Forum - Speaker: TBA - Washington, DC
July 14-15	Annual International Human Resources Management Forum – New York City
September 20-22	Expatriate Management Committee* - San Jose, CA
October 6-7	Fall Tax Meeting - Washington, DC
November 9	Tax Lunch Forum - Speaker: TBA - Washington, DC
December 7	Tax Lunch Forum - Speaker: TBA - Washington, DC
October 5	National Foreign Trade Council's Annual Meeting - Washington, DC
October 5	National Foreign Trade Council Foundation's World Trade Dinner & Award Ceremony – Washington, DC

***Note:** The WTO Committee Meetings, Trade 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.*

2011 World Trade Dinner Set for October 5, 2011

The NFTC Foundation's Annual World Trade Dinner and Award Ceremony will take place on Wednesday, October 5, 2011. The dinner is a black tie event and the venue is the elegant and historic Organization of American States, 17th Street & Constitution Avenue, NW, Washington, DC. Please save the date and plan to attend!

The 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. Our 2010 speaker was Rep. Dave Camp, who is now Chairman of the House Ways & Means Committee. Past speakers have included such respected figures as House Majority Leader Steny Hoyer; United States Trade Representative, Ambassador Susan Schwab; Secretary General of the United Nations, Kofi Annan; UN-Ambassador John Negroponte, as well as several Heads of State. We will be announcing the 2011 dinner speaker this summer.

Company sponsorship opportunities for the dinner are still available, as are a limited number of individual reservations. Contact the NFTC at 202-887-0278 or nftcinformation@nftc.org for details.

This issue of Council Highlights brought to you by:

National Foreign Trade Council
E-mail: nftcinformation@nftc.org
www.nftc.org

Washington DC Office
1625 K Street, NW, Suite 200
Washington, DC 20006
Phone: 202-887-0278
Fax: 202-452-8160

New York Office ***(New location)***
60 East 42nd Street, Suite 920
New York, NY 10165
Phone: 212-399-7128
Fax: 212-399-7144

NATIONAL FOREIGN TRADE COUNCIL

"ADVANCING GLOBAL COMMERCE FOR NEARLY A CENTURY "

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.

For membership opportunities, please contact us at nftcinformation@nftc.org or 202-887-0278.