

# 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.



January 2011

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### A Word From the President

*Fair warning: This month's rant will offend some people. In the interest of equal time, we're happy to take the best response and put it into our next issue.*

As food for thought, I want to offer up a defense of government, even big government, and suggest that one of the reasons we're in the mess we are is because of the failure of the American people to appreciate their government.

This is ironic in several ways. Those of us of a certain age (i.e. old) were raised by parents who had been through the Great Depression and World War II. (My own father was a veteran of the First World War.) They had a deep appreciation of the role of government and regarded it as being instrumental in pulling the country out of the depression and for organizing the military and industrial force that won the war. Our parents may have been Tom Brokaw's "Greatest Generation," but their achievements were on behalf of and with the full support and assistance of their government.

Franklin Roosevelt and the New Deal and the political coalition he built lasted well into the 60's until it began to erode during the Vietnam War. What really did it in, however, was Ronald Reagan's ability to convince the American people that government was at best incompetent and at worse evil, a malevolent force stealing their hard-earned dollars and restricting their liberties. Unfortunately, he was very good at that, and we have suffered from it ever since.

It is a particularly dangerous view now because the problems that plague us are not the kind that can be solved by hard-working individuals on their own. It's all well and good to say, as many candidates did during the last election, that the government doesn't create jobs – the private sector creates jobs.

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### Business Calls on Congress to Extend Trade Adjustment Assistance

On November 30th, The National Foreign Trade Council (NFTC) joined 17 other key business associations and companies in sending a letter to the leaders of the Senate Finance Committee and House Ways and Means Committee, urging them to support the extension of the Trade Adjustment Assistance (TAA) program before the December 31st deadline.

The groups wrote:

*"As the U.S. economy struggles to recover from the global economic crisis, TAA is serving more Americans than ever before. Since the new TAA program went into effect on May 18, 2009, over 360,000 workers affected by more than 3,500 layoffs have been certified to receive TAA benefits. TAA for Firms is also seeing record usage this year with a 30% increase in small U.S. manufacturing and service firms being certified into the program over FY-2009. And the TAA for Farmers program has helped about 5,000 agricultural producers across the country improve their competitiveness.*

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© 2011 National Foreign Trade Council, Inc.  
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](mailto:nftcinformation@nftc.org)

# News for Our Members

## A Word From the President

(Continued from page 1)

That statement is not only not true (the government, in fact, is responsible for millions of jobs through direct hiring for government service, through the military, and indirectly through the stimulus programs Congress has enacted); it misses the point. What government can do well, though it often does not, is create the climate of confidence and pro-growth policies that enable the private sector to grow.

Franklin Roosevelt was a master of the first. Through speeches, beginning with his first inaugural, fireside chats on the radio, and numerous public appearances he gave millions of Americans hope that things would get better and that the government was working to make that so. He inspired them to work harder and pull themselves together so that his confidence-building speeches became true. Reagan was also a master of optimism, but to a different end. Where Roosevelt taught people the government was there to help them, and proved that through the creation of social security and numerous other programs, Reagan told people their own initiative could surmount even the dead hand of government getting in their way.

The idea that each of us can solve our problems for ourselves if the government would just let us alone is an attractive one for a society that has always championed the rights of the individual, but it is inadequate for the times when the problems are so big and getting bigger. As my generation, the Baby Boomers, retires, demands on government in the form of better health care benefits and better pensions will only grow at a cost we cannot afford, and people will inevitably look to government to meet those demands. Our national security and homeland security demands continue to grow, and there has never been much dispute that that is a proper function of government. Education, while more a function of local government, is more important than ever if we are to remain globally competitive, and home schooling is hardly an appropriate solution for everyone.

I make this point because the last election once again featured government under attack, and no one was playing defense. Candidates competed with each other to find new ways to attack government and government employees and to belittle their work. Government does make mistakes. It is composed of people, and people, after all, are human, even government employees from the President and his cabinet on down. I worry that we long ago crossed a line where we stopped criticizing the mistakes and started criticizing the system that allowed them to be made.

One of my favorite quotes is from one of the most quotable politicians in recent times, Daniel Patrick Moynihan, who made the following point:

*"It would be just 222 years ago that what we came to call the Constitutional Convention finished its work in Philadelphia. Benjamin Franklin emerged from what we now call Independence Hall, and a lady asked him, what have you wrought." And he said, "A Republic, if you can keep it." And how wise he was. There were in 1787 two nations on earth which both existed at that time and had not had their form of government changed by violence since that time. There are eight nations in the world which both existed in 1914 and that have not had their form of government changed except by violence since that time....Not always approved, sometimes very much disparaged, the art of politics and government is the highest calling of a democracy. And the achievement we have in the stability of this society is so easily underestimated. It is normal for us — it is the rarest conceivable thing for most of mankind....it will not be sustained and continued if we don't know in fact how fragile it is and how much it needs the very best of men and women to continue it with the knowledge and the courage to do so."*

That is a message we should all take to heart as we wrestle with the country's problems over the next several years. Government has a role to play, and when we deny that, we make it more difficult for all of us to succeed.

# *International Trade & Export Finance*

## **Business Calls on Congress to Extend Trade Adjustment Assistance**

*(Continued from page 1)*

*“An effective TAA program that gives displaced workers the skills and resources they need to re-enter the job market is a central element of U.S. trade policy and key to future U.S. competitiveness. We urge you to act now to extend TAA, providing the certainty of funding that American workers, firms, farmers, ranchers and communities need to retool for success in the global economy. Failure to do so will adversely impact thousands of Americans, decreasing the number of those eligible for benefits, and making the remaining program provisions more difficult to access and administer.”*

“TAA is a key part of the U.S. competitiveness strategy. It is instrumental in helping those whose jobs have been adversely affected by trade acquire new skills and new opportunities for employment,” said NFTC President Bill Reinsch. “We urge members of Congress on both sides of the aisle to put politics aside and work together to extend the program as soon as possible before the end of the year.”

For more information contact Chuck Dittrich at [cdittrich@nftc.org](mailto:cdittrich@nftc.org). To read the full text of the letter, please visit: <http://www.nftc.org/default/Trade Policy/Trade Adjustment Assistance/112910 TAA Extension ltr Final.pdf>

## **Free Trade Agreement Update**

### ***Korea Talks Conclude***

The NFTC on December 3, 2010 congratulated the U.S. and Korean governments for working together to resolve issues standing in the way of advancing the KORUS FTA. The NFTC released the following statement:

“The KORUS FTA has long been a policy priority of the U.S. business community, and the NFTC commends U.S. and Korean negotiators’ commitment to resolving market access issues with respect to autos,” said NFTC President Bill Reinsch. “The FTA will play a critical role in strengthening our economic partnership with Korea, as well as our decades-long strategic alliance.”

“With Korea as our 7th largest trading partner, the reduction and elimination of tariff and non-tariff trade barriers will provide greater market access for a wide range of U.S. companies, service providers and agricultural producers – helping to increase U.S. exports and economic growth,” said NFTC Vice President for Regional Trade Initiatives Chuck Dittrich. “We view today’s announcement as a positive signal that the Administration is committed to advancing the U.S. trade agenda. As we look ahead to the end of this year and next, we urge the President to move forward with submitting the implementing legislation to Congress as soon as possible. It is with the same sense of urgency that we ask the Administration to take action on the trade pacts with Colombia and Panama.”

In June of this year, President Obama signaled his Administration’s commitment to resolve outstanding issues in the US-Korea FTA by the time of the next G-20 Leaders’ Summit in Seoul, South Korea, in November 2010. However after intense negotiations at the chief negotiator and Ministerial level in the weeks leading up to the November 11th Presidential meeting between the two leaders, there was no resolution on the two main issues holding up the agreement’s consideration by Congress, market access for U.S. autos and beef over 30 months of age. It was reported that President Obama and President Lee spent around 40 minutes discussing the trade agreement and charged their negotiators to continue efforts to come to resolution in weeks, not months. The negotiations were concluded after U.S. Trade Representative Ron Kirk and Korean Minister for Trade Kim Jong-hoon met again on November 30th through December 3th, in Columbia, MD to continue work on the outstanding issues.

# *International Trade & Export Finance*

## **Free Trade Agreement Update**

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### ***Milestones Reached on Panama***

During the week of November 15, senior Panamanian officials including Minister of Commerce and Industry Roberto C. Henríquez and Vice Minister (and FTA chief negotiator) Alvares de Soto came to Washington to meet with U.S. government officials regarding outstanding issues related to U.S. Congressional consideration of the U.S.-Panama FTA. Addressing Congressional concerns over Panama's inclusion in the OECD "Gray List" of nations considered being tax havens, the U.S. and Panama have negotiated a Tax Information Exchange Agreement (TIEA), slated to be signed on November 30. Panama has undertaken a concerted effort to remove itself from the Gray List by making efforts to sign TIEA's with any 12 nations, which is the criterion for removal from the list. By signing a TIEA with the United States, Panama has sent a very strong signal of its commitment to transparency and cooperation with the U.S. on tax and financial reporting. Panamanian officials also expressed optimism that it is making strong progress to work through the remaining labor issues of concern to Congress.

### ***New Colombian Government Looks Elsewhere***

Meanwhile, the NFTC organized a press lunch with new Colombian Ambassador to the United States Gabriel Silva, during which he laid out the incoming Santos Administration position on the U.S.-Colombia FTA. Silva reiterated Colombia's continued interest in implementing the FTA but indicated that the Santos Administration is moving forward with a robust trade agenda, signing and negotiating additional trade agreements with other major trading partners while continuing to rebuild the rule of law in Colombia and unilaterally undertake efforts to protect the rights of all Colombians, including trade unionists. Ambassador Silva cited the ILO decision this year, after 25 years, to remove Colombia from its annual list of nations requiring special monitoring. Colombia has ratified 60 ILO Conventions, including all eight fundamental labor rights conventions. Despite the fact that the Obama Administration has on several occasions stated its commitment over the past two years to engage with the Colombian government to establish benchmarks for improvements in Colombia's protection of trade unionists from extra-judicial violence, Ambassador Silva indicated that there has been no clear path laid out by the U.S. Administration for Colombia to satisfy U.S. concerns.

For more information, contact Chuck Dittrich at [cdittrich@nftc.org](mailto:cdittrich@nftc.org).

## **BRAZIL – NFTC Breakfast Meeting with Welber Barral, Secretary of Foreign Trade**

Over breakfast at the NFTC offices, a dozen member companies met November 17 with Welber Barral, Brazil's Secretary of Foreign Trade. Secretary Barral made an informal presentation, and then engaged the members in an active, hour long Q&A session. Highlights:

Brazil's Economic Surge. Brazil has managed through the global recession better than most countries: GDP growth is forecast at 8 percent this year, with similar strength expected in 2011 and 2012. While exports dropped 18 percent last year, they have been recovering nicely in 2010 and, for the full year, are expected to increase 30 percent compared with 2009. Imports are growing strongly as well, up 44 percent so far this year, through October. Brazil's strong export performance over the past five years has been impressive, reaching \$100 billion for the first time in 2005 and doubling to \$200 billion by 2008.

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## *International Trade & Export Finance*

### **BRAZIL – NFTC Breakfast Meeting with Welber Barral, Secretary of Foreign Trade**

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The growth of the Brazilian economy and the Brazilian middle class has been fueled in part by this strong export performance, 50 percent of which is of manufactured goods. On the raw material side, exports have benefited from higher prices and very strong Chinese demand for Brazilian products. Successful efforts to find new export markets in Asia, the Middle East, Africa and elsewhere in Latin America have made Brazil less market dependent upon the United States, which has fallen to second place (behind China) as Brazil's largest trading partner. As recently as 2002, the US bought 22 percent of all Brazilian exports. Today, China accounts for 15 percent of Brazil's exports; the U.S. only 9 percent. While part of the decline in the relative importance of the US market corresponds to the economic recession, there are other reasons as well, including the expansion of Brazilian exports generally.

On imports, the US remains Brazil's #1 source of imports, accounting for 34 percent of the import market, mostly parts and machinery. Mr. Barral said that the US has an \$8 billion trade surplus with Brazil. Asian countries, however, already supply for 30 percent of Brazilian imports (China alone is 14 percent) and this figure is likely to grow.

Policies of the New Government. President-elect Dilma Rousseff will take office on January 1, 2011. From the same party and a close political ally of President Luiz Inacio Lula da Silva, Dilma will be Brazil's first woman president. She is expected to continue Lula's fiscal and anti-inflation policies, but to place more emphasis on education, a sector traditionally under-funded by Brazil. Job growth in engineering and in other professional categories is projected to grow and the country needs to prioritize more technical educational fields. The FIFA World Cup in 2012 (held in 12 Brazilian cities) and the Summer Olympics in Rio de Janeiro in 2016 will stimulate major new infrastructural projects. In addition, the government is planning to build 3 million new low income houses over the next four years.

Mr. Barral said that he is a strong supporter of tax reform. The country has an extremely complicated tax structure with low rates but high transaction costs. Simplification would improve efficiency, stimulate new investment and increase jobs. The government recognizes the problem and some tax reform ("reform light" is how some are describing it) is likely under the new government. A sweeping reform, while arguably necessary, might be more time-consuming and politically difficult.

*Later in the week, the Brazilian Ambassador to the US (Mauro Vieira) speaking at a different venue also said that the Dilma Rousseff government is likely to continue President Lula's policies, but will not likely have Lula's very high public approval levels. The Ambassador also said that Brazil has been a major actor in the G20, part of the core group of the WTO, and extremely active in the UN, especially in the Security Council and Climate Change committees. As part of the G20, Brazil has emphasized that developing countries are part of a solution to current problems, not a problem themselves. In this position, Brazil seeks to take a larger role in world governance.*

*Ambassador Vieira noted that Brazil's foreign policy reach is not focused solely on distant issues; Brazil has been a major regional and bilateral player as a founding member of Mercosur, a founder of UNASUR (the 12-member Union of South American Nations founded in May 2008 and modeled after the European Union) and part of IBSA (a Brazilian initiative that brings together India, Brazil and South America.) There are several other initiatives that Brazil has not founded, but is part of, such as BRIC (Brazil, Russia, India and China.)*

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## *International Trade & Export Finance*

### **BRAZIL – NFTC Breakfast Meeting with Welber Barral, Secretary of Foreign Trade**

*(Continued from page 5)*

Trade Policies. Mr. Barral said that Brazil has several ongoing tariff and other trade problems with China and the United States, has been very active in the Doha Round (Brazil believes that the WTO offers the best dispute settlement procedures) and that US leadership is vital for the Doha Round to be successful. While the Doha Round is “in hibernation”, Brazil also is pursuing trade discussions on a bilateral basis with Mexico, Chile and Jordan. Brazil also seeks a Trade and Economic Cooperation Arrangement (TECA) with the US, has had some discussion re standards with Canada and trade talks with the EU will result in presentation of proposals from both sides in February 2011. The commercial dialogue with the US has led to plans to examine the development of regional harmonized standards.

US Cotton Subsidy Case. Asked about this case (which the US lost in the WTO) and the interim compensation arrangement made between the US and Brazil, Mr. Barral expressed the hope that the U.S. Farm Bill will end cotton subsidies and recognized that the present arrangement under which the US continues subsidies while paying compensation to Brazil is not a long-term solution for either party.

Brazilian Membership in the OECD. Asked how Brazil’s attempts to join the OECD were affecting its tax reform policy and the models being considered, Mr. Barral said that OECD membership is still under debate in Brazil, as there is no clear advantage to joining. Brazil’s tax reform goal is first to simplify the present system, then to look at the relevance of OECD models to the new system.

### **NFTC Contributes to Global Clean Energy Innovation Discussions; Helps Launch New World Economic Forum Report**

NFTC led a delegation of member companies to Cancun to highlight the importance of intellectual property rights to innovation and the positive nexus between trade and climate change. While in Cancun, NFTC arranged high-level meetings with negotiators, organized a panel discussion on how to encourage technology innovation and deployment and participated in several other discussions on carbon tariffs and clean technology subsidies. Working with other U.S. business associations, NFTC successfully urged negotiators to remove references to intellectual property rights as a barrier from the negotiations.

The resulting “Cancun Agreements” build on the Copenhagen Accord from last year by providing more structure to a financing mechanism, ensuring a system of international reporting and consultations to track countries’ pledges, and making new progress on forestry and other areas. NFTC has paid particular attention to negotiations over how to encourage clean technology innovation and adoption, which had included a disappointing and misleading discussion over whether the protection of intellectual property rights is a barrier to the adoption of clean technologies. NFTC has long argued, in testimony before Congress and to U.S. and foreign negotiators in the climate change talks, that this conversation was a distraction and muddled the reality that the intellectual property rights system is the foundation upon which companies and researchers share technology. The Council was pleased to note that the agreement contained no mention of intellectual property rights as a barrier to clean technologies.

In Cancun, Vice President Jake Colvin helped the World Economic Forum (WEF) release a new discussion paper on the linkages between international trade law and national and international action on climate change. The paper, titled *From Collision to Vision: Climate Change and World Trade*, was the product of a WEF Trade and Climate

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## *International Trade & Export Finance*

### **NFTC Contributes to Global Clean Energy Innovation Discussions; Helps Launch New World Economic Forum Report**

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Change working group in which NFTC President Bill Reinsch participated. The report includes recommendations for how countries can work together to develop a comprehensive climate change treaty that achieves key environmental goals and is in line with World Trade Organization (WTO) rules.

The Cancun Agreement itself said little about trade, except for one paragraph which “Reaffirms that the Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change; measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”

In Cancun, countries also agreed to establish a Technology Mechanism, consisting of a Technology Executive Committee and a Climate Technology Centre and Network. The role of the center is to facilitate networks to help developing countries identify technology needs and implement environmentally sound technologies and practices; provide advice on various technology options, and how to maintain and adapt new technologies; and encourage the development and transfer of technologies through collaboration with the private sector, public institutions, academia and research institutions. The agreement calls for the UNFCCC to convene an expert workshop alongside one of the negotiating sessions in 2011 to try to hammer out reporting lines and the logistics of the Committee and Center with a view towards having both fully operational in 2012.

NFTC will continue to monitor the talks to see how negotiators will deal with the rest of the technology discussions, to make sure IP does not reappear as an issue, and to highlight the positive role that trade can play in helping to address climate change.

For more information, contact Jake Colvin at [jcolvin@nftc.org](mailto:jcolvin@nftc.org).

### **TPP Gains Momentum with New Negotiating Partners**

The negotiation of a Trans Pacific Partnership (TPP) trade agreement has taken on new momentum recently with the inclusion of Malaysia into the talks, and a commitment by Vietnam to move from its “associate” status not fully committed to the negotiations, to a full negotiating partner. Both moves come on the heels of increased interest in Asia over the talks. Japan most recently, in the weeks leading up to the November the APEC Leaders’ Summit, has expressed strong interest in undertaking steps to qualify for inclusion in the TPP talks, and USTR has undertaken discussions with numerous APEC partners to explain the priorities and process of the negotiations. These discussions on more specific expectations of countries’ interested in joining will likely be incorporated into regular bilateral Trade and Investment Framework Agreement (TIFA) consultations with countries in the region.

The fourth and last negotiating round this year took place the week of November 29 in Auckland, where USTR has indicated that the focus would be on number of draft chapter texts that will be laid down, removing the brackets on previously laid down text that had been agreed upon in previous rounds, finalizing remaining issues before exchanging market access numbers in January 2011, and continuing to determine how horizontal issues would be included in the agreement.

For more information, contact Chuck Dittrich at [cddittrich@nftc.org](mailto:cddittrich@nftc.org).

# Global Innovation Forum

## NFTC Hosts Innovation Policy Forum in Detroit

NFTC President Bill Reinsch and staff hosted a workshop for senior executives and government officials on November 9th, where panelists shared views on how federal and state policy can help improve education, immigration, credit and export policies.

The National Foreign Trade Council Foundation's Global Innovation Forum (GIF) hosted the event, "Tapping into Global Demand for Innovative Manufacturing," in partnership with Automation Alley, the Detroit Regional Chamber, NextEnergy and Tech Town.

It featured remarks by Detroit Regional Chamber President & CEO Sandy Baruah, University of Michigan President Mary Sue Coleman, Michigan State AFL-CIO President Mark Gaffney, U.S. Department of Commerce Assistant Secretary for Manufacturing and Services Nicole Lamb-Hale, W Industries President & CEO Ed Walker, Fluxtrol President Robert Ruffini and senior representatives from NFTC member companies including the Chrysler Group LLC, General Electric and Procter & Gamble. NFTC also hosted a dinner the evening prior at the Detroit Athletic Club featuring John Austin of the Brookings Institution, who led a discussion on encouraging an U.S. export offensive through state and federal public policy.

Education and visa policies were the key focus of a discussion by State leaders about how to help attract investment and entrepreneurs to Michigan. A separate conversation on the role of federal policy focused on initiatives by the Obama Administration and Congress to create jobs, including the president's National Export Initiative (NEI). Small business speakers throughout the day focused on the impact of a credit squeeze.

This was the third event in a series of innovation workshops made possible by a grant from the General Electric Foundation. Additional sponsors included the Chrysler Group LLC, Pfizer, and Sandler Travis.

The themes in Detroit echoed similar concerns NFTC has heard in previous events in Palo Alto, California and Research Triangle Park, North Carolina. Getting banks to lend to small businesses, improving mathematics and science education, and improving U.S. visa and immigration policies to bolster the United States as a magnet for global entrepreneurs and thought leaders are concerns facing innovators around the country.

For more information, contact Jake Colvin at [jcolvin@nftc.org](mailto:jcolvin@nftc.org).



# *Global Innovation Forum*

## **GIF's Breakfast for Global Innovators | Senator Ron Wyden**

The Global Innovation Forum on November 16th welcomed more than 30 participants from America's leading innovative companies, think tanks and NGOs at the, Washington DC office of Bracewell & Giuliani, LLP.

We were joined by The Honorable Ron Wyden, Senior Senator from Oregon and Chairman of the Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness, who provided valuable insight into his efforts to lead in tax reform and continue to support policies that expand international trade and protect the IP rights of American firms.

Below is an outline of Senator Wyden's remarks followed by highlights from the "no attribution" discussion.

### **Senator Wyden Comments**

#### Framing the discussion

- Debate on corporate tax reform and "adult conversation" on protection of American competitiveness is more productive than polemic fighting on Bush II vs Obama tax rates
  - ◊ Tax reform provides a channel for bipartisan work that could open the door to other competitiveness issues such as addressing market access barriers, protection of intellectual property and so on.
  - ◊ Wyden-Gregg S3018 legislation to cut corporate tax rate from 35 percent to 24 percent

#### Tax reform

- Over \$200bn is spent on tax compliance issues, and 70+ bn work hours are spent enforcing tax law – reform is needed
- Requires creative thinking and strong support from business community

#### Trade

- Sticking point with Korea is autos. Once resolved should be able to advance trade agreement with S. Korea. May follow-up with Columbia and Panama if there is enough oxygen. Political climate for trade is very negative.
- Congress and average Americans are turning against trade, because "the American people don't believe in it."
- "Out of the box thinking" on trade needed-- perspectives and approaches to trade issues haven't changed since the early 1980s.
  - ◊ One example includes a recent "sting" operation by Wyden office. A fictitious company was created and used as a vehicle through which to send illusory messages to Chinese firms regarding their interest in evading tax duties. Chinese firms indicated their interest, supporting the notion that some firms are trying to cheat the system.

#### Subcommittee hearing on digital media

- Hearing will touch on issues related to censorship, digital information rights, telecommunications, and other core trade issues (e.g. duties and compliance).
  - ◊ Submit proposals for talking point to be mentioned at hearing to Wyden office
  - ◊ Need strategy to amplify effect of hearing

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# Global Innovation Forum

## GIF's Breakfast for Global Innovators | Senator Ron Wyden

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### Participant Discussion

- For the pharmaceutical industry, lack of IP protections in an area means “there is no product,” a challenge that *de facto* precedes any other global growth initiative
- Digital media hearing is most welcome and is the first of its kinds. Censorship or barring of social networking services abroad keeps customers off of the grid and away from American suppliers, limits growth for US firms who are leaders on the Internet, and creates unfair advantages for foreign competition walled off from U.S. digital services and products.
- Should increase awareness of the role of the telecommunications industry and expansion of connectivity as an engine of global growth. Much of the world is not yet connected.
- Promotion of a global innovation agreement will take a plurilateral approach similar to ACTA (the Anti-Counterfeiting Trade Agreement) and will advance an innovation zone for participants – creating space for proactive conversation on digital products, standards harmonization, technology transfer and investment rights.

Please contact John Stubbs at [jstubbs@nftc.org](mailto:jstubbs@nftc.org) to discuss the specific issues of concern for your company or organization.

## Tax Policy

### Taxing Questions for the Lame Duck Congress

Congress returned on November 29 for the remainder of the Lame Duck session. Questions remain on what can be achieved before the end of the year. There are several items that must be dealt with in the coming weeks:

- 1) The Continuing Resolution that funds the government is set to expire on December 3, and must be extended for the Government to continue in operation.
- 2) The Bush tax cuts from 2001 and 2003 expire on December 31, 2010. Employers will have to start withholding for the new tax rates beginning on January 1, if the rates are not extended. The individual tax rates will return to their pre-2001 levels. The capital gains tax rate will rise to 20 percent. The dividends rate will rise to the individual tax rate, with a top rate of 39.6 percent. The AMT “patch” will expire. The estate tax will reappear at a 55 percent rate with a \$1 million exclusion. The marriage penalty will reappear.
- 3) The tax provisions that expired at the end of 2009 and those that expire at the end of 2010 could be dealt with. These provisions include the R&D tax credit, the active financing exception, the CFC look-through rule as well as the provisions included in the stimulus package, such as the Making Work Pay tax credit or 100% expensing of certain business property.
- 4) The Unemployment Insurance extension expires on November 30.

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### Taxing Questions for the Lame Duck Congress

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The House and Senate Democratic leadership have indicated that they will take a permanent extension of the middle-class tax cuts to the respective floors during the week of November 29. They will let the upper tax rates expire. The Republican leadership in the Senate will request a vote on the permanent extension of all of the tax rates, including the upper rates. Neither side will have the necessary 60 votes in the Senate to pass their measures. The President will hold a summit with the Democrat and Republican leaders from the House and the Senate on November 30. Depending on the willingness of the Administration and the House and Senate leadership to compromise, the tax fight could linger into the new Congress. Many members are calling for a short-term (2-3 years) extension of all of the Bush tax provisions, but whether that can be achieved is unclear. There are many alternative proposals on the table. The Democrats have proposed extending the middle-class tax cuts permanently, while only extending the top rates for two years. The Republicans oppose this “decoupling” of the rates, and have the votes to stop its passage in the Senate. Senator Schumer has proposed raising the income threshold to which the top rates apply to either \$500,000 or \$ 1 million. Senator Warner has proposed using the revenue that would be raised by not extending the top tax rates and giving more tax breaks to small business. None of these alternative proposals appear to have enough votes to be adopted by the Senate.

If the tax extenders that expired in 2009 are not extended before the end of the year, it is very likely that there will be a gap in coverage. If they are extended for 2010, given the difficulty of offsetting these provisions under the PAYGO rules, it will be extremely difficult to extend them retroactively for all of 2010 as well. These provisions would have been expired for 12 months by the time the 112<sup>th</sup> Congress is sworn in on January 5, 2011.

If the Administration and Congress are unable to reach a compromise on the extension of the Bush tax cuts before the end of December, their job does not get easier in January. Republicans will take control of the House in January, and will close the gap a bit in the Senate. Republicans will be able to pass legislation by majority rule in the House, but since Democrats still control the Senate, a bipartisan compromise will still be needed for any legislation to be adopted. The need for bipartisan votes will strengthen Republican’s bargaining position, but the philosophical differences between the two parties will still make cooperation difficult. Senate Minority Leader McConnell’s statement that the Republicans want to make President Obama a one-term President, do not bode well for long-term cooperation. The Senate Democrats will have to defend 23 seats in the 2012 election, whereas the Republicans will have to defend 10. Democrats representing states that flipped to Republican in the 2010 election will have to be more cautious in their votes for the next two years. Republicans are concerned about facing potential Tea Party challengers if they appear too willing to compromise with Democrats, so many moderate Republicans will be less willing to compromise than they have in the past. This could lead to more partisan battles.

President Obama will play a key role in the enactment of legislation, both in the lame duck and in the 112<sup>th</sup> Congress. If President Obama decides to veto legislation, it will be difficult for Congress to muster the two-thirds vote necessary to override a veto. If President Obama decides to work in a more bipartisan fashion, he will likely be able to obtain enough votes by Senate Democrats facing tough reelections to adopt legislation in the Senate. How President Obama reacts to the 2010 election in his approach to Congress, will determine how much is accomplished in the next two years. When faced with similar circumstances, Harry Truman challenged Congress and ran against a “do nothing” Congress in his next reelection campaign—he won. Bill Clinton “triangulated” and compromised with Congress under similar circumstances—he also won his reelection. Will President Obama emulate Harry Truman or Bill Clinton in his approach to governing for the next two years? The answer will determine if any tax legislation gets adopted by the 112<sup>th</sup> Congress.

For more information, contact Catherine Schultz at [cschultz@nftc.org](mailto:cschultz@nftc.org).

## CISADA Implementation and the 112th Congress

Maintaining the diplomatic success of the UN, EU, and U.S. sanctions on Iran, the Administration has implemented Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) expeditiously. Following OFAC's promulgation of regulations, Treasury has deployed the financial sanctions; the GSA and NASA have published draft regulations regarding company certification for U.S. government contracts, and the State Department Office of Terrorism Finance and Economic Sanctions has engaged non U.S. companies with predictable announcements from headquarters in Europe and Asia of withdrawals from Iran's energy sector.

Within the global network of Iran watchers, it is generally reported that the energy-focused sanctions have reduced foreign investment in Iran's energy sector and constricted the supply of gasoline, and that the financial sanctions have disrupted ordinary commerce. With respect to the latter, it is worth noting that Iran's middle class – the bastion of the Green Movement – suffers the consequences. Similarly, U.S. humanitarian trade in agricultural and medical products with Iran, explicitly endorsed in CISADA, is also constrained by the unintended consequences of the financial sanctions. And not surprisingly, the black-market power of the ruling regime is enhanced.

Meanwhile, there are no indications that the sanctions have gone any way towards moving the ruling regime to renounce pursuit of latent or actual nuclear weapons capability. And predictably, voices are now raised in certain circles in behalf of the U.S. military option, Secretary of Defense Robert Gates's consistent dismissal of same as both unavailing and counterproductive notwithstanding.

All that said, what is to be expected from the 112<sup>th</sup> Congress? In a word, more of the same. Look for a lot of heated oversight of CISADA implementation; look as well, for legislation to further "tighten the screws" of the U.S. sanctions, and look finally for more Congressional voices prophesying war.

For more information on CISADA, contact Richard Sawaya at [rsawaya@nftc.org](mailto:rsawaya@nftc.org).

## NFTC Is Joined by the NAM and USCIB in an *Amicus Brief* Supporting ExxonMobil on the State Law Issue in a 2001 Alien Tort Lawsuit

On November 19 the NFTC, along with the NAM and the U.S. Council for International Business, filed an *Amicus Brief* on behalf of the defendants with the D.C. Circuit Court of Appeals in *John Doe, et al. v. ExxonMobil, et al.* ExxonMobil was sued in 2001 under the federal Alien Tort Statute for allegedly aiding and abetting human rights abuses committed by the Indonesian army. Importantly, the company was also sued under common law tort statutes of the District of Columbia. The *Amicus Brief* addresses the use of state common law to bring extraterritorial lawsuits against companies for aiding and abetting.

The issue is especially significant in light of the recent ruling by the Second Circuit in *Kiobel v. Royal Dutch Shell* that the Alien Tort Statute does not apply to corporations. If the Supreme Court upholds *Kiobel*, making the federal law unavailable to plaintiffs, their recourse would be state common law. Since the majority of ATS cases have been filed in the Second Circuit, *Kiobel* does currently give plaintiffs an incentive to use state law.

The NFTC-led *Amicus Brief* strongly reaffirms Federal supremacy in foreign policy and questions whether the District of Columbia intended its common law torts to apply extraterritorially to the plaintiffs' claims. The brief states that "it is unlikely that D.C. intended its common law to apply abroad in these circumstances. States are not responsible for the nation's foreign relations and should be even more wary about applying their laws in ways that may lead to international discord."

(Continued on next page )

### NFTC Is Joined by the NAM and USCIB in an Amicus Brief Supporting ExxonMobil on the State Law Issue in a 2001 Alien Tort Lawsuit

(Continued from page 12)

Assuming that plaintiffs do increasingly resort to lawsuits under state law, a ruling against that practice by the influential D.C. Circuit would be an important precedent. The brief concludes that “applying D.C. law to allegations by overseas plaintiffs involving alleged misconduct occurring overseas against a non-D.C. resident solely because a corporation might have minimum contacts sufficient to establish personal jurisdiction, likely violates defendants’ due process rights.”

The *Amicus Brief* is on the NFTC web site, at [www.nftc.org/default/Publications/Trade\\_Policy/Brief\\_Exxon\\_v\\_Doe.pdf](http://www.nftc.org/default/Publications/Trade_Policy/Brief_Exxon_v_Doe.pdf). Contact Dan O’Flaherty at [doflaherty@nftc.org](mailto:doflaherty@nftc.org) for additional information.

## International Human Resources

### 10th Annual International Human Resource Management Forum

The NFTC will hold its 10th Annual International Human Resources Forum at The Houstonian Hotel on March 2-3, 2011.

The forum will include sessions on:

- The impact of global demographic trends on sourcing and recruiting technical and managerial talent
- Risk management in the energy sector
- Compliance beyond the FCPA-understanding the implications of the 2010 U.K. Bribery Act
- Sessions on key markets including: Africa, Brazil, China, India, Latin America, Libya and the Middle East
- Developing and retaining talent for global enterprises
- Updates on immigration and work permit requirements in major countries
- Innovative international benefit and reward programs
- Advocating for spousal and partner employment in key markets

In addition to subject matter experts from the Forum co-sponsors Fragomen LLP, Marsh, Pricewaterhouse Coopers LLP, Secor Group and Zurich Global Life the Faculty will include international business and human resource leaders from: AECOM; Aramco; BHP Billiton; BP; Chevron; Fluor; Halliburton; Hess Oil; KBR; Marathon Oil; Qualcomm; SAIC, TASC and Wal-Mart.

For details on the agenda and registration go to [www.nftc.org](http://www.nftc.org) or contact Sandra Rodriguez at [srodriguez@nftc.org](mailto:srodriguez@nftc.org).

# News for Our Members

## New Members

**NCR Corporation** is a leading maker of automated teller machines (ATMs), as well as of point-of-sale (POS) terminals and bar code scanners. Other retail and financial systems offerings include self-service kiosks for such applications as gift registries; paper, ink, and other consumable media; DVDs; and check image processing systems. NCR's services unit provides maintenance and support, as well as professional services, such as systems integration and managed services. NCR is based in Georgia, but two-thirds of its sales are outside the US. For more information, visit <http://www.ncr.com>.

**Paragon Decision Resources, Inc.** specializes in domestic and international relocation and global assignment program development and management, creating cost-effective mobility programs that offer more services to the transferring employee, at less cost to the organization. In addition, they maintain an extensive consulting practice focused on global mobility issues in their entirety. For more information, visit <http://paragondri.com>.

**SIRVA, Inc.** is one of the world's largest relocation and moving services companies, SIRVA operates in more than 40 countries. The company boasts 300,000-plus relocations a year; outsourced moves, delivered under contract with corporate employers, and government and military customers to transfer personnel, account for the majority of SIRVA's sales. For more information, visit <http://www.sirva.com>.

**Smiths Group** is a global engineering company made up of five divisions: Smiths Detection (detection sensors), John Crane (mechanical product technology), Smiths Medical (devices), Smiths Interconnect (electronic radio frequency products), and Flex-Tek (flexible hosing and rigid tubing). Smiths has operations in more than 50 countries, and their customers range from governments and their agencies to hospitals, petrochemical companies and equipment manufacturers and service providers across the world. For more information, visit: <http://www.smiths-group.com>.

## CEE to Host Competitive Ex-Im Bank Conference

Coalition for Employment through Exports (CEE) will be hosting a conference on February 1, 2011 at the Grand Hyatt Hotel in Washington, DC. The conference, entitled, "A Competitive Ex-Im Bank: Ensuring US Jobs and Competitive US Exporters -Global Challenges and Opportunities." will be focused on the state of export finance, the roles export credit agencies see themselves fulfilling and the reauthorization of the Export-Import Bank of the United States.

It will begin with an opening breakfast speaker, followed by presentations from senior policy officials from EDC, Finvera, and COFACE (invited) on their view of the role of export credit agencies in the current economic climate. Additionally, the conference will focus on the challenges facing American businesses exporting overseas such what constitutes a level playing field, impact of a global supply chain, and competition from China and other non-OECDs.

After lunch the featured speaker Chairman Hochberg of Ex-Im Bank, will discuss the opportunities and challenges to a competitive Ex-Im Bank. The goal is to present a clearer picture of the international playing field and how best to move forward with CEE and the business community's goals for an effective Bank. The goal is for the conference to be a dynamic forum.

The following day, CEE will lead a lobby day on the Hill for interested companies.

For more information or to register, contact Nichole Westin at [nichole.westin@usaexport.org](mailto:nichole.westin@usaexport.org) or follow the URL for registration information [www.nftc.org/default/CEE/Invite 2011 Conference.pdf](http://www.nftc.org/default/CEE/Invite%202011%20Conference.pdf).

## *Calendar of Events*

<b>Date</b>	<b>Event</b>	<b>Location</b>
February 1, 2011	CEE's <i>Competitive Ex-Im Bank: Ensuring US Jobs and Competitive US Exporters -Global Challenges and Opportunities</i>	Washington, DC
February 9, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
March 2-3, 2011	Annual International Human Resource Management Forum	Houston, TX
March 15, 2011	International Benefits Committee*	New York City
March 15, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
March 30-April 1, 2011	International Assignment Management Committee*	Minneapolis, MN
April 5, 2011	Talent Management, Immigration & Workforce Deployment Trends: <i>What Lies Ahead</i>	New York City
April 13, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
April 27-29, 2011	Expatriate Management Committee*	New Orleans, LA
April 13, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
May 11, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
June 7, 2011	International Benefits Committee*	New York City
June 8, 2011	Tax Lunch Forum - Speaker: TBA (OECD/USCIB meeting is June 6-7)	Washington, DC
July 13, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
September 20-22, 2011	Expatriate Management Committee*	San Jose, CA
October 6-7, 2011	Fall Tax Meeting	Washington, DC
November 9, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
December 7, 2011	Tax Lunch Forum - Speaker: TBA	Washington, DC
Fall 2011	National Foreign Trade Council Foundation's, 2011 World Trade Dinner & Award Ceremony	TBA
Fall 2011	National Foreign Trade Council's, 2011 Annual Meeting	TBA

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

This issue of Council Highlights brought to you  
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**National Foreign Trade Council**

E-mail: [nftcinformation@nftc.org](mailto:nftcinformation@nftc.org)  
[www.nftc.org](http://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 mid January 2011*)  
60 East 42nd Street , Suite 920  
New York, NY 10165  
Phone: 212-399-7128  
Fax: 212-399-7144

## NATIONAL FOREIGN TRADE COUNCIL

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

*For membership opportunities, please contact us at  
[nftcinformation@nftc.org](mailto:nftcinformation@nftc.org) or 202-887-0278.*