



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.

December 2012—January 2013

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Message from the NFTC Chair

My college and law school roommate, a constitutional law professor, visited Washington a few days ago and we each took the other to events that we had on our respective schedules. His event was the lead-off panel discussion of the annual meeting of the Federalist Society; mine, a briefing at CSIS by National Security Advisor Tom Donilon about the President’s then-upcoming trip to Asia. The lessons that I took away from these very disparate back-to-back events come together when thinking about the role of governments, here and abroad.

As business executives and citizens, we want government to intervene at certain times and not at others. The Federalist society panel was very much focused on the ObamaCare Supreme Court decision, which addressed the reach of three Federal powers under the Constitution: to regulate commerce among the States, to tax, and to attach conditions to the spending of Federal funds.

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A Word From the President

The end of the year and the end of a Congress inevitably leads to discussions both of what happened over the past year and why, and of what is coming up next year. We have already discussed the past in some detail when we issued our Congressional scorecard shortly before the election. (We will have an updated version after adjournment reflecting any additional relevant votes.) Today’s comment will say a few words about the future. It will be just a few words because one of the things that has become a tradition at the National Foreign Trade Council (NFTC) is our annual forecast for the upcoming year. Our staff looks closely at what we see coming up in tax, trade, sanctions, and China and gets a few pages on each out to you in January. Stay tuned for that.

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USA*Engage, NFTC Honor GE’s Del Renigar for Five Years of Service as Co-Chair at Annual Lunch

In previous years, the USA*Engage annual lunch has been an occasion to honor a member of Congress for displaying appropriate caution regarding the indiscriminate use of unilateral economic sanctions. This year’s lunch, however, featured critical assessments of sanctions programs from Suzanne Maney of the Brookings Institution and Frank Januzzi of Amnesty International. We also honored GE’s Del Renigar for his five years of service as USA*Engage co-chair and welcomed his successor, Halliburton’s Bob Moran.



*Del Renigar, GE and USA*Engage Co Chair*

Burma notwithstanding, the U.S. government fixation on the use of economic sanctions as a blunt instrument in diplomatic efforts worldwide has not diminished in 2012. Nor has the appetite of almost every member of Congress for ever more sanctions in the service of dealing with nuclear non proliferation, terrorism, human rights abuses, and civil war.

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News for Our Members

A Word From the President

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At the 40,000 feet level, I see 2013, and perhaps also 2014, as a year of tax. Comprehensive tax reform is overdue; the business community in general and NFTC in particular have long fought piecemeal changes of the international provisions in the expectation that reform was coming and in the belief that it would turn out better for business and for the country if it were done in that way. It now appears that the stars are aligning properly, and the Ways and Means and Finance Committees will move ahead. Much ground work has been laid through hearings and discussions in 2012, but few people have taken detailed positions on what should be done. There has been substantial talk of the need to transition to a territorial system, since we are nearly the only country left in the world that does not have one, but while companies may agree on the need to do that, detailed discussions on precisely how to do it and, more important in the short run, how to transition to it, have yet to be held. Cathy Schultz, our Vice President for International Tax Policy, has been hard at work on all these issues and will have more to tell you about them later.

On the trade front, assuming there is remaining bandwidth on the Ways and Means and Finance Committees, the two big items are TPP and U.S.-EU trade liberalization. The former is well underway, and we are rapidly reaching the point where countries will have to make significant concessions if the talks are to conclude successfully. The earliest estimate for completion is next fall, but there are plenty of people who think 2014 is more likely. Either way, it does not appear that Congress will need to address TPP legislatively next year, although it will no doubt continue to watch the negotiations very closely.

We expect the U.S.-EU negotiation to be launched soon. There is skepticism on both sides that the other will be able to deliver a meaningful agreement. That is not idle talk – we’ve been beating each other over the head on standards harmonization for more than 20 years with very little to show for it. Nevertheless, I remain an optimist, in large part because of the growing appreciation on both sides of the Atlantic of the enormous competitive challenge that China presents. Combining U.S. and EU market power will make for a much more effective counterpunch to that challenge. This too, however, is not likely to conclude in 2013, which means the upcoming year will be one of significant negotiating activity but not of legislating activity, which, in turn, suggests that the bandwidth problem for the two Congressional committees is not likely to occur.

There is more – extension of the Generalized System of Preferences which again expires, this time on July 31, 2013, the perennial promise Congress makes to reform and reauthorize AGOA which it never seems to get around to doing, a miscellaneous tariff bill and tax extenders if not done in the lame-duck session, and, of course, inevitably more sanctions proposals. Related to the last point, we are hopeful that when the Supreme Court announces its decision in the Kiobel case it will at least impose some limits on the Alien Tort Statute lawsuits that are increasingly plaguing our companies.

All in all, another full agenda. I recall when I first came to the NFTC I did an interview with *National Journal*, in which I said the wonderful thing about working on trade issues was that no problem was ever really solved, so there is always more to do. Apparently that is as true now as it was then.

NFTC Releases “Connecting the Dots: The Global Economy and Supply Chain Management”

On December 1, the NFTC released the second edition of “*Connecting the Dots: The Global Economy and Supply Chain Management*,” first released in 2008, a paper which explores emerging trends in global commerce. Premised on the idea that the international community has shifted from a trading system primarily based on exporting and importing goods to a more integrated system of corporate supply chains spanning the globe, the study analyzes the trade and investment environments of 117 countries based on data from OECD and the World Bank, among others. To read the paper follow the URL: http://www.nftc.org/default/Publications/Trade_Policy/CONNECTING%20THE%20DOTS%202012%20final.pdf

News for Our Members

Message from the NFTC Chair

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The NFTC is all about identifying and seeking adoption of the right mix of public policies at home and abroad when they affect international trade and investment. Sometimes we want the government in: to open foreign markets, and therefore, we support new “trade negotiating authority.” Sometimes we want it out: thus our case against a U.S. state trying to run U.S. foreign policy through the adoption of its own sanctions policy. With respect to foreign governments’ activities: we want the government of China to be more aggressive in enforcing intellectual property rights and to refrain from imposing measures that restrict market access through requiring “indigenous innovation” to qualify for procurement.

The Federalist Society panel, which was balanced between admirers and critics of various aspects of the health care decision, applauded and worried about the limits on the Commerce Clause, the use of which had brought with it both expanded domestic growth and expanded Federal government regulation. The same morning, Tom Donilon, in his remarks, noted that a Presidential priority was creating disciplines for state-owned enterprises (SOEs) to create a level playing field when the SOEs compete with privately-owned companies. To do this, the U.S. negotiators need the agreement of other governments engaged in TPP talks to enter into commitments, for example, to regulate SOEs and private companies in a nondiscriminatory fashion. The U.S. negotiators want the TPP participants to intervene collectively to set rules to limit what governments are currently free to do with their SOEs when competition is distorted. The negotiating parties most concerned with defensive interests want to preserve their freedom of action. The international discussions over freedom of cross-border flows and forced localization reveal similar opposing positions – freedom to intervene in trade and investment versus collective intervention through creating international rules to curb these distortions.

Rules are self-executing to a certain extent. The Congress does not sweep past Constitutional limits on a regular basis, and where international rules are very clear (e.g. the binding of tariff, the MFN clause), governments generally refrain from blatantly violating the rules they have signed up for. But in both cases, governments can stray across the line and dispute settlement is needed. So our domestic institutions abide by the rulings of the Supreme Court and governments ultimately abide by WTO and NAFTA panel rulings.

There is a need for governments to show restraint on occasion – for example, foreign governments not using SOEs to distort international trade and investment; and to intervene on occasion – through setting collective rules and providing for enforcement through dispute settlement. Getting the balance right – curbing inappropriate government intervention and expanding appropriate government remedial actions is a common thread that runs through NFTC’s menu of projects. The coming year will provide a full plate of opportunities to foster these objectives.

Ambassador Alan Wm. Wolff is a Senior Counsel of the International Trade Practice at McKenna Long & Aldridge LLP and is the Chairman of the NFTC Board of Directors.

News for Our Members

NFTC Welcomes House Passage of STEM Jobs Act of 2012 As Important First Step

By passing the *STEM Jobs Act of 2012*, Congress took an important step in achieving the targeted goal of comprehensive immigration reform. This step was not taken without considerable mixed feelings in the pro-immigration community, primarily between those who welcomed the changes but wanted to enact them in the context of broader immigration reform and those who wanted to get at least one piece of reform done sooner rather than later. The history of comprehensive immigration reform failure and the uncertainty of its future puts NFTC in the latter category, albeit reluctantly. We hope that the House's action will be the first step of many others that are necessary to repair our immigration system and it will facilitate bipartisan on further reform going forward.

STEM is short for “Science, Technology, Engineering and Mathematics,” and refers to the highly-skilled immigrants educated in the United States who are currently prevented from remaining in our country to work and contribute to our economy. In the face of an unemployment rate hovering at eight percent, some have wondered why the United States should seek to keep foreigners in the country. However, the latest 3.5 percent unemployment rate for computer and math occupations, as published by the Bureau of Labor Statistics, paints a different picture: the shortage of workers with STEM skills in our country. In certain STEM occupations, such as petroleum engineers (0.1 percent), nuclear engineers (0.5 percent), and statisticians (1.6 percent), unemployment is nearly non-existent. This not only stifles economic growth during a time when the economy remains weakened, but it also impacts the competitiveness of American business and the American economy as a whole.

This is not only about employment. It is also about innovation. A Kauffman Foundation study states that the number of high-tech startups founded by immigrants has stagnated and is about to decline¹. Passing the *STEM Jobs Act of 2012* can help reverse this trend. The importance of increasing the attractiveness of immigration for highly-skilled employees can be seen in the efforts of other countries to attract those same individuals. The Chilean Government, for example, launched a program called Start-Up Chile, which includes the provision of temporary visa and \$40,000 of equity-free seed capital for early stage, high potential entrepreneurs when they decide to start up their business in Chile². This program has been highly successful in attracting high-tech startups, especially from the United States. This competitive disadvantage for the United States³ has been exacerbated by the fact that many of those highly educated foreigners received their education at American universities. The American Association of Engineering Societies states that foreign students achieved 42 percent of engineering master's degrees in the United States and 53 percent of U.S. engineering Ph.D.s. Without the *STEM Act* or comprehensive reform, those professionals would have to go back to their home countries where they would compete with American businesses.

Moving forward on comprehensive immigration reform and the *STEM Act* is a smart move for our country. It helps to ensure that U.S. businesses can hire the brightest employees from around the world, and that our workforce consists of the highly-skilled people that our we need to grow and prosper. The *STEM Jobs Act of 2012* will give the brightest talents from around the world access to new employment-based visas – EB7 and EB8. In order to gain access to those visas, one would be required to hold a master's degree or a Ph.D. from a qualified university in a qualified STEM field. Moreover, the applicants have to have a job offer. The bill is also good for foreign students whose excellence will be rewarded. It will facilitate further economic advancement for our country, as future jobs depend on the innovation power of a highly-skilled workforce -- the backbone of any country's economic success.

For more information, contact Bill Reinsch at breinsch@nftc.org.

¹ http://www.kauffman.org/uploadedFiles/Then_and_now_americas_new_immigrant_entrepreneurs.pdf

² <http://startupchile.org>

³ *The Economist*

International Trade & Export Finance

NFTC Applauds Passage of Russia PNTR; Expresses Reservations About Magnitsky Provision

On December 6, the Senate completed congressional action on PNTR for Russia and Moldova by a vote of 92-4 following House approval November 16 by 365-43. The bill allows the President to suspend the 1974 Jackson-Vanik amendment, thereby enabling U.S. companies' access to the benefits of Russia's accession to the WTO in August.

The NFTC, as part of the business coalition supporting PNTR, has actively lobbied for this result for more than a year. The NFTC and USA*Engage advocated a clean PNTR bill, although it was clear that Congress wished to replace the Jackson-Vanik amendment with a human rights sanctions provision, the "*Sergei Magnitsky Rule of Law Accountability Act*." The inclusion of this legislation in the PNTR bill authorizes sanctions on those Russians who were complicit in the death of Sergei Magnitsky and those who have violated human rights in Russia. The provision mandates creation of a list of persons whose U.S. assets are to be frozen and who are to be denied entry visas into the United States. Last summer the House Foreign Affairs Committee had reported sanctions legislation that, unlike its Senate counterpart which applied the sanctions globally, was confined to Russian persons and had a ten year sunset provision. The House version of the Magnitsky sanctions were added to the PNTR legislation enacted on November 16, but, importantly, without a sunset provision providing criteria for termination of the sanctions. The bill's potentially expansive language extends sanctions to persons who "acted as an agent of or on behalf of a person in a matter relating to an activity." This could be interpreted to include corporations. The bill also defines those who can be sanctioned as "any entity organized under the laws of the U.S., *including a foreign branch of such an entity*," thereby extending its application to foreign subsidiaries of U.S. companies.

The bill provides that the President "*shall consider information provided*" by members of Congress, as well as by foreign governments and NGO's in compiling the list of sanctioned persons. The bill gives the President this responsibility and provides a national security interest waiver for those in the classified annex. However, the bill gives the Secretary of the Treasury national security waiver authority for others named who are not in the classified annex. For more information, contact Dan O'Flaherty at doflaherty@nftc.org.

NFTC Applauds Announcement of New U.S.-Canada Security, Trade and Investment Initiatives

The NFTC welcomed the announcement by President Obama and Canadian Prime Minister Stephen Harper on December 14th of two new U.S.-Canada initiatives – the [Beyond the Border \(BTB\) Action Plan](#) and the [Regulatory Cooperation Council \(RCC\) Action Plan](#) – aimed at furthering cooperation on trade, investment, emergency preparedness and security. The NFTC released the following statement.

"We welcome these new initiatives, as they show a real commitment by both countries to advance bilateral partnership on all of these key issues. Efforts to enhance cooperation on trade and investment, in particular, will benefit businesses and workers in both countries and help support economic growth and job creation.

"We commend the U.S. and Canadian governments for their continued work and urge them to press on in their efforts to promote transparency and efficiency in trade and investment policies."

To review the BTB and RCC plan for the URL below:

http://www.whitehouse.gov/sites/default/files/us-canada_btbt_action_plan3.pdf

http://www.whitehouse.gov/sites/default/files/us-canada_rcc_joint_action_plan3.pdf

News for Our Members

NFTC, eBay, Host High-Level Discussion on Enabling Entrepreneurs to Access the Global Marketplace

The NFTC joined member company eBay on October 24 for a dialogue at the Ronald Reagan International Trade Center for a discussion about how the Internet and mobile technologies are reducing barriers to international trade and revolutionizing the way in which entrepreneurs and microenterprises are participating in the global marketplace.

The event marked the release of eBay's "Commerce 3.0" report, which uses internal trade flow data from eBay's marketplace to highlight how online platforms and advances in logistics and communications are creating new global opportunities for even the smallest of businesses. The analysis, conducted by NFTC member company Sidley Austin, indicates that a remarkable 97 percent of eBay's commercial sellers export to foreign markets. Of those, over 80 percent reach five or more foreign countries.

NFTC Vice President Jake Colvin led a panel discussion on developing new trade policy solutions to further assist the ability of small businesses to participate in the 21st century global marketplace. Former U.S. Trade Representative Ambassador Susan Schwab provided keynote remarks, and was joined in a discussion with Michael Masserman, Executive Director for Export Policy, Promotion and Strategy at the Commerce Department; Ralph Carter, Managing Director for Legal, Trade, & International Affairs at FedEx; Chris Chapman, owner of Maryland-based small business Loucon LLC; and Brian Bieron, Senior Director of Global Public Policy for eBay Inc.



From left to right: Ambassador Susan Schwab; Brian Bieron, eBay; Jake Colvin, NFTC

Discussion centered on how U.S. policymakers can remove obstacles that inhibit participation in foreign markets. eBay's Bieron noted that, "Customs and shipping-related trade barriers are major pain points that keep small businesses from fully realizing the benefits of global trade." Ambassador Schwab highlighted how the greater participation of small businesses in global markets is a powerful new narrative that can change how trade and global competition are perceived in the United States and as a tool of economic development globally. Fedex's Carter discussed efforts in trade dialogues and negotiations to facilitate trade and increase de minimis levels to allow greater values of goods to clear customs duty-free.

Ambassador Susan Schwab also emphasized that the Internet presents new challenges. Companies today need to be concerned about cyber-attacks, ensuring they are handling data appropriately in the context of rules that may vary across countries, and fighting counterfeiting and piracy in the digital age. Government and private sector efforts to help small businesses navigate and address these issues would give added comfort to those who may look to export.

The report suggests several areas of focus for policymakers. One is to improve global delivery services by better aligning regulations and procedures internationally. The paper also calls on governments to minimize the complexity of customs procedures by increasing the de minimis threshold and permitting companies to take product returns duty-free from international customers, and to build on trusted trader programs and better link them up with others internationally through mutual recognition agreements.

"The idea that cross border trade is something that only large-scale businesses can participate in is no longer true. Technology is rapidly changing trade patterns and trade policy should adjust to reflect this new dynamic," said Colvin.

The Commerce 3.0 policy paper can be found at: <http://www.ebaymainstreet.com/commerce3us>. For more information, contact Jake Colvin at jcolvin@nftc.org.

USA*Engage, NFTC Honor GE's Del Renigar for Five Years of Service as Co-Chair at Annual Lunch

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Suzanne Maloney, one of Washington's most discerning and independent analysts of U.S. Iran relations and an authority on the decades long U.S. effort to employ economic sanctions to "persuade" the Iranian government to abandon its presumed efforts to acquire nuclear weapons capability, gave a nuanced review of the current state of affairs. In terms of gross economic disruption and multilateral buy in, the sanctions are without parallel save for those that were visited upon Saddam's Iraq. And like the sanctions on Iraq, the Iran sanctions are immiserating more and more ordinary Iranians. Further, Suzanne predicted more draconian sanctions forthcoming from Congress, which, while viewing as counterproductive, the Administration will implement. All of that said, Suzanne was dubious that any sanctions regime *per se* would compel the Iranian regime to forego its nuclear file, though some proximate resolution might result from direct negotiation between the U.S. and Iran.



Dr. Suzanne Maloney, Brookings Institution

Frank Januzzi, who staffed the Senate Foreign Relations Committee under the chairmanship of Joe Biden, and now heads the Washington office of Amnesty International USA, gave a nuanced assessment of the general inutility of economic sanctions so far as Amnesty's core mission is concerned. In Amnesty's analysis, the economic costs visited upon ordinary citizens whenever sanctions are imposed in the name of human rights do not justify any sought after benefits. Frank added that maintaining diplomatic relations – and, indeed robust commerce – better serve U.S. global humanitarian objectives.

USA*Engage will focus on re-stating the philosophical and practical case against economic sanctions and for diplomacy and normal rule-governed global trade when the 113th Congress convenes.

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

MEFTA Coalition Hosted Roundtable Discussion on U.S.-Middle East and North Africa Trade and Investment Policy Priorities

On November 28, the U.S.-Middle East Free Trade (MEFTA) Coalition, led by the NFTC, held a roundtable discussion on developing U.S.-Middle East and North Africa trade and investment policy priorities in the next Administration with representatives from the U.S. private sector, Assistant U.S. Trade Representative (USTR) for Europe and the Middle East Dan Mullaney and his team, and diplomats from 12 Middle East and North Africa embassies in Washington, including Egyptian Ambassador Mohamed M. Tawfik and Omani Ambassador Hunaina Al Mughairy.

The meeting served as a forum for discussion of newly-re-elected President Obama's MENA trade priorities and the Deauville Partnership with Arab Countries in Transition. The meeting was also notable in that it was the first formal gathering between US-MEFTA Coalition members and multiple MENA embassy representatives. Representatives of the Moroccan, Algerian, Tunisian, Libyan, Egyptian, Saudi, Omani, Emirati, Bahraini, Jordanian, and Turkish embassies were in attendance, including two ambassadors."

For more information, contact Chuck Dittrich at cdittrich@nftc.org.

OECD Public Consultation on the Tax Treatment of Intangibles under the Transfer Pricing Guidelines

On June 6, 2012, Working Party 6 of the OECD produced an interim draft of the transfer pricing aspects of intangibles. The draft was not a consensus document within the Working Party and the OECD requested public comments on the provision of the interim draft. The project taken on by Working Party 6 is important because intangibles are the core of value creation and determinative for the international allocation of tax revenues from multinational corporations. The taxing right to intangible profits are assigned exclusively to the residence state of the intangible owner under the OECD model tax treaty unless an intangible forms part of the business assets of a permanent establishment in the source state. The OECD received 70 comment letters on the interim draft, and scheduled the public consultation for November 12-14, 2012. The NFTC commented on the discussion draft and presented testimony on those comments during the public consultation.

Business and government representative at the public consultation agreed that the goal of the revision of the Transfer Pricing Guideline was to provide more clarity and certainty for business and governments as to the application of the arm's length standard, minimizing the risks of double taxation, and consistent with the tax treaties under which the Guidelines are relevant. Ambiguity and an overly-broad net will only serve to create dissenting views and increase areas of dispute. In connection with the perceived general anti-avoidance flavor of the Intangibles Draft, the business community urged the OECD to develop analytical frameworks based on broad principles, which can be applied across all industries and sectors. In this respect, the OECD should not develop "problem-based solutions" designed to tackle elements of what tax authorities perceive to be "offensive." Business also expressed concern with the general government suspicion that transfer pricing results in business "gaming" the system. Government views transfer pricing as a tool for base erosion. The arm's length standard stems from the basis of a fair allocation of profits according to the functions performed, assets owned and risks assumed by the parties involved, taking reference from unrelated third parties. Business believes that the arm's length standard should stay true to its original principle and should not be used as a yardstick to combat perceived abusive behavior. Without rules of reason, business and governments will continue to disagree, which goes against the tenet of the OECD which is to encourage cross-border trade and stimulate economic and job growth.

Some of the specific issues addressed by business in the public consultation:

1. **Definitions.** The definition of "intangibles" included in the discussion draft was considered overly broad by the business commenters. In order for taxpayers to practically identify the transactions involving intangibles and to meaningfully price such transaction, the identification of what an intangible is, and is not, is a crucial starting point for the subsequent analysis. Vague definitions would be unusable from a practical standpoint, leading to a disproportionate burden of proof and time-consuming disputes due to a lack of clarity.
2. **Entitlement to intangible related returns.** Section B of the Discussion Draft was seen by the business commenters to have the most references to the general anti-abuse overtone of the draft. Business urged the OECD to provide clearer guidelines on how to practically apply the notions of "control," "important functions," and "outsourcing" with a special emphasis on the need to be consistent with the principles laid down Chapter IX of the transfer pricing guidelines. Business also reiterated that bearing financial risks related to intangible activities is often a key indicator for intangible ownership return. Joe Andrus, Head of Transfer Pricing at the OECD said that the Working Party 6 did not address the financial investment in the Discussion Draft. The Working Party does not feel that a large financial investment should be disregarded. The Working Party could not agree on how to reward passive versus active investment in a project, and hated all of the versions that they came up with, so subsequently left these provisions out of the interim Discussion Draft. Mr. Andrus said that investment should be rewarded, but may be rewarded differently depending on the type of activity. The business community welcomed the clarification to the Discussion Draft by the Secretariat and requested that this issue be further clarified in the next Discussion Draft.

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OECD Public Consultation on the Tax Treatment of Intangibles under the Transfer Pricing Guidelines

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There was a detailed discussion over whether the entity claiming the entitlement to the intangible related return needed to have employees physically perform the important functions related to the development of the intangible. Mr. Andrus thought the Discussion Draft was clear that this was not the case, but the business commenters said that the Draft was very specific about this active control test, and asked that it be further clarified because “active control” of investments is out-of-line with most business realities.

- 3 Choice of transfer pricing methodology and pricing the transaction. The business commenters supported a greater differentiation on how to approach transactions regarding the use of (i.e. for licensing arrangements) versus the transfer or sale of intangibles. The consideration and depth of analysis for these two categories of transactions are often rooted in different analytical framework. The business commenters felt the Discussion Draft had an implicit tendency towards application of the profit split methods rather than the “most appropriate method,” provided under current Chapters I-III of the Transfer Pricing Guidelines, and requested that the Discussion Draft stay consistent with the current guidance on the choice of transfer pricing methods and comparability. The business commenters said that the use of the comparable uncontrolled price (CUP) and transaction net margin (TNMM) methods may be more indicative of the true arm’s length result than a profit split, and simpler to apply than a discounted cash flow analysis.
- 4 Safe Harbor Rules. Business commenters continue to stress the value of obtaining certainty and the reduction of administrative burden in the current economic environment. The business commenters embraced the general idea of using Memorandum of Understanding (MOUs) to provide more certainty in a number of routing areas. Transactions with “low transfer pricing risks,” or “benign transactions,” with little danger of tax abuse should be considered for safe harbors.

The OECD Working Party 6 has indicated that an updated version of the Intangibles Discussion Draft will be circulated for comment, once the Working Party has had an opportunity to review all of the comments and work through the discussion of the public consultation. Given that over 1,000 pages of comments were received by Working Party 6 and the almost three full days of the public consultation, it could take most of a year before they have an opportunity to release the next Discussion Draft.

For more information, please contact Catherine Schultz, cschultz@nftc.org.

OECD Hosts First Global Forum on VAT

On November 7-8, the OECD hosted the first Global Forum on the VAT. The OECD first developed international standards on consumption taxation in the context of electronic commerce in 1998, which has become known as the “Ottawa Taxation Framework Conditions.” In the field of consumption taxes, the core elements of the Taxation Framework Condition are: 1) rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where the consumption takes place and an international consensus should be sought on the circumstances under which supplies are held to be consumed in a jurisdiction; 2) for the purpose of consumption taxes, the supply of digitized products should not be treated as a supply of goods; and 3) where business and other organizations within a country acquire services and intangible property from suppliers outside the country, countries should examine the use of reverse charge, self-assessment or other equivalent mechanisms where this would give immediate protection of their revenue base and of the competitiveness of domestic suppliers.

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OECD Hosts First Global Forum on VAT

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Evidence grew that VAT could distort international trade in services and intangibles more generally and the OECD launched a project for the development of the OECD intangible VAT/GST Guidelines, as an internationally agreed standard for applying VAT to cross-border services. Guidelines on the VAT treatment of business-to-business supplies of services and intangibles were adopted in 2010 and International VAT Neutrality Guidelines were adopted in 2011. The OECD is now developing Guidelines on the VAT treatment of cross-border supply of services and intangibles in specific scenarios, including transactions involving businesses that operate cross-border on the basis of branch structure and transactions in connection with immovable property. The NFTC participates on the OECD Technical Advisory Group on the VAT/GST that is working on developing these Guidelines. The United States is the only OECD country that does not have a VAT.

The global reach of the VAT means that not only OECD countries, but also much of the rest of the world has an interest in policy exchange and development of best practices for the design and operation of a VAT. The Global Forum on the VAT was designed to allow participating countries to explore key policy trends and their impact for policy makers, tax administrators, and business. There were over 200 participants, including representatives of 80 governments, and business representatives in attendance at the first Global Forum.

VAT is a source of revenues for governments around the world and its importance as a revenue source continues to grow. Over 150 countries operate a VAT today and the VAT raises some 20 percent of the world's tax revenues. The Global Forum looked at a range of design issues, notably considering how rising household income inequality may affect VAT policy and discussing options for VAT compliance. Country experts exchanged views on countermeasures to reduce VAT losses due to fraud and expressed a strong need for enhanced administrative co-operation, including through the exchange of information, building on the OECD work in this area.

The key focus of the debate at the Global Forum was on the issue of double taxation and double non-taxation that results from the uncoordinated interaction of national VATs at the international level. In contrast with the taxation of income, there is no internationally agreed framework for the application of the VATs to cross-border trade. Governments believe that this is particularly troublesome in the context of the strong growth in services and intangibles. Services cannot be subject to border controls in the same way as goods, so administrative procedures for ensuring that the right amount of tax is paid in the right place are more complex.

Business representatives explained that since business is the tax collectors of the VAT for governments, a system should be designed that is simpler, more robust and reduces compliance costs. Business want to comply, and governments have to make it easier and less costly for them to do so.

The Global Forum concluded that there is a strong need for internally agreed principles and guidelines that contribute towards ensuring that VATs interact consistently so that they may facilitate, rather than distort, international trade. The work on the international VAT/GST Guidelines provides the ideal basis for the development of such global standards. Participants strongly agreed that the Global Forum's key objective should be to build the widest possible international consensus on the international VAT/GST Guidelines as the future international standard for applying VAT to cross-border trade with a view to minimizing risks of double-taxation and unintended non-taxation. The next Global Forum will be held in 2013 or early in 2014.

For more information, please contact Catherine Schultz, cschultz@nftc.org.

International Human Resources

Annual Global Workforce Management Forum Scheduled for March 20-21, 2013 Houston

The NFTC will host its 12th annual Global Workforce Forum in Houston on March 20-21, 2013 at The Houstonian Hotel. The primary focus will be on how multinational corporations are addressing their needs in sourcing, recruiting, developing, rewarding and retaining business-critical talent for their global operations.

The agenda will include general session and workshops on such topics as:

- Iraq: Compensation and Allowances for expatriates and local staff
- Brazil: Overcoming challenges of immigration delays, housing and schooling shortages and update on implications of new employment laws
- Workforce Management Technology: Case studies on system selection and usage
- Short-term Assignees, Business Travelers and Rotators: Understanding and Managing Tracking and Compliance
- Driving High Performance and Innovation Through Global Talent, Mobility and Reward Strategies
- Enhancing Retention and ROI Through Effective Global Career Planning-corporate Case Study
- Africa: Overcoming staffing and other barriers
- Update on Compensation of Global Executives-What's Ahead in 2013 and Beyond
- Understanding and Maximizing Human Capital Data

Agenda details and registration information will be announced soon.

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

International Compensation and Benefits Committee-Houston 2012 and 2013

In 2010 the NFTC established a new international human resource management working committee in Houston. It is modeled after a working group established over 20 years ago in New York City. In both instances the purpose is to bring together experienced corporate international human resource professionals who are responsible for the design and management of competitive, compliant and cost effective employer provided international benefit and compensation programs with subject matter experts from the major international actuarial, accounting, insurance and law firms.

In 2012 the agendas included discussions and presentations on such topics as:

- Canada: Meeting the Talent (Shortage) Challenge
- Turkey: Update on Employer-Provided Benefits
- Around the World: Executive Total Rewards
- The Global Project Rotator-The Pay Conundrum
- Africa: Update on Benefits for Local Staff
- Mexico: Impact of New Labor Laws on Employer Provided Plans
- Iraq: Expatriate and Local Staff Compensation
- Senior Executive Compensation, What's Happening

The Steering Committee is co-chaired by Jenny Midyat, Global Compensation Manager-Baker Hughes, and Ann Williams, Senior Global Benefits Manager-Halliburton. The committee appreciates the support provided by Henry Noey of Aon Hewitt, Ed McGaughey of Pearl Meyer & Partners, and June Bood of PwC in helping establish this working group.

The next meeting will be May 1, 2013. For more information, contact Bill Sheridan at wsheridan@nftc.org.

**This issue of Council Highlights brought to you
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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.*