



# 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.*

*October-November 2012*

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### A Word From the President

**E**lsewhere in this issue there is an article about our interim scorecard for the 112th Congress that we made public on October 5th. (It is interim because we anticipate additional trade-related votes in the lame-duck session, particularly on PNTR for Russia.) That article discusses our conclusions in greater detail, but I want to make a couple points of my own.

First, overall we have experienced a more pro-trade Congress over the past two years than we did in the 2008-10 cycle, where we ended up giving everyone a grade of incomplete because there were so few trade and sanctions votes to consider. This time around there were eight in each house. Of course, more important was the fact that most of them came out the right way. Congress passed implementing legislation for the three FTAs (Korea, Colombia, and Panama), renewed Trade Adjustment Assistance, and reauthorized the Export-Import Bank.

*(Continued on Page 2)*

### NFTC and USA\*Engage Release 112th Congressional Report Card on International Trade Issues

National Foreign Trade Council (NFTC) and USA\*Engage on October 5th released their 112th Congressional Report Card, scoring members of Congress based on their votes on key international trade and engagement issues in 2011 and 2012. Unlike the 111th Congress, which collectively received an “incomplete” due to a lack of positive action, the 112th Congress received positive scores – 64% of Senators and 43% of Representatives received an A or B – for enacting trade legislation critical to U.S. economic growth and job creation.

*(Continued on page 4)*

### Rep. Dreier Calls for Action on Russia PNTR, Cross-Border Data Flows During Keynote Address at NFTC’s 98th Annual World Trade Dinner

In the keynote address delivered during the October 3 NFTC Foundation World Trade Dinner and Award Ceremony, Representative David Dreier (R-CA), Chairman of the House Rules Committee, issued a call to action for congressional passage of legislation that would establish permanent normal trade relations (PNTR) with Russia.

Rep. Dreier also highlighted the importance of addressing 21st century global trade challenges, including cross-border data flows.

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*Chairman David Dreier (R-CA)*

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# *News for Our Members*

## **A Word From the President**

*(Continued from Page 1)*

Some of these were long in the making, and all of them are significant accomplishments that mean a lot to NFTC members. In addition, Congress passed a number of other measures by voice vote, such as extending the AGOA third-country fabric provision, that were also positive.

Second, this is good news because it implies recognition in the Congress that we live in a highly competitive global economy where 95 percent of the world's consumers lie outside our borders. If we are to continue to grow and create jobs we have to do it by reaching out beyond our borders. For many companies, that can be beyond their comfort zone, but over a period of years, multiple administrations have developed many tools, most of them in the Commerce Department, to help businesses do precisely that. There have also been times when legislation to facilitate that kind of movement was outside of Congress' comfort zone as well, a speed bump we appear to have gotten over in the past two years. We will see if that continues as we move into a new congressional cycle with new trade challenges – concluding the Trans-Pacific Partnership negotiations, launching U.S.-EU negotiations, revitalizing WTO talks through attempts to expand the Information Technology Agreement and create a new International Services Agreement, among others. Those will eventually require new negotiating authority, and we hope Congress will take that up in 2013 as well. (There, in particular, the NFTC is prepared, as we drafted a bill reflecting business community priorities in 2008. We are now updating that and should have it ready to go in time for the arrival of the new Congress.)

Third, a look at party voting patterns in the scorecard shows that while there are differences in the “center of gravity” of the two parties on pro-trade votes, particularly in the House of Representatives, there are enough pro-trade Democrats and anti-trade Republicans to make predicting outcomes uncertain. While from a personal perspective, I would be happy to have more of the former and fewer of the latter, either way it is clear that good trade legislation can make it through the Congress, and that our task in the association business is to build on that foundation and encourage the Administration to broaden its initiatives and Congress to support them.

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

The NFTC will host its annual global workforce forum at The Houstonian Hotel on March 20-21, 2013. As the global economy gradually improves outside of Western and Southern Europe, multinational companies continue to be challenged by the shortages of engineering, technical, supervisory, managerial and craft talent, especially in “emerging” geographies in the Americas, Africa and Asia.

The forum will focus on how companies are finding ways to overcome the talent shortages through new sourcing, recruiting, onboarding and reward approaches. The use of technology to help manage internal and external recruiting and placement will be a feature of the forum. Understanding the need for added lead time will be another theme, especially in getting work permits for such business-critical countries as Brazil.

Agenda details and registration information will be announced soon.

For more information, contact Bill Sheridan at [wsheridan@nftc.org](mailto:wsheridan@nftc.org).

# News for Our Members

## House Rules Committee Chairman Honored with 2012 World Trade Award

*(Continued from page 1 Dreier Calls for Action...)*

During his remarks, Chairman Dreier stated, “We have a really very, very important opportunity to now do what we should have done before August 22, which is when Russia was able to join the World Trade Organization, and ensure that U.S. businesses and workers can have access to the 140 million consumers in Russia. And, we need to get that done just as quickly as we possibly can.

“... As we look at where we’re going on the trade issue ... we need to have a 21st century vision ... The prime issue that needs to be addressed is the issue of cross-border data flows. ... There are countries that unfortunately are utilizing it to jeopardize what I describe as the interdependence between political and economic globalization. That needs to be something that we will consistently push.

“... Even though I am going to be leaving Congress in January this year, I will remain dedicated and passionate ... about the necessity for us to break down these barriers to encourage the free flow of goods, services, capital, ideas and people as well.”

Prior to delivering his remarks, Chairman Dreier was honored with the NFTC Foundation’s 2012 World Trade Award for his leadership in promoting the benefits of open trade and investment.

“During his more than 30-year tenure on Capitol Hill, Chairman Dreier has been a steadfast champion of international trade and engagement,” said NFTC President Bill Reinsch. “He understands the importance of advancing the U.S. trade agenda to ensure that U.S. businesses and the millions of Americans they employ can compete on a level playing field. We are pleased to have this opportunity to honor his public service and leadership on these critical issues.”



The NFTC Foundation dinner was held on October 3rd at the Organization of American States. The event was widely attended by policymakers, members of the business community, ambassadors and embassy officials from a number of countries, including Colombia, Egypt, Mexico, New Zealand, Panama, Vietnam, among many others.

For more information contact Bill Kelly at [wkelly@nftc.org](mailto:wkelly@nftc.org).



*L-R—Alan Wm. Wolff, NFTC Board Chairman & Chairman David Dreier (R-CA)*



*Bill Kelly, NFTC Foundation President*

## News for Our Members

### NFTC and USA\*Engage Release 112th Congressional Report Card on International Trade Issues

(Continued from page 1)

While the House and Senate enacted several important bills, most of them involved either long-pending free trade agreements or reauthorization of existing programs. Congress did not take up any new major trade initiatives.

“Compared to the 111th Congress, the 112th has made significant strides on the trade front over the past two years,” said NFTC President and USA\*Engage Co-Chair Bill Reinsch. “Important legislation that had been stalled for more than four years – including the free trade agreements with Colombia, Korea and Panama – was enacted, illustrating that this Congress worked together in a bipartisan manner to advance the U.S. trade agenda, helping to boost U.S. economic growth, increase exports and support American job creation.”

The Report Card scored Senators on eight votes, including:

- **China Currency Bill:** S. 1619, *Currency Exchange Rate Oversight Reform Act of 2011* (On Passage of the Bill)
- **U.S.-Colombia FTA:** H.R. 3078, *United States-Colombia Trade Promotion Agreement Implementation Act*
- **U.S.-Korea FTA:** H.R. 3080, *United States-Korea Free Trade Agreement Implementation Act*
- **U.S.-Panama FTA:** H.R. 3079, *United States-Panama Trade Promotion Agreement Implementation Act*
- **Trade Adjustment Assistance:** H.R. 2832, *Trade Adjustment Assistance Extension Act of 2011*
- **Export-Import Act:** H.R. 2072, *Export-Import Bank Reauthorization Act of 2012*
- **Sugar Program Reform Amendment:** Amdt. 2433 to S. 3240, *Agriculture Reform, Food, and Jobs Act of 2012*
- **Sugar Program Repeal Amendment:** Amdt. 2393 to S. 3240, *Agriculture Reform, Food, and Jobs Act of 2012*

The highest scorers in the Senate included Sens. John Boozman (R-AR), Dan Coats (R-IN), Dean Heller (R-NV) and Richard G. Lugar (R-IN).

With respect to Members of the House, votes on the following pieces of legislation were considered:

- **U.S.-Colombia FTA:** H.R. 3078, *United States-Colombia Trade Promotion Agreement Implementation Act*
- **U.S.-Korea FTA:** H.R. 3080, *United States-Korea Free Trade Agreement Implementation Act*
- **U.S.-Panama FTA:** H.R. 3079, *United States-Panama Trade Promotion Agreement Implementation Act*
- **Trade Adjustment Assistance:** H.R. 2832, *Trade Adjustment Assistance Extension Act of 2011*
- **Motion to Recommit H.R. 3078:** On Motion to Recommit with Instructions: To implement the United States-Colombia Trade Promotion Agreement
- **Iran Sanctions:** H.R. 1905, To strengthen Iran sanctions laws for the purpose of compelling Iran to abandon its pursuit of nuclear weapons and other threatening activities, and for other purposes
- **Export-Import Act: H.R. 2072,** *Securing American Jobs Through Exports Act of 2011* (On Motion to Suspend the Rules and Pass, as Amended)
- **H.R. 6429:** To amend the *Immigration and Nationality Act* to promote innovation, investment, and research in the United States, to eliminate the diversity immigrant program, and for other purposes (On Motion to Suspend the Rules and Pass)

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## NFTC & USA\*Engage Release 112th Congressional Report Card on International Trade Issues

*(Continued from page 4)*

Top scorers included Reps. Bob Dold (R-IL), Doc Hastings (D-WA), Jared Polis (D-CO) and Harold Rogers (R-KY).

“While there were a number of positive trade-related votes, we are disappointed that there has been no action on final approval of legislation granting Russia permanent normal trade relations (PNTR),” Reinsch continued. “We continue to strongly urge Congress to take action on Russia PNTR immediately when Members return to Washington in November, and we look forward to what should be a heavy trade agenda in 2013.”

The Report Card is being released as an interim report. A final report will be released at the end of the congressional session.

To read the 112th Congressional Report Card, visit: <http://www.usaengage.org/default/Documents/Home/Report%20Card%20112th%20Interim.pdf>. For more information contact Bill Reinsch, Dan O’Flaherty or Richard Sawaya about the Report Card at 202/887-0278.

### **USA\*Engage Blog Post: U.S. Sanctions on the Decline (But Don’t Cheer Just Yet)**

The Global Works Foundation’s Progressive Economy published its Trade Fact of the Week for September 26 (<http://progressive-economy.org/the-u-s-is-sanctioning-fewer-countries-than-at-any-time-in-70-years/>), highlighting that the number of countries targeted with significant U.S. economic sanctions has declined to six – from 29 in 1992, and 12 in 2002.

The six are: Burma, Iran, Cuba, North Korea, Sudan and Syria.

The publication also notes that broad embargoes have been supplanted by “smart” sanctions that target individuals or specific economic entities – Specially Designated Nationals (SDNs) and Blocked Persons on the U.S. Treasury Department’s Office of Foreign Assets Controls master list running to 545 pages.

We at USA\*Engage welcome the trend. In the case of Burma, we note the irony that U.S. sanctions are being suspended to encourage U.S. commercial relations with Burma in order to promote systemic reform in the country, and that the suspension is conditioned on companies reporting intelligence to the State Department. We have long argued that normal commerce should be the default position for U.S. relations with other countries as a sine qua non of U.S. international relations, not least because commercial engagement yields social knowledge.

Iran of course dominates the news, and “crippling sanctions” constitute the heart of overt U.S. policy. That said, there is every indication the sanctions – while indeed crippling for many ordinary Iranians – do not cripple the ruling regime or alter its calculus regarding its nuclear objectives.

In the case of Syria, economic sanctions appear simply beside the point.

Can anyone say that the sanctions on North Korea have altered North Korean behavior an iota?

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## USA\*Engage Blog Post: U.S. Sanctions on the Decline (But Don't Cheer Just Yet)

(Continued from page 5)

Sudan – or rather the Sudans – remain locked in conflict. Any possibility of U.S. private sector economic engagement in South Sudan rests on some alteration of sanctions on Sudan, given the realities of infrastructure and assets.

And last but not least, Cuba. An embargo that arguably has preserved Castro's dominion, as an ironic consequence of U.S. domestic politics.

So yes, two cheers for the decline in the number of countries suffering U.S. sanctions, as testimony to the utility of commerce. But, a Bronx cheer for the continuing reliance on economic sanctions – broad or ostensibly targeted – that complicate global supply chains and raise the rewards for illicit trade in the absence of any disinterested assessment of real costs, benefits and consequences.

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

## NFTC Supports PNTR for Russia, Opposes Sanctions

For the past year and a half, the NFTC has lobbied Congress to extend Permanent Normal Trade Relations (PNTR) to Russia so that at its accession to the World Trade Organization, U.S. companies would compete on an equal basis with their Asian and European competitors in the Russian market. PNTR requires congressional action to exempt Russia from the 1974 Jackson-Vanik amendment, which denied Russia permanent most-favored-nation (MFN) status. The NFTC lobbying effort has been in conjunction with the business community's Coalition for U.S.-Russia Trade, whose focus has been exclusively on the commercial benefits of PNTR to U.S. companies.

Russia did accede to the World Trade Organization on August 22. Congressional failure to act on Russia PNTR has excluded U.S. companies from the benefits of Russian membership in the WTO and results in significant disadvantages for U.S. companies in the Russian market — e.g., trade in services — a high-growth sector of U.S. exports is not on an MFN basis and U.S. companies do not have access to WTO dispute settlement procedures. As more time passes without PNTR, lost business opportunities will mount. The NFTC and the Coalition are currently lobbying Congress to pass PNTR in the lame-duck session following the November 6 U.S. elections.

Unilateral economic sanctions legislation against Russia, the *Sergei Magnitsky Rule of Law Act*, named after a Russian lawyer who died in detention in 2009, is being linked to PNTR by many in Congress and is considered a necessary condition for passage of PNTR. The Coalition asked the NFTC and USA\*Engage to work with the Administration and relevant Congressional committees and leadership to ensure that sanctions legislation accompanying PNTR would do as little damage to the U.S.-Russian commercial relationship as possible. Senate and House committees have reported different versions of this legislation. The House bill mandates that those responsible for the torture and death of Mr. Magnitsky be denied visas to the United States and that their U.S. assets be frozen. The Senate bill extends the sanctions to human rights violators “anywhere in the world.” Both bills permit the chairs and ranking members of ten congressional committees to nominate foreign human rights violators to be placed on the list of sanctioned persons.

The NFTC and USA\*Engage strongly oppose such a broad expansion of U.S. sanctions policy and would have preferred that sanctions not be incorporated in PNTR legislation. Given the inevitability of inclusion of a sanctions component in a PNTR bill, NFTC and USA\*Engage are working to modify this language as Congress and the Administration decide the final shape of sanctions on Russia.

For more information, contact Dan O'Flaherty at [doflaherty@nftc.org](mailto:doflaherty@nftc.org) or Richard Sawaya at [rsawaya@nftc.org](mailto:rsawaya@nftc.org).

# *International Trade & Export Finance*

## **Supreme Court Hears Oral Argument on Kiobel ATS Case; NFTC and Others Submit Briefs**

The Supreme Court heard the second round of oral argument on October 1 in the Alien Tort Statute (ATS) case, *Kiobel v. Royal Dutch Shell*. The NFTC and USA\*Engage submitted an amicus brief supporting the defendant and also assembled a business coalition of thirteen associations in the United States and Europe that submitted amicus briefs in the case. This was the second oral argument in the case, the first one in February having dealt with whether corporations can be sued under the ATS. The question posed for reargument was whether the ATS “allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the U.S.”

Argument centered on whether ATS claims require a U.S. nexus, and if so, what constitutes that nexus. Paul Hoffman, attorney for the plaintiffs, argued that the fact that the plaintiffs now reside in the United States establishes adequate nexus. Justice Alito agreed with defendant’s outside counsel, Kathleen Sullivan, that the case has nothing to do with the United States and that to rule for the plaintiffs would open the door to universal jurisdiction and to claims in other countries against U.S. persons. Sullivan also argued that the ATS does not apply to corporations, reverting to the original question posed by the Court in February’s oral argument. She further argued that the place of injury dictates the jurisdiction — in this instance Nigeria — and that cases such as this are a matter of the United States projecting its law onto other countries.

Chief Justice Roberts asked whether Sullivan wanted this case to supersede the *Filartiga* or *Sosa* decisions, and Sullivan replied that was not an issue because those decisions did not reach extraterritoriality. Solicitor General Verrilli agreed that the ATS should not apply extraterritorially in the absence of a U.S. nexus and questioned whether there is a common law cause of action in the absence of a connection to the United States. Verrilli also emphasized the negative effect of ATS suits on U.S. foreign relations. In closing, Hoffman argued that Sullivan’s argument would have held I.G. Farben harmless after World War II, that aiding and abetting liability has been validated by numerous lower court decisions, and that there is a strong international trend toward universal justice and jurisdiction. For more information, contact Dan O’Flaherty at [doflaherty@nftc.org](mailto:doflaherty@nftc.org).

## **U.S. Advances New Green Goods Commitment in APEC**

In September, at an Asia-Pacific Economic Cooperation (APEC) forum summit in Vladivostok, Russia, leaders finalized the development of an “APEC List of Environmental Goods,” advancing a multi-year process to cap tariffs on green goods and clean technologies.

The list comprises a set of 54 product lines to which APEC economies have agreed to reduce tariff rates to five percent or less by the end of 2015. The list includes a number of core technologies such as waste water treatment technologies (e.g. filters and ultraviolet disinfection equipment); air pollution control technologies (catalytic converters); solid and hazardous waste treatment technologies (incinerators, crushing and sorting machinery); environmental monitoring and assessment equipment; and power generation equipment (gas, steam, wind turbines).

NFTC worked closely with the U.S. government for several years on this initiative, and congratulates the White House and U.S. negotiators, who have made this a high priority. The Council believes that this represents a potentially significant accomplishment that can lower the cost of and improve access to a range of clean tech technologies.

The process also turned out to be an interesting exercise in trade negotiations. While progress on these issues has been stalled for years at the World Trade Organization, officials entered into a unique and largely constructive negotiating process under APEC. We think this commitment now provides a strong basis to advance a broader agreement to reduce trade barriers to green technologies at the WTO and to explore opportunities for eliminating trade barriers in other innovative industries through APEC.

For more information, or if you have questions, contact Jake Colvin at [jcolvin@nftc.org](mailto:jcolvin@nftc.org).

# *International Trade & Export Finance*

## **The United States–Canada Regulatory Cooperation Council (RCC)**

The Canada-U.S. Regulatory Cooperation Council (RCC) will hold a webinar on November 28, on its RCC Nanotechnology Work Plan. The RCC's nanotechnology initiative is intended to increase regulatory transparency and coordination between the United States and Canada respecting nanomaterials. The Nanotechnology Work Plan includes specific objectives, deliverables and milestones for tangible progress within the RCC's two-year mandate. The November 28 webinar will provide additional background information and updates on the Nanotechnology Work Plan. Interested NFTC member companies should confirm their webinar attendance no later than October 25.

**BACKGROUND:** In December 2011, President Obama and Prime Minister Harper released a Joint Action Plan on how the United States and Canada will align regulations and regulatory approaches. The bilateral RCC initiative is an integral part of both countries' efforts to create jobs and grow their respective economies.

The RCC Joint Action Plan is comprised of 29 initiatives, each of which represents an opportunity to create a new form of cooperation that will be used as models to foster ongoing regulatory alignment. The RCC initiative provides an opportunity to move beyond previous approaches to cooperation – advancing the Canada-United States regulatory relationship to a new level.

Completed work plans have been posted on the American and Canadian RCC websites. They represent the roadmaps the Working Group leads will use to implement their respective initiatives and deliver concrete results over the next 12 months. Interested NFTC member companies are invited to contact the respective Working Groups with comments and suggestions.

Many of these initiatives are being approached in a way that will not only resolve the existing regulatory misalignment or unnecessary difference, but will also consider lasting mechanisms for ongoing regulatory alignment. Working groups will focus on both the current issues and also consider what it would take to increase partnerships between regulatory agencies in the United States and Canada to emerge with:

- aligned standards;
- reliance on regulatory work performed in the other jurisdiction, without additional requirements;
- the ability to address offshore risks together at our perimeter; and/or
- joint efforts in product approvals and reviews.

Greater regulatory cooperation means less unnecessary and duplicate requirements, greater efficiencies, and lower costs. In turn, this will facilitate trade and make the Canadian and American economies stronger and more competitive. Health, safety and environmental protection will not be compromised as work is carried out under the RCC Joint Action Plan.

Engagement with stakeholders and process transparency are critical to the RCC's success. There is now an opportunity for stakeholders on both sides of the border to engage with regulators to share their perspectives and ideas on addressing the initiatives at play, as well as developing systemic alignment mechanisms to address the root causes of unnecessary regulatory differences.

Stakeholders are encouraged to work with the Working Group leads regarding the implementation of RCC initiatives that are relevant for them. The completed RCC work plans are available at [www.trade.gov/RCC](http://www.trade.gov/RCC) in the United States and at [www.actionplan.gc.ca/RCC](http://www.actionplan.gc.ca/RCC) in Canada.

For more information, contact Bill Kelly at [wkelly@nftc.org](mailto:wkelly@nftc.org).

## The Fall 2012 Tax Committee Meeting Is a Big Hit with NFTC Members

The NFTC Annual Fall Tax Meeting was held on October 11-12 at the Microsoft Innovation and Policy Center in Washington, D.C. The meeting was attended by many NFTC members.

The first panel was moderated by Tom Roesser of Microsoft and consisted of Rob Johnson of Cisco, Tim McDonald of Procter and Gamble, and Karl Schmalz of ExxonMobil. The panelists discussed tax reform and the effects of the anti-base erosion provisions included in the Camp tax reform discussion draft when moving to a territorial-style tax system. Each of the proposed anti-base erosion rules creates problems for various industries. All of these issues must be taken into account as a new system is designed, and explaining the various industry concerns alerted other NFTC members to the struggles that lie ahead in any tax reform debate.



*Jennifer Duffy, Cook Political Report provides an Election Update*

Manal Corwin, Deputy Assistant Secretary for International Tax Affairs at the U.S. Department of Treasury was the luncheon speaker. Ms. Corwin explained that there are potentially ten treaties and protocols that could be before the U.S. Senate within the next several months. The treaties and protocols with Switzerland, Luxembourg and Hungary have been reported out of the Senate Foreign Relations Committee and await a vote before the full Senate. The treaties with Chile and the Multilateral on the Exchange of Information have been sent to the Senate and await a hearing by the Senate Foreign Relations Committee. Treaties that have been initialed or signed and could be sent to the Senate early next year include the updated protocols with Japan, the United Kingdom, Spain, Poland and Norway. Treasury is hopeful that the hold that has been placed on the pending treaties in the Senate will be lifted so that the treaties can move forward.

Ms. Corwin also discussed the recent outreach to other governments as part of the effort to gain intergovernmental agreements for the exchange of information necessary under FATCA. She also explained recent efforts to work with the Indian government to be sure there are no tax treaty overrides in the new Indian tax package.

Peter Barnes of General Electric moderated the next panel discussion on tax treaties and exchange of information issues. Michael Danilack, Deputy Commissioner (International), Large Business and International (LB&I), Internal Revenue Service; Douglas O'Donnell, Director, Tax Treaty and International Coordination (LB&I); Nancy Wiltshire, Senior Manager for Exchange of Information (LB&I); David Varley, Senior Manager of the Treaty Assistance and Interpretation Team (LB&I); and Nipi Khimani, Executive Assistant, Technical to Assistant Commissioner, International (LB&I) participated on the panel. Mr. Danilack explained that the LB&I realignment is complete and that one of the areas the team is focusing on is the gathering of information for the information exchanges that are necessary under U.S. treaties. An informal discussion of the issues facing companies under the exchange of information provisions under U.S. tax treaties, and the information required and collected by our trading partners ensued. Mr. Danilack said that the more input LB&I gets and the earlier that taxpayers engage them, the better and more responsive LB&I can be to help taxpayers. He said that LB&I has a customer service oriented mission and would like the interests of taxpayers and the IRS to converge.



*L-R—Bill Sample, Microsoft; Michael, McDonald, U.S. Treasury; Carol Dunahoo, Baker McKenzie*

The next panel was moderated by Carol Dunahoo of Baker, McKenzie and included Michael McDonald, Financial Economist, Business and International Tax at the U.S. Department of Treasury, and Bill Sample, Tax Director of Microsoft. The U.N. Tax Committee has recently released its transfer pricing manual for developing countries. The manual was drafted by a “Committee of Experts” each representing themselves and not the countries that employ them, so the report is non-binding and there is no requirement that governments comply with the report. Mr. McDonald said that both the work of the OECD and the U.N. is important to the Treasury Department.

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# Tax Policy

## The Fall 2012 Tax Committee Meeting Is a Big Hit with NFTC Members

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Mr. McDonald participates on the U.N. Tax Committee and is a member of Working Party 6 at the OECD. He is the only U.S. government participant in both of these organizations. The objective of the U.N. transfer pricing manual was supposed to be consistent with the arms-length standard and the OECD guidelines. Ms. Dunahoo said that many of the participants on the U.N. tax committee discounted the OECD guidelines on transfer pricing. Unlike the OECD process, the U.N. process does not permit a public consultation on the draft document. The document is expected to be finalized at the October 15 Geneva meeting of the U.N. Tax Committee. According to Mr. McDonald, the U.N. approach is not optimal, and is not supported by the smaller of the developing countries. What works for the BRICS, does not work for small developing nations. The OECD is working with the U.N. and is trying to help the developing countries administer the arms-length standard.

The last panel on Thursday, October 11 was chaired by Lewis Greenwald of Sullivan and Worcester, and included Barbara Felker, Chief, Branch 3, Office of Associate Chief Counsel (International), Internal Revenue Service, R. William Morgan, Senior Economic Advisor to the Director of Transfer Pricing, (LB&I), Internal Revenue Service, and Sean Foley of KPMG. Barbara Felker explained the Foreign Tax Credit Splitter rules and she hoped the covered asset acquisition regulations will be released by the end of the year, or shortly thereafter. She walked through a host of other regulatory projects and outlined their status accordingly.

Mr. Foley outlined a plan to establish safe harbors for routine services, and Mr. Greenwald agreed with him that safe harbors could be helpful for practitioners and the IRS. Mr. Morgan disagreed with Mr. Foley on what and how those safe harbors should be and how they could operate effectively, but said that the IRS was open to further discussions on the issue.



*L-R—Douglas O'Donnell, IRS; Nipa Khimani – IRS; David Varley, IRS; Michael Danilack, IRS ; & Nancy Wiltshire, Management Exchange of Information*

The dinner speaker on Thursday evening was Jennifer Duffy, Editor and Political Analyst of Senate and Governor races for the Cook Political Report. Ms. Duffy explained the current polling on the Presidential race as well as several tightly contested Senate races.

To open the meeting on Friday, October 12, a legislative panel, moderated by Nick Giordano of Washington Council Ernst and Young, included Tony Coughlan, Tax Counsel, Senate Finance Committee Minority, Jeff VanderWolk, International Tax Counsel, Senate Finance Committee Majority, David Olander, Chief Tax Counsel, House Ways and Means Committee Majority, and Aruna Kalyanam, Tax Counsel, House Ways and Means Minority. The members of the panel discussed the possible legislative activities that could occur in the lame duck session of Congress, and the possible agenda for 2013. The panelists agreed that the members will have a very short time to act on legislation during the lame duck session. Members will be electing leaders, and entering the office lottery during the first week back. They will then adjourn for Thanksgiving, and really have the four weeks between Thanksgiving and Christmas to complete action on the extension of the Bush tax cuts, the AMT, the expired tax provisions, and other non-tax issues such as the sequester and the farm bill. There was no clear agreement among the panelists as to how all of the tax provisions will be dealt with in the lame duck session. All of the panelists are hopeful that a full tax reform debate will occur beginning in 2013. There is a Gang of 8 currently working on resolving the fiscal cliff issues, but the panelists pointed out that if the Super Committee was unable to reach agreement on deficit reduction and entitlement reform issues, without a change in the current political landscape, the latest discussions were unlikely to result in a compromise that Congress could accept.

For more information, please contact: Catherine Schultz, Vice President for Tax Policy, [cschultz@nftc.org](mailto:cschultz@nftc.org).

Highlights of the  
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