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.

CELEBRATING A NEW CENTURY 1914-2014 NFTC NATIONAL FOREIGN TRADE COUNCIL

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View from the NFTC Chair
From Across the Pond

While many rushed off to Bali, I crossed the Atlantic to visit our trade cousins, spending Thanksgiving week in London. I can report that part of the British economy is booming – one of our party found the crush in Harrods so great that getting near the store's merchandise was physically impossible. I can also report that the dollar is still only a poor relation to the pound, and that when Thomas Cooks touts its ATM as having no fee, one is actually charged £6 to get £100 (hint – search for a Citibank ATM). But a lot of the city is free, including the Victoria and Albert Museum, whose collections demonstrate the value of once having had an empire (a book selling at Hatchard's recounts how of the 193 current members of the UN, British forces invaded and in many cases ruled for a while in 171 of them – and the author said, still counting).

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A Word From the President

As 2013 staggers to a close, we have witnessed some good news on the trade front. First, the World Trade Organization (WTO) Ministerial in Bali concluded with the first multilateral agreement in nearly 20 years. Admittedly, it is modest compared to the ambition of the Doha Round, but it contains important advances in trade facilitation that will save our companies millions in more efficient entry procedures. Plus, it will hopefully set the stage for moving on to other elements of the Doha Round. (We will have more to say about a post-Bali agenda very soon, and those of you who are not already members of our WTO Project might want to consider joining.) National Foreign Trade Council (NFTC) Vice President for Global Trade Issues Jake Colvin, was in Bali, and he reports on it elsewhere in this issue.

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Fall 2013 Tax Committee Meeting Is a Big Hit with NFTC Members

The NFTC Annual Fall Tax Meeting was held on October 30-31 at the Microsoft Innovation and Policy Center in Washington, DC. The meeting was attended by many NFTC members.

Legislative Update Panel. From L-R, Hill Tax Counsels: Aruna Kalyanam, David Olander, Ron Dabrowski, and Mark Prater. Moderator: Nick Giordano.

The first panel was moderated by Norm Richter of Baxter and consisted of Chris Bello, Branch 6 Chief at the Internal Revenue Service; David Ernick of Pricewaterhouse Coopers; and Rocco Femia of Miller & Chevalier. The panelists discussed the OECD Revised Discussion Draft on the Taxation of Intangibles, and the OECD Whiter Paper on transfer pricing. They explained the differences between the earlier Discussion Draft and the Revised Draft, and the issues behind them. The taxation of intangibles and the transfer pricing issues are also included in the larger OECD project on Base Erosion and Profit Shifting (BEPS). The OECD public consultation on these issues will be held on November 12-13 in Paris.

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A Word From the President

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As 2014 begins, the U.S. focus will increasingly be on Congress as it (hopefully) accelerates the process of considering Trade Promotion Authority (TPA) legislation, which is an essential tool in negotiating and implementing trade agreements.

Unfortunately, what should be a no-brainer has become complicated thanks to the sustained efforts of the anti-trade folks – more about them on another occasion. To counteract their misinformation, the Trade Benefits America Coalition, of which the NFTC is a steering committee member, recently released a report setting the record straight and dispelling common myths about TPA.

Here are the facts:

1. TPA is constitutional.
2. TPA does not exclude Congress from playing a meaningful role in the negotiation and approval of trade agreements.
3. TPA does not cede to the President the ability to set U.S. trade negotiating objectives and decide whether trade agreements meet Congressional priorities for international trade.
4. TPA does not let the President enter into a trade agreement without Congress's consent.
5. TPA does not result in the Executive Branch unilaterally writing legislation to implement a trade agreement.
6. TPA does not force Congress to vote on trade agreements without first having input into them and being able to fully consider them.
7. TPA does not undermine U.S. sovereignty.
8. TPA does not allow the negotiation of trade agreements that override U.S. consumer protection, health, environmental safety, security and financial standards.
9. TPA does not undermine transparency in trade negotiations.
10. TPA strengthens Congress's role in trade negotiations and the ability of U.S. trade negotiators to accomplish the objectives set by Congress.

The facts are clear – we need TPA to open new markets for U.S. companies and workers and ensure a rules-based system for two-way trade. As always, the NFTC will be there advocating for action on new negotiating authority and for the specific provisions of the TPA bill our members developed in 2008 and then revised earlier this year.

Click here to read the Coalition's full report, "Myths and Realities on TPA."

"A Word From the President" is written by NFTC President Bill Reinsch; if you have questions or comments please forward them to breinsch@nftc.org.

View from the NFTC Chair—*From Across the Pond*

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There were many personal high points of the visit. Visiting the Linnean (the British tend to misspell all non-English words as a matter of pride) Society and seeing the painting of Joseph Banks in the place of honor in its library (Banks sailed with Captain Cook as an aristocrat-not-to-be-denied and famous naturalist – see Patrick O'Brien's book about him), and holding in my hands some of Darwin's specimens in the collection of the Museum of Natural History, as well as seeing in the Museum's research cabinets the ammonite fossils that led Alfred Russell Wallace to independently conceive the theory of evolution through natural selection. Also special: visiting one of the original copies of the Magna Carta (two clauses are still in effect despite King John's attempts to contrary) at the British Library. (Also there: the manuscript of the words for "Yesterday" in Paul McCartney's hand).

But this was a busman's holiday. I spent a good few hours with an impressive turn-out of the officials at the Department for Business, Innovation and Skills, who are keen on concluding a strong Transatlantic Trade and Investment Partnership (TTIP), and separately with the Chair of the committee of jurisdiction for TTIP for the House of Lords (who led the delegation of MPs that visited the NFTC a few weeks ago) – also strongly pro-TTIP. In the larger meeting, we covered a lot of the waterfront, examples being: investor-state dispute settlement (I outlined that concerns about the intrusiveness of this instrument were greatly overstated), disciplines over state-owned enterprises (point taken that these provisions are for shaping the world trading system more than for U.S.-EU bilateral relations), financial services (strong EU/UK concern that there be coverage, and concern that the United States is reluctant), GMOs and GIs (difficulties on both sides), sub-central public procurement (in the United States not easy either), SMEs and sub-central regulation (ditto), and interest in the prospects for TPA and the American politics of trade. Public interest in the Snowden stuff and privacy appear to be close to nonexistent in the UK with CCTV cameras welcomed to keep down crime.

The House of Lords was in session, and we got to see a division (vote) on a sort of Dodd-Frank banking bill, a bill in which the Archbishop of Canterbury was a major force. The Archbishop, Justin Welby, before being called to the cloth, worked for 11 years in the oil industry, five of them for the French oil company Elf Aquitaine based in Paris, and was treasurer of the oil exploration group Enterprise Oil PLC in London, where he was mainly concerned with West African and North Sea oil projects. He writes often on ethics and finance (Some parallels with the career of Father Drinan here).

The Cameron government was tacking to the left whilst we were there, declaring for plain packaging for cigarettes (in a reversal), and pressing for portability of pension benefits, as examples. He was also speaking out against unfettered immigration (especially from the new entrants to the EU) and, critical of Brussels' intrusiveness – so he was perhaps tacking to both ends of the political spectrum at once). At the same time, Scotland is preparing for a vote on devolution from the UK (the betting is against the vote carrying).

My impression, given the small hotel we stayed at that was perched a few blocks in between a wholly immigrant population and the bright lights of Oxford and Regent streets with their high end retail arcades, is that there is still an income distribution divide (of course also a growing topic of political conversation in our country). But popular support of TTIP is apparently strong. I was asked by my British government hosts what the feeling was here, outside the Beltway, on TTIP. Well, that is our job.

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.

Recapping NFTC's Participation in the WTO Bali Ministerial

NFTC participated in the WTO's Ninth Ministerial Conference, which took place December 3-6 in Bali, Indonesia, where negotiators produced a package of deliverables. The most significant part of the package is a Trade Facilitation Agreement aimed at simplifying and making more transparent customs procedures and regulations to improve the speed and reliability of exporting and importing.

In a statement, NFTC called the Bali Package significant, particularly given the promise of trade facilitation to improve access to the global marketplace for small businesses, create jobs and spur more inclusive growth in the United States and around the world. The Council also suggested it provided a welcome signal, after more than a decade of frustration, that the WTO can serve as a negotiating forum among its broad membership. It also cautioned that Bali illustrated the challenges of negotiating an agreement that requires sign off from the WTO's diverse membership, and suggested that it will be important to find creative ways of modernizing trade rules in the future.

The agreement does not include the business community's entire wish list – for example, there is no commitment for a meaningful de minimis threshold under which goods could enter duty-free, and the exclusion of VAT from the de minimis commitment that does exist is disappointing – but it is significant for companies and more broadly for economies. The OECD estimates that the kind of simplification, harmonization and transparency that could be achieved will reduce total trade costs by around 15 percent for low and lower middle income countries, while the International Chamber of Commerce suggests in a report that the gains could improve global GDP by nearly $1 trillion, creating 18 million jobs in developing countries and 3 million in developed ones.

The agreement also offers a base on which to build commitments in other forums such as the Trans-Pacific Partnership.

In Bali, NFTC supported several member companies by organizing meetings with WTO Ambassadors from several countries, maintaining contact with U.S. and WTO officials, and working with other organizations including the U.S. Chamber of Commerce and International Chamber of Commerce to participate in meetings with private sector groups from around the world.

NFTC co-sponsored the Bali Business Forum and spoke at a discussion on the Role of the Private Sector and New Issues alongside member Jennifer Sanford of Cisco Systems; Arancha González, who heads the International Trade Centre; Perry Robinson of Rackspace; Deep Kapuria, Chairman of the Confederation of Indian Industry; and Jan Eggert, the Director General of the Foreign Trade Association. NFTC was also represented on a panel on Trade and Innovation at a Trade and Development Symposium and organized a session on "Business Perspectives on the WTO's Role in Promoting Global Trade" at which Cisco, eBay, Johnson & Johnson and UPS spoke.

As it became clear that Indian and U.S. trade ministers had resolved their differences and an agreement was at hand, NFTC was quoted in the *Financial Times* and *Bloomberg Businessweek*.

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Recapping NFTC's Participation in the WTO Bali Ministerial

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In its statement, the Council congratulated U.S. Trade Representative Michael Froman, Deputy U.S. Trade Representative Michael Punke and their colleagues for their tireless and innovative efforts to support the global trading system, and a variety of delegations for emphasizing that this deal enjoyed strong and deep support from developed and developing countries.

Trade Facilitation is one of four "Singapore Issues" that were tabled at the 1996 Singapore Ministerial, along with trade and investment, trade and competition policy, transparency in government procurement. Members reached agreement in August 2004 to negotiate on trade facilitation, and dropped the three other Singapore issues from the Doha agenda.

For more information, contact Jake Colvin at jcolvin@nftc.org.

A Second Thought on Economic Sanctions

Note: This piece appeared in the December 2013 edition of World Commerce Review.

President Woodrow Wilson famously declared in 1919: "A nation boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy." Since Wilson, economic sanctions have been a perennial staple of U.S. foreign policy, currently touted as effective "coercive diplomacy" in the case of Iran and its ostensible nuclear ambitions.

Indeed, compared to previous sanctions regimes, the U.S.-led multilateral sanctions visited upon the Iranian economy have wreaked indubitable damage upon it. As Juan Zarate details in his recently published book, "Treasury's War: The Unleashing of a New Era of Financial Warfare," the unprecedented power of the sanctions to cause economic harm is directly commensurate with the unique position major U.S. banks play in the global financial system and the digital information revolution enabling that position.

Simply put, all financial roads pass through U.S. banks. The anti-terror financing measures articulated in the *USA Patriot Act of 2001*, developed from earlier U.S. Treasury anti-money laundering initiatives, constitute the "big data" systemic heart of the sanctions regime. The money can be followed and frozen.

The exploitation of U.S. financial dominance to implement the sanctions upon Iran is enabled by a concomitant technology-driven phenomenon: the renaissance of U.S. oil and natural gas production by virtue of hydraulic fracturing/horizontal drilling and real-time, micro-seismic data transmission and analysis. The steady decline of U.S. crude oil imports has in turn enabled Saudi Arabia, as swing marginal producer, to replace Iranian crude exports in the global market without an increase in world prices. Put another way, while the sanctions on Iran have not produced a price increase, they have arguably put a floor under prices tolerable to both producers and consumers.

The Obama Administration touts its management of the financially-based economic warfare directed at Iran in contrast to that of its predecessors. And comparisons are made to U.S. drone strike hegemony similarly developed under its watch.

But, as former Secretary of Defense Robert Gates has cautioned regarding the use of drones, there may well be strategically compelling reasons to harbor severe doubts regarding the new financial warfare.

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A Second Thought on Economic Sanctions

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Secretary Gates's point about drone reliance is essentially Darwinian. In the knowledge universe, adaptation to momentary superiority is inevitable. Just as Al Qaeda terrorists have continued to adapt to, and exploit the Internet and social media, so the objects of U.S. financial instruments of control will adapt.

Iran's exposure to the financial stranglehold placed upon it is a consequence of its conventional participation in the global economy, which in turn still depends upon the dollar's place as the global reserve currency. But workarounds can become alternatives. The continued distortion, indeed manipulation of U.S. banking beyond generally accepted norms of combatting money laundering and criminal enterprises, may indeed encourage financial alternatives to the strategic detriment of the U.S. financial sector.

Effective sanctions also create winners and losers. In the case of Iran, the Revolutionary Guards (IRGC) have clearly been winners. As the financial sanctions have removed "secular" participants from the Iranian economy in sector after sector, the IRGC has profited from the vacuum, and by some estimates now control more than 10 percent of the entire economy. If sanctions were to be lifted, those in the revolutionary elite who have profited from their imposition will be loath to relinquish their gains.

Within the U.S. government, conversely, the human capital devoted to administering Iran sanctions has grown substantially, in step with the successively byzantine network of measures put into place by Congress year after year. If institutional history is any guide, the sanctions apparatus will not be terminated, even in the case of an otherwise successful negotiation with Iran over its nuclear program. Indeed, the sanctions bar in Washington legal circles continues to grow.

The point, in sum, about the advertised success of the "smart" financial sanctions – their indubitable capacity to do real harm to the Iranian economy – is that the success is temporary, contingent upon a moment in the global oil trade, and not without consequences inimical to ordinary commerce.

In fact, it will remain for historians to judge whether it is the financial warfare waged upon Iran that brought the country to the negotiating table. The fact is Iran's progress to so-called nuclear "break out" capability occurred in the teeth of ever more draconian sanctions. Commentary in Iran since the announcement of the interim agreement indicates that those who have profited from the country's internal sanctions workarounds oppose a final settlement and by extension the dismantling of the sanctions. For the numerous winners – ordinary Iranians – there will be powerful losers.

Outside Iran, the principal naysayers to the interim agreement – the seemingly strange bedfellows Israel and Saudi Arabia – may also have reasons beyond the nuclear issues per se to prefer the status quo of an Iran ostracized from the global and regional marketplace. Saudi Arabia's role as the world's global crude oil swing producer has already been noted. Iran's full participation in crude oil trade with Asia, coupled with the production renaissance in the United States, could make for hitherto unseen competition.

Besides Turkey, Iran is the only country with the human capital capable at present of matching Israel's economic might, and, with a population exceeding 70 million, the potential to exceed it. And Turkey does not possess Iran's natural resource base.

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A Second Thought on Economic Sanctions

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No one can predict that the ongoing nuclear negotiations will result in a comprehensive success. Indeed, the interim deal is little more, substantively, than an agreement to negotiate under the rubric that nothing is decided until everything is decided. The sanctions relief proffered is both modest and contingent. The veritable blockade of Iran's economy remains structurally intact.

Predictably, those who believe in the efficacy of financial warfare insist that the Obama Administration continue to escalate the campaign and join forces with Congress to enact further sanctions to "bring Iran's economy to its knees." Proponents warn that the modest, provisional relief accorded Iran in the interim agreement, coupled with its open-ended negotiating calendar, in effect permits the Iranian regime to have its cake and eat it too: enjoy sufficient economic relief and remain in a state of permanent de facto break-out capability.

Patrick Clawson, Director of Research at the Washington Institute for Near East Policy, who has long pressed for maximum confrontation with Iran, also takes this view: double down on sanctions precisely in order to increase the chances for a comprehensive agreement. He proposes, however, an approach that has the potential to break apart the bureaucratic technology of financial warfare that Congress has legislated to go by itself. Specifically, he proposes that the next sanctions legislation include a provision that if a verifiable comprehensive agreement is reached, the President has the authority to repeal all sanctions on Iran, period.unilateral disarmament.

The United States has embarked upon an ambitious trade negotiations with Asian countries – the Trans-Pacific Partnership – and with the European Union – the Transatlantic Trade and Investment Partnership. By their nature, economic sanctions depart from the principle of free trade among sovereign states, governed by equitable and transparent rules of engagement. If diplomatic negotiations succeed between Iran and the P5+1 countries, would it not make strategic sense for the United States to stand down its arsenal of financial weaponry?

While highly improbable, such an act of unilateral disarmament would send an unmistakable message that the United States has redoubled its commitment to the benefits of global trade. Moreover, after the lessons of U.S. misadventures in Iraq and Afghanistan and blowback from the Snowden revelations, perhaps it is time to wipe the foreign relations playbook clean, and think again about the essentials of national security interests and tools of diplomacy.

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What to make of the Cuba handshake

For as much as the media made of the handshake between President Obama and Cuban President Raul Castro, it's not nearly as juicy as other aspects of the U.S.-Cuba relationship.

The handshake itself is small potatoes. President Obama was right not to have snubbed a handshake at a memorial for Nelson Mandela, which would have turned into an even bigger story.

The reality is that there are much more important developments in the U.S.-Cuba relationship, and strong potential for principled engagement to further benefit the Cuban people and America's national interest.

As for the current relationship, David Adams of Reuters reports that there appears to be "a new climate of pragmatism" in the bilateral relationship on issues ranging from granting asylum to Edward Snowden to resuming direct mail service. In Bali last week, I watched as new World Trade Organization Director-General Roberto Azevedo deftly helped Cuba and the United States work out a compromise in a business-like manner to smooth passage of a major trade pact, which was characterized by less-caustic rhetoric and without the kind of posturing that has historically been associated with U.S.-Cuba interactions.

To the extent that a business-like atmosphere can persist between the two countries, there are other areas where principled U.S. engagement can achieve real results. In particular, further changes to U.S. policy could help support the kinds of entrepreneurs and small businesses that are emerging in Cuba. Beyond pursuing discreet bilateral talks on issues like mail service and emergency response, further relaxing licensing requirements for travel to Cuba could enable more Americans to support entrepreneurs there. The Administration could get even more creative, licensing Internet platforms and financial service and shipping providers to offer Cuban entrepreneurs an opportunity to market and sell their products to U.S. consumers.

While Congress has enacted laws that limit the ability to get rid of the embargo in its entirety, the President has significant leeway under his licensing authority to get creative to support the Cuban people.

Last month, in cooperation with the Center for Democracy in the Americas, the National Foreign Trade Council hosted several Cuban entrepreneurs, including the owner of a family-owned restaurant and the owners of Nostalgicar, a Havana-based service that rents out classic Chevys to visitors. Both of these businesses would benefit tremendously from the increased flows of Americans that could result from more purposeful trips to Cuba, and there are many others that would be empowered by the kind of access to the global digital marketplace that the United States could enable.

For more information, contact Jake Colvin at jcolvin@nftc.org.

The Fall 2013 Tax Committee Meeting Is a Big Hit with NFTC Members

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Danielle Rolfes, International Tax Counsel at the U.S. Department of Treasury, was the luncheon speaker. Ms. Rolfes explained the U.S. role in the BEPS project and asked for business input to Treasury as the BEPS project moves forward over the next two years. Given the international outcry to do something about double-nontaxation, Ms. Rolfes said that retaining the status quo is not acceptable, and business should expect changes. Treasury would like positive input from business, not just arguments for retaining the current system. Treasury is looking for principled tax positions as they participate in the BEPS working groups, and work through the Action Plan over the next two years. The recent government shutdown lead to the furlough of many of the Treasury Department staff, so they are still catching up with back work, and many of the regulatory projects that were expected to be completed before the end of the calendar year, have slipped into the first quarter of 2014.

The next panel was moderated by Manal Corwin of KPMG, and consisted of Michael Plowgian of KPMG, formerly of the OECD BEPS project; Barbara Angus of E&Y; and Tim McDonald of Procter & Gamble. The panelists discussed the OECD BEPS project and how business has already been affected by it. They walked through the politics behind the BEPS project and the issues included in the Action Plan released in July. There was a discussion of the countries already adopting legislation, and claiming that the changes proposed are because of the BEPS project. There is concern that countries will unilaterally start to make changes in their tax law and audit procedures, and claim that the changes are because of BEPS. The panelists agreed that there should be a dispute resolution provision included in the final BEPS proposal to assure that there is a way to eliminate double-taxation and to resolve differences between countries.

Panel on Transfer Pricing and the Taxation of Intangibles, Rocco Femia, Miller & Chevalier; David Ernick, PWC; Chris Bello, Branch 6 Chief Internal Revenue Service, Norm Richter, Baxter.

Peter Barnes of Caplin & Drysdale and Duke Law School moderated the next panel discussion on tax treaties and the MAP process. Michael Danilack, Deputy Commissioner (International), Large Business and International (LB&I), Internal Revenue Service; Diana Wollman, Director, International Strategy (LB&I); Patricia Foust, Advanced Pricing and Mutual Agreement (LB&I); and David Varley, Senior Manager of the Treaty Assistance and Interpretation Team (LB&I) participated on the panel. The panelists discussed the current MAP case load and the countries where the United States has the most unsettled cases pending—Canada, India and Japan. Some tax authorities are very aggressive and can be difficult to deal with. Michael Danilack agreed with the previous panel that the BEPS project should include a dispute resolution provision in the final package to bring the Competent Authorities to the table to negotiate. Michael 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.

The next panel was moderated by Harrison Cohen of Deloitte and included Arlene Fitzpatrick, Attorney-Advisor in the Office of International Tax Council at the Treasury Department; Chris Landberg, Advisor on International Economics and Trade for the Majority on the Senate Foreign Relations Committee; and Andy Olson, Senior Advisor for International Economics and Trade for the Minority on the Senate Foreign Relations Committee. This panel focused on the pending tax treaties, and how to resolve the political stalemate in the Senate. Tax Treaties with Switzerland, Luxembourg and Hungary were reported out of the Senate Foreign Relations Committee in 2011 and were sent to the Senate floor. Senator Rand Paul put a hold on the tax treaties, and they were not acted on before the end of the 112th Congress, and so were sent back to the Senate Foreign Relations Committee for new action.

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The Fall 2013 Tax Committee Meeting Is a Big Hit with NFTC Members

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These three treaties and protocols join a tax treaty with Chile and an OECD multilateral convention on the exchange of information to make five tax treaties pending before the Committee. Both Chris Landberg and Andy Olson expressed support for the tax treaties from the Chairman and Ranking Member of the Committee, but Mr. Olson said that there are still Senators on the Republican side who need to be convinced of the importance of tax treaties before they can move forward in Committee. Several strategies were discussed as to how to move the treaties forward, and the NFTC will continue to work with all of the members of the Committee and the Senate leadership to advocate for the tax treaties.

Tax Treaties and the MAP Process—Problem Areas panel; Peter Barnes, General Electric; Michael Danilack, Internal Revenue Service.

On Thursday, October 31, the NFTC members heard from the Legislative Panel moderated by Nick Giordano of Washington Counsel Ernst & Young. The panelists included Mark Prater, Chief Tax Counsel, Minority Staff of the Senate Finance Committee; Ron Dabrowski, Tax Counsel, Majority Staff of the Senate Finance Committee; David Olander, Chief Tax Counsel, Majority Staff of the House Ways and Means Committee; and Aruna Kalyanam, Tax Counsel, Minority Staff of the House Ways and Means Committee. The panelists discussed Chairman Camp and Senator Baucus's commitment to tax reform and the path to achieving tax reform. They also discussed the current budget conference and the ongoing negotiations implications for tax reform. Chairman Camp is committed to marking up a tax reform package in 2013. When reminded that the House is only in session for four more weeks, and adjourned on December 13, the staff said that Chairman Camp understands the tight time frame, but is hopeful that action can occur. Chairman Baucus will be releasing discussion drafts as he continues his work toward a tax reform package. Separately, Chairman Baucus announced that he will begin releasing discussion drafts in the next two weeks.

Incoming NFTC Tax Chair Paul Nolan , McCormick & Company.

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

Briefing by Bob Stack on the OECD Digital Economy Working Group

In early November, the OECD Working Party 10 held its first meeting. This working party was created as part of the BEPS project to deal with digital economy issues. On November 7, Treasury Deputy Assistant Secretary for International Tax Affairs Bob Stack and Associate ITC Brian Jenn held a briefing with a few members of the business community to explain the work of the digital economy task force. Mr. Stack said that for the most part, the interests of U.S. multinational corporations and the U.S. Treasury were generally aligned. Where the interests might differ, would be in the area of U.S. base erosion and the possibility that companies use intangibles to strip revenue from the U.S. tax base.

Mr. Stack believes that the digital issues included on the BEPS Action Item list (issued in July 2013), could be dealt with by other Action Items. However, there is a big sentiment at the OECD that something has to be done about digital, and there will be a report with concrete options on digital economy. Treasury does not want any bad rules or results aimed specifically at American companies. American companies are the major target of the digital task force, and Mr. Stack asked companies to provide information on companies in other countries who might also be players in the digital arena.

Timeline for the Digital Economy Work

A scoping paper was released by the OECD before the first meeting of the digital working group. OECD members had many comments about those scoping notes. In mid-December, the OECD will release a draft document for public comment. A questionnaire will be posted online on the proposed digital economy business model. Mr. Stack strongly encouraged business to respond to that survey. This will provide information to the working group on how business operates. The next meeting of the working group is February 3-4, 2014. Mr. Stack would like to have business input for that second meeting, and the OECD is considering this option. The draft document will be revised in February and should be ready for approval by March. Public comments will then be due in early April. The third working group meeting will be held form April 22-24 with a possible public consultation. The final work product has to be approved by the Committee on Fiscal Affairs (CFA) in June in order for the work to be completed by the September 2014 deadline set in the BEPS Action Plan set forth by the G-20.

The Digital Economy Working Group

Brian Jenn, Associate International Tax Counsel at Treasury, is also a member of the Working Party 10, with Mr. Stack. According to Mr. Jenn, the BEPS Action Plan outlined aspects of the digital economy, such as whether a company has a significant presence in a country, and how it uses personal data. The scoping notes for the first meeting of the Working Party contained a few key questions: 1) What are the business models in the digital economy? 2) Where is the value created? This is a key concept in the BEPS project, and governments want to align value creation with taxing rights. At the first Working Party meeting, several businesses made presentations on how their businesses operate that the Working Party members found to be very helpful. It is very hard to formulate one definition of the digital economy that stands apart from any other business model. Mr. Stack said that this issue hangs over the delegates in the room. There were very few examples of non-U.S. companies involved in the digital economy (Angry Birds, Ali Baba were the examples used). Treasury is very concerned that the Working Party is really focused on targeting U.S. companies.

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Briefing by Bob Stack on the OECD Digital Economy Working Group

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Many questions arose as part of the Working Party delegates discussion. What are the business models? The delegates were interested in a two-sided model where customers interact with a company free of charge and used Google as an example. Customers are not paying to do searches, but Google uses the customer data in its advertising business. The online questionnaire will ask companies how business models are implemented in taxation and legal contexts. How do current tax rules apply to business models? The OECD had Technical Advisory Groups (TAGs) in the past that worked on income characterization and ecommerce issues. Could the current BEPS work use the work that was done in the past in the BEPS context? Are there aspects of business models unique to the digital economy that differ from the models used in the non-digital arena? What are the characteristics of the digital economy that are exaggerating BEPS? What kind of international tax rules are best for addressing these issues? Should both direct and indirect taxes be considered?

Mr. Stack said that there will be a report out of the Working Party. The group might develop detailed options to deal with the perceived difficulties. There are nexus questions. There are questions of the attribution of value from relevant data. Are source rules needed? Should the issues be dealt with under the countries VAT/GST rules instead of the income tax?

The ability to have a significant digital presence has raised digital PE issues. The Working Party has delegated the PE issues to Working Party 1 on Tax Treaty Issues, which is the group that handles PE issues. The intangibles issues are being handled by Working Party 6, which also handles transfer pricing issues. Mr. Stack said that the Working Party 10 will not reopen the residence/source country taxation issues, the project is limited to BEPs (although there are some countries who do not agree with this).

The attribution of value to data is a big concern. The French are greatly concerned about the value of the data collected from French companies and customers, and feel that this data ought to be taxable in France. Mr. Stack said that data is viewed much more intensely in the EU than in the United States. The ongoing NSA scandal has the Europeans strongly believing that “big data” is bad, and the French have a very strong political direction to do something about it. They see data as a raw material, and as such, feel it should be taxed.

On the characterization of income issue, the question arose as to whether the use of the cloud is a service or a rental. The BRICS do not care about prior OECD work on the characterization issue because they were not involved in it. They are involved in the BEPS work because, although they are not part of the OECD, they are part of the G-20.

On the VAT/GST discussion, Mr. Stack said that it is easy for countries to collect the consumption tax on goods, but they are struggling with how to tax digital services. (The business participants in the meeting explained the VAT TAG work to Mr. Stack, and that the digital services issues are part of the ongoing work of that TAG). The United States is supportive of the use of a VAT/GST solution for the digital economy concerns. The VAT is administrable and would avoid disputes of the kind that would arise under an income tax. Note that some companies may not agree if they think that VAT may fall on companies, and there could be jurisdictional issues over which country taxes .

Continued on Page 12)

Briefing by Bob Stack on the OECD Digital Economy Working Group

(Continued from page 11)

Mr. Stack reiterated that it is hard to articulate the tax challenges related to the digital economy. How is it different or unique? What should be included in the options? The Indians and Chinese want an income tax solution to the digital problem, and the French are pushing for a data taxation point. Other countries are indifferent to digital because they do not have any companies in that arena. Should there be a destination based income tax? Mr. Stack pointed to a paper done by Alan Auerbach and Michael Gratz on this. How should deductions be allocated? This is a harder question for countries.

Advertising seems to confuse everyone on the Working Group. It is counter-intuitive and hard to determine who has the taxing rights to it.

The work of other Working Parties will have to be returned to the group for their review. Working Party 1 will handle the digital PE issue. Working Party 6 on transfer pricing, is already working on the taxation of intangibles, Working Party 9 is working on the VAT issues. Mr. Stack is hopeful that any of the options considered by the digital economy Working Group won't do any damage to U.S. companies and the U.S. tax base. The United States is concerned about companies marketing in one country but booking the sales in a different, lower-tax jurisdiction. The spillover benefits to jurisdictions has not been discussed yet, but should be on the table for future meetings

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

13th Annual International Human Resources Forum-Houston- March 4 -5, 2014

The NFTC will be hosting its 13th annual International Human Resource Management Forum in Houston on March 4-5, 2014. The central theme will be "Managing Opportunities and Realities in Frontier Markets: Three Steps Ahead."

The forum will include sessions on:

- "Frontier Markets" – Expectations and Realities
- Talent and Mobility Management in Multi-National Corporations
- Africa: Preparing for the Unexpected
- Developing Leaders for the Global Enterprise
- Protecting International Travelers & Expatriates Against Health Risks in the Middle East and Africa
- Best Practices in Global Mobility in the Oil and Gas Industry
- Women's Health Access in Emerging Markets
- Canada-U.S. Border Crossings: Issues and Answers
- Technology Supporting Global Mobility
- Health Management and Productivity in Russia and Eastern Europe
- Managing the Challenge of Expatriate and Global Compensation Data

In addition to subject matter experts from Aon Hewitt, Berry Appleman & Leiden LLP, KPMG LLP, MetLife International, NetExpat and Paragon Relocation, the Faculty will include speakers from Airinc, Black & Veatch, the Canadian Employee Relocation Council, ConocoPhillips, Dell, Diamond Offshore Drilling, Global Guardian, Halliburton, Living Abroad, New York University, Schlumberger and Worley Parsons.

For information on the agenda and registration, go to the NFTC's Calendar of Events for March 4-5, 2014, or contact Sandra Rodriguez at srodriguez@nftc.org.

Join NFTC as We Celebrate Our New Century!

A Centennial Celebration is literally a once-in-a-lifetime event. At NFTC, we are not content to merely celebrate our rich history. In the spirit of the first National Foreign Trade Convention, we want to seize this unique moment to examine critically the world trade landscape, analyze the mega-trends in force, and envision what the future of international trade will hold for our companies, industries and America as a whole.

In 2014, NFTC will convene a nationwide series of activities and programs to examine the future of trade in the context of key industries, regions and issues. Now, as in 1914, the strength of NFTC rests in the community of our members.

We invite all our member companies to partner with us as we seek to update the vision of Secretary Redfield a century ago: Beyond the endless talks and disputes—*What is the future of American trade in the global economy?*

Please join us in the many opportunities we have organized to Celebrate our New Century!

Here is a list of some of the activities we have planned:

- Centennial Kickoff Reception at the historic President Woodrow Wilson House—January 14, 2014
- Nationwide Luncheon Series: *The Future of American Trade*
- Embassy Series: *The Future of Trade Around the Globe*
- NFTC Centennial Celebration World Trade Dinner, December 3, 2014

Corporate members are encouraged to join the celebrations and donate to the 100th Anniversary Fund to help fund these events and activities. In return they will be recognized on what is perhaps most unique of all the 100th Anniversary tributes: a major commemorative artwork has been commissioned to visually transmit the wonderful history and influence of the organization over its 100 years, as well as its critical role going forward.

Please contact NFTC Vice President for Strategy and Growth James Wilkinson at jwilkinson@nftc.org for more details and for ways you can chip in and join the fun!

CELEBRATING A NEW CENTURY
1914-2014
NFTC
NATIONAL FOREIGN TRADE COUNCIL

SAVE THE DATE!

Wednesday, December 3, 2014
The Centennial NFTC World Trade Dinner

Andrew W. Mellon Auditorium
1301 Constitution Ave NW Washington, DC

For Sponsorship or event information
Please Contact James Wilkinson at jwilkinson@nftc.org or 202-464-2022

Kickoff Reception to Celebrate NFTC's New Century Set

A century of history rich in world trade has passed since the first National Foreign Trade Convention in 1914. As the NFTC prepares to celebrate our centennial with a year full of events and activities, we invite you to join us as we seize this unique moment to relish our many significant achievements and look ahead at future challenges and opportunities.

To revisit our earliest days and to underscore his critical role in our establishment, the Kickoff Reception will be held at the historic President Woodrow Wilson House, just north of Dupont Circle in the lovely Kalorama neighborhood. This unique Georgia Revival town home served as the post-presidency residence of President Wilson and his wife, Edith. Today it is preserved as an elegant living memorial to President Wilson by the non-profit *Woodrow Wilson House*, and features 1920s-era décor, furniture, books and artwork, as well as artifacts ranging from state gifts to personal effects of the 28th President and his family.

The evening will culminate with the grand unveiling of "***The NFTC Story***", a 3-dimensional commemorative artwork created by local artist Lawrence Romorini. The work was specially commissioned to reflect the first 100 years of the NFTC and our critical role in the emergence of the U.S. as the world's global economic leader.

CELEBRATING A NEW CENTURY
1914-2014
NFTC
NATIONAL FOREIGN TRADE COUNCIL

You are cordially invited to join us for the NFTC Centennial Kickoff Reception

Featuring very special guest
"President Woodrow Wilson In Person"
who will attend, mingle with guests, and give remarks
pertinent to the relevance of trade in 1914 and today
With remarks by
United States Trade Representative Mike Froman *(invited)*
and
Secretary of Commerce Penny Pritzker *(invited)*

At The President Woodrow Wilson House
2340 S St. NW, Washington DC
January 14, 2014 5:30 – 8:00 PM
Business Attire, Valet Parking, Light Hors d'oeuvres
Capacity limited

For tickets or more details, please visit www.nftc.org or contact
NFTC Vice President James Wilkinson at jwilkinson@nftc.org or 202-464-2021

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NATIONAL FOREIGN TRADE COUNCIL

"ADVANCING GLOBAL COMMERCE FOR 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.