

COUNCIL HIGHLIGHTS

NATIONAL FOREIGN TRADE COUNCIL

“SERVING AMERICA’S INTERNATIONAL BUSINESSES SINCE 1914”

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



*June-July 2014
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View from the NFTC Chair

By Alan Wm. Wolff, NFTC Chairman

Our centennial year presents an occasion to reflect on our impressive past and plan for future accomplishments in our second century. A year before President Wilson had his Secretary of Commerce convene a conference of business leaders that gave birth to the National Foreign Trade Council (NFTC) in May 1914, the President broke 112 years of precedent by directly addressing a joint session of Congress on April 8, 1913. His top priority one month into his Presidency was trade – specifically lowering U.S. tariffs. He spoke for only nine minutes. This was what he conveyed:

It is clear to the whole country that the tariff duties must be altered. They must be changed to meet the radical alteration in the conditions of our economic life which the country has witnessed within the last generation...

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NFTC Celebrates 100th Birthday at the National Archives

By: James Wilkinson, Vice President for Strategy and Growth, jwilkinson@nftc.org

The NFTC Foundation hosted NFTC’s Centennial Birthday gala reception at the National Archives in Washington, DC, on May 28, where nearly 300 NFTC members and VIP guests gathered to mark the precise date of our founding 100 years earlier, just blocks down Pennsylvania Avenue at the long-gone Raleigh Hotel. Master of Ceremonies Bill Lane and NFTC Chairman Alan Wolff warmed the crowd with recollections of changes in trade policy over the years and drew parallels between today’s massive trade talks and the driving force behind the world’s original and still the greatest unified market and free trade area – the United States.

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Keynote speaker Ambassador Bill Brock (former USTR, Secretary of Labor, Senator, Congressman, and international businessman) made an impassioned plea for Trade Promotion Authority and commercial diplomacy, and for business groups like the NFTC to demand greater civility among our elected leaders so



Ambassador Bill Brock, Former USTR

that the current era of gridlock can be overcome. Acting Undersecretary of Commerce for International Trade Ken Hyatt made a presentation of the nation’s highest export award, the President’s E Star Award, to NFTC President Bill Reinsch, which had been bestowed earlier the same day in a formal ceremony led by Secretary of Commerce Penny Pritzker. This was the second time the NFTC had been so honored; in 1962, the NFTC was among the first batch of recipients recognized by President John Kennedy for their service to exporters. The evening culminated in a toast led by President Bill Reinsch, who called to the stage all former and current NFTC employees to be recognized for their contributions to the success of the NFTC during



NFTC President Bill Reinsch and Acting Undersecretary of Commerce for International Trade Ken Hyatt

its first 100 years, and to 100 more years of serving our members and advancing global, rules-based trade, stronger commercial ties and a more peaceful world.

News for Our Members

A Word From the President

By Bill Reinsch, NFTC President

Presidencies are about the future – or they ought to be. Every President has to cope with unexpected crises – remember Hoover in 1929, George W. Bush on 9/11 and again in 2008, and many others. It is the rare Administration whose attention is not diverted by unforeseeable events, and the great risk, always, is that the President will be swallowed by events and lose sight of his most fundamental task, which is inspirational: to provide his vision of the future, to tell us how to get there and to tell us that we can be better than we are and can rise to the challenges that changing times provide. He needs to do that because that is what Presidents are about – making sure the America of tomorrow is intact, healthy and strong for our children, our grandchildren and future generations after them. While Rahm Emmanuel is right that one should never waste a good crisis, neither should one allow himself to be so caught up in it that his larger vision of the future begins to disappear.

Unfortunately, providing a vision always means advocating change, and the sad truth of human nature is that people love change in theory but hate it in reality because it means they will have to get out of their comfort zones and do something different. One of America's great strengths is that we are better at that than many other countries. Our traditions are less mature and hide-bound, and our culture embraces change as a positive value. Historian Frederick Jackson Turner wrote about the frontier as a means (and a metaphor) for Americans' constant ability to reinvent themselves, in his time by going, literally, where no man had gone before. In our time the frontier is defined less in physical space than in exploring the inner reaches of our minds and of the physical world that surrounds us, but the constant search for innovation and reinvention is one of our greatest strengths.

Yet right now we seem plagued with fear of the future. People have a strong sense that something is wrong but are deeply divided over both the problem and the solution. President Obama is unlikely to eliminate, or even smooth over, that division, but he can, and should, not be defeated by it and instead lay out his vision for the America of our children and start us on that path, even knowing that the work will not be completed. This is what President's – at least the good ones – do.

Fortunately, he has been doing that, albeit not to unanimous enthusiasm. His health care plan tackled our most urgent long-term domestic problem. His immigration efforts address an urgent current problem with the underlying principle that welcoming others to our shores, as we have, more or less, for 300 years, is not only good for them but good for us. It is invigorating and adds new dynamism to our society and our economy. Most recently he has been tackling climate change and the environment, an issue that promises to produce debate as vigorous as on health care.

The NFTC doesn't get involved in domestic issues. We have no position on health care, and will not take a position on EPA regulations, except to the extent they might affect the UNFCCC talks on climate change, where we have been active. (We do have a strong position on mobility, particularly high-skilled immigration and business travel, and will continue to advocate for immigration reform in those areas.) But we will say that maintaining a clean environment and dealing with climate change, where the evidence of its occurrence is overwhelming, is an important vision statement for the President to make. We need to be good stewards of the earth, if not for ourselves, then for the generations that come after us that will have to live with the decisions we are making now. Addressing a long-term but life-changing problem like this is precisely what we should expect from our Presidents – a focus on the future as well as on the present.

So, we can have a good debate about the specific changes he recommends, but I hope that in doing so, we will all understand that the President has done exactly what we should expect from him – provided a vision for the future and a roadmap for getting there.

“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.

News for Our Members

View from the NFTC Chair

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For a long time—a time so long that the men now active in public policy hardly remember the conditions that preceded it—we have sought in our tariff schedules to give each group of manufacturers or producers what they themselves thought that they needed in order to maintain a practically exclusive market as against the rest of the world. . . .

We must abolish everything that bears even the semblance of privilege or of any kind of artificial advantage, and put our business men and producers under the stimulation of a constant necessity to be efficient, economical, and enterprising, masters of competitive supremacy, better workers and merchants than any in the world.

We must build up trade, especially foreign trade. We need the outlet and the enlarged field of energy more than we ever did before. We must build up industry as well, and must adopt freedom in the place of artificial stimulation. . . .

[A further historical note regarding the gender-specific references above, which to a reader of that distant time would not have raised an eyebrow: Wilson was very good on tariffs in 1913, but did not become a leader on women's suffrage until 1917 when he addressed Congress as follows: "We have made partners of the women in this war...Shall we admit them only to a partnership of suffering and sacrifice and toil and not to a partnership of privilege and right?"]

President Wilson further broke precedent by later meeting off the Senate floor for hours with members of the Senate Finance Committee to plan strategy on getting the tariff bill through the Senate. Amongst the most dramatic actions was the removal in three years of the import duty on sugar. (The removal of that tariff later became an early casualty of the need for funds, about \$30-40 million in sugar tariffs, to help finance the preparations for what became U.S. entry into World War I.) Despite the need for revenue, the structure of the 1913 tariff reductions stayed largely in place until the tariff acts of 1922 and 1930 (the notorious *Smoot-Hawley Act*). Of course it was that phenomenal legislative error that led to a positive reaction – passage of the *Reciprocal Trade Agreements Act* in 1934 under FDR and Cordell Hull, which created the America's trade agreements program, periodically given an imperative boost by enactment of what is now called Trade Promotion Authority from 1974 through the not so distant past.

Why look at history? The answer is inscribed on the block of stone on the NE side of the National Archives, the great venue for our recent marvelous 100th birthday celebration: *What is Past is Prologue*. Wilson's words on international trade still ring true today, although a number of the challenges faced are different. Obtaining major results in the current trade negotiations and their approval by Congress needs, and I trust will have, strong leadership from the White House. The U.S. Trade Representative, as is true with most other trade negotiators, must deliver not only solid results abroad across the bargaining table but needs to rally support at home, in the case of the United States from the President, his Cabinet, the Congress and the public. This effort will require and I am sure will have the ardent and active support of the NFTC. We are each important to this effort. Acting together we can make a difference.

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.

International Trade & Export Finance

Is Investor-State Dispute Settlement Passé

By Dan O'Flaherty, Vice President, doflaherty@nftc.org

Opposition to the investor-state dispute settlement provisions (ISDS) in Bilateral Investment Treaties (BITs) and free trade agreements (FTAs) has been increasing in surprising places.

A European Commission official, Rupert Schlegelmilch, told a European Parliament hearing last month that the case of the disputed Havana Club trademark, a case in which the NFTC has supported the claim of Pernod Ricard over Bacardi, illustrates the need for ISDS in TTIP: "Despite the claims of our American friends, problems can arise with the American legal system. An example of this occurred with problems some European companies faced in the U.S. because of business they had in Cuba that involved expropriated properties. The WTO ruled in 2002 but the U.S. has still not withdrawn the law." However, EU Trade Commissioner Karel DeGucht testified at the same hearing that he had tried unsuccessfully to convince USTR Froman to drop the ISDS component of the free trade negotiations, reflecting opposition to the provision by many European consumer, labor and environmental groups.

The South African government recently decided to allow its bilateral investment treaties with major trading partners like Germany, Spain and the UK to lapse. The official reason given by the government was that the investor-state dispute settlement provision of their BITs restricted its ability to make domestic economic policy – essentially that the treaties constrained their sovereignty. Although there was a suggestion that the South African government's ulterior motivation was to be able to nationalize the mines if they decided to do that, they did give assurances that their domestic courts were fully up to the job of providing dispute settlement, making international arbitration unnecessary. There is evidence that this view resonates elsewhere and that a strong case can be made for abandoning ISDS in BITs and FTAs. In fact the case was made powerfully at a recent Cato Institute conference where Cato's Simon Lester and Dan Isakson agreed with George Washington University's Susan Aronson and Public Citizen's Lori Wallach that ISDS addresses a problem that no longer exists, applies vague criteria in "fair and equitable treatment" and "minimum standard of treatment" and should be eliminated from U.S. BITs and FTAs. Among other things, they argued that it would be much easier for the United States to negotiate FTAs without the insistence on enforcement of investment provisions via international arbitration.

Now investment disputes are on the rise, not on the decline, and while one can argue that many cases brought to arbitration are frivolous and that there should be a better mechanism for weeding them out, it remains the case that enforcement of dispute settlements is a key element of investor confidence. So is the trend going South Africa's way? Are other countries abandoning their BITs to preserve that piece of their sovereignty?

In one very important case the answer would seem to be no. Boston University's Amos Irwin argues in a GEGI Working Paper that China changed course in 1998 and included ISDS in most of the BITs it has signed since then, certainly those with capital-exporting countries. Prior to 1998, China sought to shield itself from international liability by restricting arbitral awards to the amount of compensation for an expropriation. This maximized China's control over and minimized its liability for private investment, forcing investors into Chinese courts.

Irwin refutes several explanations for China's limited acceptance of ISDS in its new BITs with capital exporting developed countries. He rejects the arguments that China changed course in order to protect its own outward investors, to conform to WTO norms or to enhance its overall liberalization policy. Instead, he argues that the change was due to the "unshakable requirement of open access to arbitration" by the United States and other developed countries. Still, China's commitment to include ISDS in its BITs is limited since they have not retroactively changed their existing BITs, including those with the UK and Japan, to include access to arbitration. Irwin argues that China is struggling to maintain what he calls "bilateral sovereignty," defined as the ability to sign BITs while limiting international tribunals' ability to give a broad interpretation of their provisions.

China's qualified embrace of ISDS indicates that South Africa is not necessarily pointing the way into the future. While the Cato scholars and others broadly agree with the rationale behind South Africa's action and assert that ISDS is responding to a 1950s problem that no longer exists, China's position shows the importance of insistence on enforcement mechanisms in BITs and investment chapters of FTAs.

International Trade & Export Finance

What Do the Results of the European Elections Mean for TTIP?

By Sophie Bolla, Research Fellow, sbolla@nftc.org

On Sunday, May 25, the citizens of the 28 Member States of the European Union elected the new European Parliament. The three mainstream parties, the European People's Party (EPP, right-winged), the Socialists and Democrats (S&D, left-winged) and the Alliance of Liberals and Democrats for Europe (ALDE, center), which are pro-integration and pro-trade, clearly won the elections with a total of 520 seats out of 751.

However, what has everyone talking is the success of eurosceptic parties, especially the United Kingdom Independence Party (UKIP) in Great Britain and the Front National (FN) in France. While the political balance of the new Parliament will not fundamentally change, the newly elected anti-EU MEPs will now count for approximately 20 percent of the seats, and their voices will be louder than ever in Brussels. This has, of course, great implications for the future of the Union, and European leaders will have to draw conclusion from what happened over the weekend. It started last week with the meeting of the European Council. But what do these results mean for the Transatlantic Trade and Investment Partnership (TTIP)?

As far as the eurosceptics are concerned, their positions on TTIP are very different from one country to another: while the French FN or the Five Star Movement in Italy are very outspoken about their opposition to the negotiations and used it as a platform during the campaign, the UKIP has not made any comment on the subject. All in all, we can presume that the new nationalist MEPs won't have a significant impact on the future vote of the agreement especially if they are unable to form a European party¹. However, the citizens sent a clear warning to the European institutions: they don't approve of the way Brussels is working right now. Thus, there is no doubt that the NGOs and groups like the Green Party, which are against TTIP, will push the Commission for even more transparency in order to address the citizens' concerns.

What is needed right now is true leadership from the European Council on this issue. So far, the Member States have let the Commission handle all the criticism from TTIP opponents, especially during the campaign. Pro-TTIP leaders like Angela Merkel, David Cameron, François Hollande or Matteo Renzi must step up to the plate and promote public knowledge – through their own national and European parties – about what is really at stake with the transatlantic agreement: growth and job creation on both sides of the Atlantic.

¹For a party to become a Europarty it must bring together a minimum of 25 MEPs from at least seven Member States. Because of their nationalist tendencies, eurosceptic parties have never been able to agree on creating a Europarty.

Trade History

May 27-28, 1914: Under the auspices of President Woodrow Wilson, U.S. Secretary of Commerce William Redfield and leaders of business and industry convened the first National Foreign Trade Convention in Washington, DC, to generate public dialogue and interest in exporting, plan ways to expand America's export capacity, and recommend government policies beneficial to the promotion of trade and the growth of the American economy.

By unanimous vote at the conclusion of the convention 100 years ago, delegates voted to establish the NFTC as a standing body of trade experts to educate the public and businesses about trade, and to coordinate the policies and trade activities of the U.S. government.

Celebrating the Sanctions Hammer

By Richard Sawaya, Director of USA*Engage, rsawaya@nffc.org

The 10 year anniversary celebration of the Treasury Department's Office of Terrorism and Financial Intelligence (TFI), co-hosted by the Treasury Department and the Center for Strategic and International Studies on June 2, provided an extraordinary view of the role of finance-based economic sanctions in U.S. foreign policy practice. Taken together, the observations of major participants serve notice to the private sector that financial sanctions will persist and multiply in the foreseeable future.

Treasury's first Undersecretary for Terrorist Financing, Stuart Levy, drew a sharp distinction between "old" sanctions – trade embargoes that don't work for a host of oft-stated reasons – and finance-based sanctions innovated under his watch, initially as a tool to combat terrorist finance networks building on anti-narcotics money laundering initiatives. Unlike embargoes, financial sanctions target illicit activity by individuals and other specific entities, with which companies are loath to be associated and therefore become willing and able enforcers of sanctions in order to avoid any reputational damage. Because of the electronic nature of financial transactions, and the centrality of the United States in the global financial system, it is undeniable that sanctions can disrupt targeted transactions and, therefore, "work." Note Levy's assertion that the private sector becomes a partner with skin in the game in the effective implementation of sanctions, an insight he credits to his first boss, Hank Paulson.

Levy offered a caution that the very attractiveness of financial sanctions may lead to overuse and also observed their attractiveness has increased as the appetite and capacity for military force has declined in U.S. foreign policy.

Former Member of Congress (and chair of the House Intelligence Committee) Jane Harman, currently President of the Woodrow Wilson Center, was candid as to the political attractiveness of financial sanctions. Both isolationists and interventionists embrace them as a means to address state and non-state actor malfeasance: armed aggression, nuclear proliferation, human rights abuses, even "corruption." Crediting the U.S.-led multilateral sanctions visited upon Iran with bringing that country to the negotiating table, she inadvertently touched upon the critical difference between sanctions mandated by Congressional legislation and those initiated under Executive Order: She stated that it will take explicit support from Israel (sic) for Congress to repeal sanctions in the event of an agreement between Iran and the P5plus1 – in spite of the fact that the other developed countries currently party to the sanctions would resume trade with Iran in the event of a deal.

George W. Bush National Security Advisor Stephen Hadley and former Obama Advisor Tom Donilon provided cautionary notes about financial sanctions. They agreed that their visibility and quickness and seeming ease of implementation tempt policymakers to mistake them for strategy instead of seeing them as one of many tactics in a strategy. Regarding Iran, they agreed that their necessary multilateral character is predicated on "choose doing business with the U.S. or with Iran" and their durability on increased Saudi production and the homegrown renaissance in U.S. oil production that together filled the supply gap and prevented a world oil price run up that would have otherwise been the blowback from the removal of 1.5 MM barrels a day of Iranian oil from the world market.

Former head of the National Security Agency, Keith Alexander, made a strategic declaration, almost as an aside, to wit: In the event an agreement with Iran is reached, repeal of the sanctions regime would benefit U.S. interests in the region, given the character of the Iranian population.

A dispassionate observer might conclude:

- So long as the dollar remains the world's reserve currency, the political and practical utility of financial sanctions will remain and arguably increase (if they are good for X objective, they are good for X and Y and Z and...).

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Celebrating the Sanctions Hammer

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- This state of affairs is exacerbated by the outcomes of the wars of choice in Iraq and Afghanistan. Military intervention is a non starter, upping the attractiveness of financial sanctions as the automatic response to geo political developments that challenge U.S. policy. In this context, it's an irony of history that, rationally, a rapprochement with Iran, however limited, would be a strategic benefit for the United States.
- First order effectiveness – that is, successful multi-lateralization of financial sanctions either *de facto* or *de jure*, depends in turn on avoiding perturbations in the real global economy.
- Administratively imposed sanctions as part of the conduct of foreign policy are always preferable to legislatively mandated sanctions because the latter can become an impediment to rational strategic decisions by any Administration.

A Warm Welcome To Our New Member Companies

Berry Appleman & Leiden (BAL) is widely respected for resolving the most challenging corporate immigration cases, regardless of volume or complexity. They service clients across a broad spectrum of global industries, from science and technology, to manufacturing and engineering, to energy and financial services, to sports and entertainment. Its law practice includes representation across the United States, and its legal teams prepare and file cases in all regions of the Immigration and Naturalization Service and the Department of Labor. BAL's clients include companies and medical institutions that employ international personnel. The firm specializes in helping clients obtain U.S. visas for employees. The NFTC is proud to have BAL as a member.

Brown-Forman Corporation maintains a portfolio of mid-priced to super-premium brands including such well-known spirits as Jack Daniel's, Canadian Mist, Finlandia, Southern Comfort and Woodford Reserve. Its wine labels include Sonoma-Cutrer and Korbel champagnes. Jack Daniel's is the company's signature brand and is the largest-selling American whiskey in the world (by volume). The founding Brown family, including former chairman Owsley Brown II, controls the company. Brown-Forman is one of the largest American-owned spirits and wine companies and among the top 10 largest global spirits companies, and sells its brands in more than 135 countries. The NFTC is proud to be working with Brown-Forman to meet global demand.

Interpublic Group offers various diversified services, including public relations, meeting and event production, sports and entertainment marketing, corporate and brand identity, and strategic marketing consulting. The Interpublic Group is one of the world's largest advertising and marketing services conglomerates. Its flagship creative agencies bridge the gap between brands and the general public and include McCann Worldgroup, DraftFCB and Lowe & Partners, while such firms as Campbell-Ewald, Deutsch, and Hill, Holliday are leaders in the U.S. advertising business. Interpublic also offers direct marketing, media services and public relations through such agencies as Initiative and Weber Shandwick. Its largest clients include General Motors, Johnson & Johnson, Microsoft and Unilever. The NFTC looks forward to working with the Interpublic Group.

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OECD Holds Public Consultations on BEPS Action Items

By Catherine Schultz, Vice President for Tax Policy, cschultz@nftc.org

On May 15 and 19, the Organization for Economic Cooperation and Development (OECD) held public consultations on discussion drafts issued as part of the Base-Erosion and Profit Shifting (BEPS) project. The May 15 public consultation focused on the two BEPS Action Plan discussion drafts on hybrid mismatch arrangements, which were released on March 19, 2014. The May 19 public consultation focused on the transfer pricing documentation and country-by-country reporting discussion draft released on January 30, 2014.

Hybrid Mismatch Arrangements Consultation

The OECD released two discussion drafts on hybrid mismatch arrangements on March 19, 2014. The OECD drafts followed a 2012 report on hybrid mismatches. The 2012 report concluded that the “collective tax base” of countries is put at risk through taxpayer’s use of hybrid instruments. The OECD BEPS Action Item 2 calls for the development of instruments to neutralize the effects of hybrid mismatch arrangements and tax arbitrage. According to the OECD, the hybrid arrangements risk the global tax base and have a negative impact on competition, efficiency, transparency and fairness.

The first discussion draft recommends domestic law changes, and the second recommends changes to the model tax convention. The recommendations for domestic law changes include a comprehensive discussion of mismatches arising from specific hybrid arrangements. The changes recommended in the model tax convention are designed to prevent hybrid entities from obtaining improper tax treaty benefits. The domestic law changes identified the types of hybrid arrangements considered to be within the scope of BEPS Action Item 2, including:

1. Hybrid financial instruments, defined as arrangements in which a deductible payment made under a financial instrument is not treated as taxable income under the laws of the payee’s jurisdiction.
2. Hybrid entity arrangements, defined as arrangements involving a hybrid entity as a payer, where differences in characterization of the payer result in a deductible payment being disregarded or triggering a second deduction in the other jurisdiction.
3. Reverse hybrids or imported mismatches. These arrangements include those in which payments are made to an intermediary payee that are not taxable on receipt. There are two types of reverse hybrids set out in the discussion draft: a) those in which differences in characterization of the intermediary result in the payment being disregarded in both jurisdictions, and b) those in which the intermediary is party to a separate hybrid arrangement and the payment is set off against a deduction arising under that arrangement.

The drafts say that the effective rules should apply automatically; be coordinated to avoid double taxation; have a minimal disruptive effect on existing domestic laws; be drafted in a clear, simple way to allow easy, consistent application by taxpayers and tax authorities in different jurisdictions; be consistent and flexible enough to be incorporated into each jurisdiction’s domestic laws; minimize compliance costs; and be simple enough for tax administrators to administer. The OECD recommended implementing primary and secondary linking rules. The primary rule would deny the payer a deduction if the income is not taxed as ordinary income in the payee’s jurisdiction. The secondary rule would come into effect and force the inclusion of income in the payee’s jurisdiction if the payer is granted the deduction. The discussion draft says that such a two-step approach would ensure that linking rules would be fairly simple to apply.

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During the May 15 public consultation, the business community commenters generally found the proposals unworkable, and identified specific problems for repos, regulatory capital, widely held funds and collective investment vehicles (CIVs). The discussion draft recommendations for domestic law changes were particularly troubling. In comments submitted on the discussion draft, the NFTC said that the discussion draft does not articulate a clear policy for distinguishing between the effects of hybrid mismatch arrangements and other mismatches caused by differences in domestic tax policy. Hybrid mismatches may well arise from well considered tax and economic policy decisions by each jurisdiction. Additionally, other BEPS Action Items, to be considered as part of the 2015 workstream, will provide recommendations regarding CFC rules and interest deductibility. Depending on the nature of those recommendations, countries may find the issues presented by the hybrid mismatch arrangements to be greatly reduced because of the taxation of such arrangements by investor jurisdictions under CFC rules or the limitation on the deductibility of interest expense in the source jurisdiction. Many other business commenters agreed with the NFTC that the 2015 work on CFC and interest deductibility could affect hybrid arrangements, and that the work should not be finalized in 2014.

Several practitioners at the consultation said that widespread coordination among states would be necessary, and that this coordination could be impossible. Each jurisdiction would have to be well-versed in the tax laws of every other jurisdiction, and trying to determine foreign law for every transaction is unlikely to occur. Laws in one country would be reliant on laws in another country to make this work. Audits would be very difficult. Practitioner also pointed out that the threshold for related party transactions included in the draft was too low (10 percent) and unworkable. A 50 percent or more threshold was recommended. Business requested that the OECD not write rules that are impossible for corporations to comply with.

Country-by-Country Reporting and Transfer Pricing Documentation

The May 19 public consultation on the country-by-country reporting discussion draft started out contentious and never improved. The discussion draft that was released by the OECD on January 30, 2014 was the subject of the consultation. However, a leaked “bootleg” discussion draft that outlined changes recommended by OECD Working Party 6 prior to the consultation was also on the table. Business filed comments to the first discussion draft, and most did not have access to the revised draft prior to the consultation. Those who had seen the revised draft did not have time to update their comments before May 19. The revised draft will not be released to the public.

The country-by-country template set out in the January discussion draft included 17 categories of information that companies would be required to provide to the jurisdictions in which they do business. The revised draft shortened that list to seven items. The revised draft also explained that companies have more flexibility in the sources of data they can use in preparing the country-by-country (CbC) report, and can either use top-down or bottom-up data. Companies welcomed the flexibility and the limit in the amount of information that could be required to be filed. Business commenters all pointed out that the country-by-country reporting was designed as a risk assessment tool, and that it should not be used for transfer pricing. The scope of the information being requested far exceeds what is necessary for high-level risk assessment. The NGOs pointed out that the BEPS project originated because of the public perception that multinational corporations are not paying “their fair share” of taxes. Business disagreed with the NGOs on this point. A project that is supposed to provide tax auditors with the tools to perform high-level risk assessments is not best suited to the tax of improving public trust in multinationals.

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Business was united in requesting that the information requested under the country-by-country reporting template be filed at the parent company level, and only exchanged by governments under tax treaty exchange of information provisions. This would ensure that the information being exchanged would be kept confidential. The NGOs and many of the governments present at the Working Party 6 public consultation disagreed with this approach. The NGOs believe that all of the information reported by companies under the CbC template should be made public. They do not believe that the requested information is proprietary, nor would it be detrimental to corporations if all of this information was made public. Full disclosure of multinational tax information is needed to assuage the public's concerns. They also said that the use of tax treaty provisions would work against the interest of developing countries who have few bilateral tax treaties. Business pointed out that the use of multilateral conventions would open up the tax treaty exchange of information provisions to any country who agreed to sign onto the convention. The NGOs insisted that the information be made public so that business could be held accountable. The business community, including the NFTC, strongly disagreed with this position. Public disclosure is not necessary for tax administrations to have appropriate data and tools to best allocate transfer pricing resources. The only way to ensure that the information being received by a government is kept confidential, is to have the exchange done on a government to government basis. Since the Working Party has agreed to allow business flexibility in the reporting standards, all information reported may not be identical across all corporations. The release of this information could affect companies' transactions, competitive positions, and could easily be misconstrued. The discussion as to whether the CbC report should be kept confidential or made public was not resolvable in the public consultation.

The transfer pricing documentation discussion draft included information that must be reported in both the Master File and Local File. The Master File is supposed to provide a "big picture," and the Local File is supposed to provide jurisdiction-specific information. The information requested in the discussion draft far exceeds the information currently being required by any jurisdiction. The NFTC recommended that the Master File be limited to basic information regarding a business's operations and transfer pricing policies relevant to all jurisdictions in which the business operates. This should be information normally generated or prepared in the ordinary course of business, such as consolidated financial statements. The NFTC objected to the criteria that could be subjectively interpreted such as "important drivers of business profit," "principal contributions to value creation," and "important business restructuring transactions." The NFTC also requested that the Master File information only be made available to requesting countries pursuant to the tax treaty information exchange agreements.

The debate in the public consultation on the Master File and the Local File centered almost exclusively on the language requirement for the Local File report. The Master File may be filed in English, and the discussion draft specified that the Local File be filed in the local jurisdictions' language. The business community said that local jurisdictions can currently request information in their home language, and that business works to comply with this. If penalties are going to be incurred under the new Master and Local File requirements, then all reports should be initially filed in English to meet the filing deadlines, and then translated into the local language at the request of the local jurisdiction. The question of which language should be used to file the Local File information brought out tensions between tax authorities, NGOs and business. Many tax authorities said that not all of their tax administrations understand English, and that even reading the OECD discussion drafts was difficult for them. Business explained that translating tax documents into many languages would be costly, and could take a great deal of time.

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NGOs do not believe it would be more costly for business to comply with different language requirements, since they do business in the local language in their operations. Business explained that resources used to pay for improved information reporting systems would no longer be available for research and development, payroll or for shareholder dividends. There was also a disagreement over whether less developed countries have the ability to process the large amount of information that business is being requested to provide. An overload of information leaves governments no better off than under the current system, at a high cost to business.

Next Steps

The OECD Working Parties responsible for the BEPS Action Items must make their recommendations to the OECD Committee on Fiscal Affairs (CFA). The CFA will put together a report based on the Working Party recommendations and it will be presented to the G-20 Finance Ministers at a meeting in Cairns, Australia, on September 20-21. Once the Finance Ministers accept the report, it will be presented to the leaders of the G-20 at their meeting in Brisbane, Australia, in November. The OECD BEPS work will continue and a draft discussion document is expected to be reported out of Working Party 6 in December 2014 on transfer pricing risk recharacterization and capitalization as part of the on-going intangibles work. There are several Action Items that are on the agenda for the 2015 work:

September 2015

- Recommendations regarding the design of domestic rules to strengthen Controlled Foreign Companies (CFC) Rules (Action 3);
- Recommendations regarding the design of domestic rules to limit base erosion via interest deductions and other financial payments (Action 4);
- Strategy to expand participation to non-OECD members to counter harmful tax practices more effectively (Action 5);
- Tax treaty measures to prevent the artificial avoidance of permanent establishment status (Action 7);
- Changes to the transfer pricing rules in relation to risks and capital, and other high-risk transactions (Actions 9 and 10);
- Recommendations regarding data on BEPS to be collected and methodologies to analyze them (Action 11);
- Recommendations regarding the design of domestic rules to require taxpayers to disclose their aggressive tax planning arrangements (Action 12);
- Tax treaty measures to make dispute resolution mechanisms more effective (Action 14); and for December 2015 in the following areas:
 - Changes to the transfer pricing rules to limit base erosion via interest deductions and other financial payments (Action 4);
 - Revision of existing criteria to counter harmful tax practices more effectively (Action 5); and
 - The development of a multilateral instrument (Action 15).

Global Innovation Forum

NFTC's Global Innovation Forum Partners with LivingSocial to Discuss Global Startups

By Jake Colvin, Executive Director, Global Innovation Forum @ NFTC, jcolvin@nftc.org

On May 1, the Global Innovation Forum @ NFTC (GIF) held a forum at LivingSocial in Washington, DC, about how entrepreneurs are engaging in the international marketplace thanks to Internet-enabled technologies.

The event, held in partnership with NFTC members eBay Inc. and Intuit, along with Tech Cocktail and ideospace DC, explored issues from the importance of localizing your product offerings and salesforce to the challenges of being able to move talent internationally to support the needs of startups.

Devin Wenig, President of eBay Marketplaces, and Jen Consalvo, Chief Operating Officer of Tech Cocktail, kicked off the forum. Their remarks were followed by a discussion featuring globally minded startups – Laura Kennedy, LivingSocial; Kavita Shukla, CEO of Columbia, Maryland-based Fenugreen; and Pranav Vora, founder of Georgetown-based online menswear label Hugh & Crye – with Usman Ahmed of eBay Inc. and Lindsey Grossman of Intuit.



(L-R) Lindsey Grossman, Intuit; Pranav Vora, Hugh & Crye; Kavita Shukla, Fenugreen; Laura Kennedy, LivingSocial; Usman Ahmed, eBay Inc.; Jake Colvin, Global Innovation Forum; and Devin Wenig, President, eBay Global Marketplaces;

The GIF's May 1 forum was held in support of a May 2 Startup Global Design Workshop hosted by the White House Business Council in partnership with Business Forward, Intuit, 1776 and the National Foreign Trade Council. The May 2 workshop was an opportunity for stakeholders in the startup community to engage with senior White House and Administration officials on ensuring that American startups have knowledge of, access to and can benefit from international opportunities.

Several key themes emerged from the discussion, including the dramatic impact of technology on global trade, the importance of diversifying exports, the rapid growth of mobile and challenges startups face in foreign markets.

"We never imagined and never set out to be a global startup, but then we started to find all of these tools ... from BigCommerce to QuickBooks to UPS Mail Innovations," observed Kavita Shukla of Fenugreen. "Within a year, we were exporting to around 40 countries."

Trade History

June 12, 1934: The U.S. Congress enacted the Reciprocal Trade Agreements Act, granting the President authority to negotiate and approve tariff-cutting agreements and bilateral trade agreements. The NFTC supported the Reciprocal Trade Agreements Act because it gave the President a mechanism to mitigate some of the damage of the Smoot-Hawley Tariff Act by jump-starting the U.S. and global economies mired in the Great Depression. Driven by the Depression, this Act represented a historic shift in U.S. trade policy away from high tariffs and towards more global engagement.

News for Our Members

2014 NYC Annual International Human Resource Management Conference Set for - July 15-16, 2014

By Bill Sheridan, Vice President for International Human Resources, wsheridan@nftc.org

The NFTC Foundation is hosting its Annual International Human Resources Management Conference on July 15-16, 2014, at the New York Athletic Club in New York City. This year's conference, "*Global Talent Management: Attraction, Development, and Deployment*," will focus on the challenges facing multi-national enterprises, especially in emerging or "frontier" markets in getting the right talent in place in an expedient and compliant manner. In addition to subject matter experts from: Cartus, Dean Foster Associates, Fragomen Worldwide, the NFTC, PricewaterhouseCoopers, World Trade Resource and Zurich Insurance, the faculty will include subject matter experts from:

- Advanced Micro Devices (AMD)
- The Atlantic Council
- BASF
- Corning
- Ford Motor Company
- GeoBlue
- Globus (Ghana)
- Honeywell
- International Flavors & Fragrances (IFF)
- Northrup Grumman
- Novartis
- Saint-Gobain
- Xylem
- And other corporations to be announced

Some of the topics on the Agenda are:

- Global Talent Management-The CEO's Perspectives
- Cyber Risks, Shocks and Resilience
- Immigration and Tax Compliance
- Healthcare Delivery Via Mobile Technology
- Meeting the Cultural Challenges of Working in Emerging Markets
- Best Practices in Global Mobility
- Global Relocation trends and Issues

For information on the Agenda and to register for the forum go to www.nftc.org and the Calendar of Events for July 15-16, 2014.

A Warm Welcome To Our New Member Companies

(Continued from page 7)

Littler Mendelson, P.C. is the largest global employment and labor law practice with more than 1,000 attorneys in over 60 offices worldwide. Littler represents management in all aspects of employment and labor law and serves as a single source solution provider to the global employer community. Consistently recognized in the industry as a leading and innovative law practice, Littler has been litigating, mediating and negotiating some of the most influential employment law cases and labor contracts on record for over 70 years. Littler is the collective trade name for an international legal practice, the practicing entities of which are separate and distinct professional firms. The NFTC looks forward to working with this firm to serve the global community.

Moore Stephens Retirement Solutions Limited is a leader in retirement preparation for employers and is a part of one of the world's major accounting and consulting networks. MSRS offers a range of solutions to help multinational employers provide appropriate retirement benefits to their globally mobile employees. They also provide personal plans for expatriates, providing a portable solution particularly suitable for mobile contractors or mobile employees on fixed term assignments. They manage the plans of many international organizations from a variety of business sectors including, oil and gas exploration, financial services and banks, hotel and leisure, and also from the global charitable sector. The NFTC is proud to work with MSRS to provide financial planning for firms throughout the world.

Centennial Celebration News

World Trade Month

By: James Wilkinson, Vice President for Strategy and Growth, jwilkinson@nftc.org

Our year-long Centennial Celebration continued during May with our month-long observance of International Trade Month, capped off by our Centennial birthday party at the National Archives building.

The NFTC was headquartered in New York City for most of our 100 years, so it's only fitting that in our centennial year the organization World Trade Week NYC recognized our work for the nation's exporters, especially our International Human Resources team's significant contributions to the growth of international trade in the tri-state area, with the 2014 Global Trade Award. On May 12, NFTC Vice President for International Human Resources Services Bill Sheridan accepted the award on behalf of the NFTC at the sold-out awards breakfast at Baruch College.



GLOBAL TRADE AWARD presented to Bill Sheridan, Vice President International Human Resources Services, NFTC by Nancy Ploeger, President, Manhattan Chamber of Commerce, NY District Export Council, WTW NYC Liaison.

Later that day, Bill joined fellow NFTC Vice Presidents Grace O'Rourke and James Wilkinson at a luncheon with the Board of Governors of India House in the New York financial district. India House was home to the NFTC for our first 20 years, and the organizations shared U.S. Steel CEO James Farrell as President until his death in 1943. In fact, his great-grandson John Lowman is now President of India House, and re-connecting the organizations during our mutual centennial year of 2014 is a priority of both organizations.

On Wednesday, May 14, NFTC President Bill Reinsch was in New York for a special half day conference at Bloomberg Headquarters on "The Politics of Global Trade." The NFTC co-sponsored this ambitious program, which featured USTR Mike Froman, former USTR Sue Schwab, NFTC Board Member Bill Lane (Caterpillar) and member Rick Johnston (Citigroup).

Bill Reinsch spoke about the politics surrounding TPA in the context of the two major ongoing trade negotiations, TPP and TTIP. The event was carried live on Bloomberg on its terminals worldwide and via its multiple streaming websites, reaching a potential worldwide audience of over 350,000.

Thursday, May 22, was the Maryland DEC Celebration of International Trade in Baltimore, MD, where Vice President James Wilkinson and intern Molly Morales represented the NFTC at sessions on exporting services and manufactured goods, trade finance and other related topics. Co-sponsoring along with the NFTC was NFTB Board Member Company McCormick, and the plenary address was delivered by Laura Lane of Board Member Company UPS.



Ambassador Alan Wolff, NFTC Chairman at 100th Birthday Reception.



Bill Reinsch, NFTC President; Frank Kittredge, Former NFTC President; and current and past NFTC team members.

Centennial Celebration News

Save the Dates!

- **July 9, 2014** - NFTC Tax Lunch Forum – Speaker: TBA - Washington, DC
- **July 9-10, 2014** - NFTC Board of Directors Meeting – Baltimore, MD
- **July 15-16, 2014** - Annual International Human Resources Forum – New York City
- **September 23-25, 2014** - Expatriate Management Committee – Dearborn, MI (*By invitation*)
- **October 16-17, 2014** - NFTC Fall Tax Committee Meeting – Washington, DC
- **October 16, 2014** - International Benefits Committee – New York City (*By invitation*)
- **November 5, 2014** - NFTC Tax Lunch Forum – Speaker: TBA - Washington, DC
- **November 13, 2014** - International Compensation & Benefits Committee – Houston, TX (*By invitation*)
- **December 3, 2014** - NFTC Tax Lunch Forum – Speaker: TBA - Washington, DC
- **December 3, 2014** - World Trade Dinner and Award Ceremony – Centennial Celebration - Washington, DC



Timothy Carmody; President Woodrow Wilson in Person; and Gala Host and NFTC board member Joann Piccolo of TE Connectivity.

Additional events and dates will be announced as they are confirmed.

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!

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

This issue of Council Highlights brought to you
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NATIONAL FOREIGN TRADE COUNCIL

"SERVING AMERICA'S INTERNATIONAL BUSINESSES SINCE 1914"

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
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