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.

Celebrating a New Century 1914-2014 NFTC National Foreign Trade Council

August-September 2014
Vol 14, Issue 4

View from the NFTC Chair

One of the most universal cravings of our time is a hunger for compelling and creative leadership

By Alan Wm. Wolff, NFTC Chairman

This quotation is the opening line of James Macgregor Burns' seminal work, titled "Leadership." One is reminded of Burns and the subject he devoted much of his life to by the obituaries printed about him just a few weeks ago. It is a timely topic, certainly with various geopolitical crises dominating the headlines, and on a smaller but still very important stage, the world of trade negotiations. As to the former, Gaza and Ukraine is causing a look over the shoulder from the Administration despite its pivot to Asia, as well as key voices in the Republican opposition charging that there is a current lack of leadership from the White House. The underlying assumption is that the United States is still "the one indispensable nation," a position from which it cannot distance itself.

In the sphere of trade negotiations, individual and national leadership – not just circumstances – still matter. I was present when each of two USTRs (then called STRs as they were Special Trade Representatives) changed reality in a room where stasis had ruled. One of these STRs was a Republican, Bill Eberle, the other a Democrat, Bob Strauss. Eberle had been a CEO of a major American company, American Standard, and could and did extract from a fractious and seemingly intractable body of GATT "contracting parties" a degree of consensus for moving negotiations forward. Strauss had been Chairman of the Democratic National Committee and was unequalled in his ability to sense where a deal could be had, manipulating individuals into coming along and liking the result, and somewhat fantastically, him. He operated best in smaller rooms with principals. He was tough, outrageous, humorous, and, remarkably sensitive to the fundamental needs of our major negotiating partners, or put another way, their ability to deliver on the deal struck. Both through force of personality, their leadership, could and did change outcomes.

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NFTC Holds Annual Strategic Global Workforce Management Forum

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

The National Foreign Trade Council (NFTC) Foundation held its annual International Human Resources forum on July 15-16, 2014, at the New York Athletic Club with more than 150 participants. This year's theme was "*Global Talent Management: Attraction, Development and Deployment.*"

The opening session was led by Eileen Mullaney, Scott Olsen and Bhushan Sethi of PricewaterhouseCoopers (PwC) and was centered on the results of the company's annual survey on the perspectives of chief executive officers regarding global enterprise talent needs and development. This session set the stage for other parts of the forum.

Jason Healey, Director-Cyber Statecraft Initiative at the Atlantic Council, presented on "*Beyond Data Breaches: Global Interconnections of Cyber Risk,*" and shared his corporate cyber-risk management experiences with a major financial services firm. He recapped ways to reduce enterprise risk through better internal controls as well as with external parties that have access to business and personnel data.

As usual, the forum faculty included subject matter experts on a wide range of process, policy, compliance and emerging market topics with emphasis on corporate issues and experiences. In addition to speakers from Cartus, Dean Foster Associates, Fragomen Worldwide, NetExpat, PwC, Worldtrade Resource and Zurich Insurance there were panelists from: AIA, AIG, AMD, BASF, Bloomberg, Bunge, Citi, Corning, Ford Motor Company, GeoBlue, the Global Innovation Forum, Globus, IFF, Mastercard, Northrup Grumman, Novartis, Severn Trent Services, TD Bank and Xylem.

On March 25-26, 2015, the NFTC will host its annual International Human Resources Forum in Houston, TX. More information will follow in the fall.

News for Our Members

A Word From the President

By Bill Reinsch, NFTC President

Earlier this month I delivered the closing speech to the 182nd annual convention of my fraternity, Alpha Delta Phi. I thought you might be interested in what I'm thinking about these days, so the speech follows, minus some specific local references, which, unfortunately for you readers, were the funny parts.

"…All my comments begin with community. We are all part of groups that are larger than us – family, school, job, religion, ethnic group, country, and, of course, fraternity. Those bonds can be strong or weak but they are bonds nonetheless, and they define us as human beings.

"They give us context. Sometimes they hold us back by tying us to lifestyles that are not healthy, cultural traditions that resist progress, or politics more suited to the past than the present. At various times in their history fraternities have been accused of all those things, and the challenge we collectively face is rising above the stereotypes and demonstrating the value of the institution. I think Alpha Delta Phi can be proud of its record of doing that from its earliest days up to the present, but past success counts for very little going forward, and we must continue to face these challenges directly.

"And, as we all know, our 'earliest days' were a long time ago. Many of you, and hopefully me, will be around when we celebrate our 200th anniversary in 2032 – and while the fraternity's values are eternal, the environment in which they exist has changed remarkably – and very quickly.

"The main change is that advances in technology have produced a world that is flatter, faster, and closer together. Two hundred years ago, most people never got more than 50 miles from where they were born. Today, we fly to London or Paris for the weekend, vacation in Southeast Asia or Antarctica. In my business, which is trade, I illustrate this by pointing out that more than half the cut flowers sold in this country every day are imported from overseas, which would have been unthinkable and impossible 50 years ago. There is a company in North Carolina that catches flounder off the Atlantic Coast and sells it fresh every day in Tokyo.

"When I was growing up, air mail was fast. Overseas phone calls were rare, expensive, and operator arranged. Today, air mail is snail mail, and I'm surprised I haven't heard any cell phones ringing out there; although, I can see many of you surreptitiously checking your texts and emails. If you are a college freshman today, you may never have used or even seen a record player or 8 track, a black and white TV, or a typewriter – things that were routine for my generation but novel for my grandparents. You don't remember life without voicemail, microwaves or Netflix.

"Fortunately, most Americans have been good at change. From the original settlers crossing the Atlantic, to the pioneers who first crossed the Appalachians, to the homesteaders of the Great Plains and the gold miners of California, Americans have sought out the new, the dangerous, the untried, untested, and unexplored the great wide open, to quote Tom Petty. Some of you may remember studying Frederick Jackson Turner's Frontier Thesis as an integral part of America's growth to transcontinental nationhood in the 19th century, and it was no accident that John F. Kennedy, who challenged my generation to lives of public service, defined his administration as the 'New Frontier.'

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A Word From the President

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“At a more prosaic level this is captured in a famous cartoon that defined the 60s – the bearded, long haired hitchhiker at the side of the road holding up a sign that says only, ‘Farther.’

“Whether we know it or not, whether we like it or not, the frontier is part of us, whether your ancestors were those pilgrims, homesteaders or gold miners, or whether they were farmers in Ireland, Vietnam, Mexico, or Central America, refugees from the wars that plagued Europe, or slaves brought here from Africa. In all these circumstances, America has opened its doors, if not its arms, and taken in the huddled masses so eloquently described by Emma Lazarus. But those masses are not ‘them’ in some other part of town, they are "us" pure and simple, and they are part of the larger community we all belong to – the nation.

“Who has gained from this unprecedented policy of acceptance? Not only the individuals, but the nation. For it is the strong that have sought to come here, the strong that have survived the travails of getting here, the strong that prevailed once they arrived, and the strong who sought out our physical and social frontiers and proceeded to tame them one by one in a process that continues to this day. America is stronger and more prosperous as a result, and it is all of us who can take pride in what we and our forebears have accomplished. But not everyone has benefitted.

“Today’s frontiers are different. In the beginning, the great wide open was literal untilled fields, grassy plains. Now, as the physical frontier is swallowed up by roads, bridges, and airports, we have moved to new depths and heights to explore the oceans and reach for the stars, literally and figuratively. Today's frontiers lie in the laboratory, the computer and the human mind. The frontiers of knowledge and the challenge of pushing back boundaries to advance the state of humankind.

“Our challenge is to tackle those new frontiers with the same energy, imagination, and persistence of our forebears. But the speed, scope and complexity of these changes threaten to unravel our society. They make people nervous. About their future. About the world’s future. Economically, people feel that their lives may spin out of control. Today’s good job and good salary is next week’s victim of downsizing or offshoring. As the treadmill moves faster, more and more people worry about being thrown off. Where is the psychic, as well as financial, safety net? Does the virtual company provide anything beyond virtual benefits?

“Socially, defenders of traditional order feel under attack. Controversies over gay marriage, gun rights, abortion, immigration and other hot-button issues divide our polity. Deep philosophical differences over the proper role of government also divide us. The Tea Party would reduce the role of government in ways that would make our society very different. The left would expand government to address the growing problem of income inequality. The flavor of our frustration is caught by travel writer Paul Theroux, writing in this month's "Smithsonian," who tells of his visit to a gun show in Natchez, MS.

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News for Our Members

A Word From the President

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"'It was not about guns. Not about ammo, not about knives....these men felt beleaguered – weakened, their backs to the wall....The gun show was the one place where they could regroup and be themselves....The gun show wasn't about guns...it was about the self-respect of men – white men, mainly, making a symbolic last stand.'

"Meanwhile, the 24-7 media cycle, instant opinions via Twitter, Facebook, and other social media coarsen the tone of our public debate and encourage us to rush to judgment via clever sound bites rather than engaging in thoughtful discourse. In the cacophony, we risk losing sight of the questions that are fundamental to our democracy, the ones we must ask of societies as much as individuals.

- Are we giving those left behind in this new economy the tools they need to survive?
- Are we preventing the exploitation of children and other defenseless people?
- Are we preserving the environment for our children and grandchildren?
- Are we maintaining institutions that will protect due process and the rule of law?

"These are the questions our government and our society should wrestle with. If technology and globalization are not leading to better lives for the world's peoples; if those promoting them argue that better lives are not their responsibility; if government argues that it has no duty to prevent global economic integration from causing social disintegration; then the people's confidence in government and democratic institutions will inevitably erode.

"And that is important. We need our institutions to lead us to answers that heal the divisions in our society. If we cannot get them right, we risk having nothing left to guide and manage the changes we face.

"Unfortunately, our institutions are failing us. Congress and the President are locked in mortal combat neither can decisively win. Congress is bitterly divided not only along partisan lines but on philosophical lines within parties. 'Compromise,' which was thoroughly embedded in our system of government by the Founding Fathers, has become a four letter word, and the bonds of civility that normally tie us together are badly frayed – at just the moment when our country faces great challenges from both inside and outside.

"No doubt there are solutions to these problems, but discovering them will take more time than we have tonight, and implementing them will require the good will and spirit of compromise that is presently lacking.

"Instead, I will close by simply reminding all of us that despite our politicians' frequent use of the term 'American exceptionalism,' democracy is a fragile commodity, and it takes hard work to maintain it, even here. There is no guarantee that the sun will always shine on America. No one made this point more eloquently than the late Senator

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A Word From the President

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

"Sen. Moynihan meant this as a plea for our best to devote their lives to public service, and I endorse that. Government is as good as its people. If we give it our best, it will return its best. But those who choose a different path are not off the hook. Their job is to demand the best, to insist that our politicians and institutions deliver on their promises and to hold them accountable when they do not. And our job is to vigorously defend our institutions because they are in peril. We can disagree about what government should do on a given matter, but we should not undermine its ability to do what the majority has decided. One way we prevent that is by participating in the political process, which begins with voting. The fact that voter turnout so far this year is at historic lows shows the challenge we face.

"Circling back to the beginning, what does this have to do with the Alpha Delta Phi? Because you understand better than most the importance of community – the ties that bind us together and the mutual respect and collegiality that are the foundation of a civilized community just as much as they are of the fraternity. So, the lesson is simple. Because we are part of the Alpha Delta Phil community, we should understand how to be responsible members of our larger community as well, and we can use that understanding to build not only a stronger fraternity but a stronger nation."

"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.

Trade History

August 23, 1988: The Omnibus Foreign Trade and Competitiveness Act of 1988, four years in the making, was signed into law by President Reagan. Among other provisions the Omnibus Act renewed Fast Track Authority and Super 301. The NFTC, on behalf of its member companies, recommended several items ultimately included in the final bill, including enhanced market access for U.S. industry, maximum flexibility for the president in GATT negotiations and increased protection for intellectual property.

View from the NFTC Chair

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From the descriptions of several participants, leadership was in evidence in Bali, on the part notably of the new WTO Director General Roberto Azevedo and U.S. Ambassadors Froman and Punke, netting the potential live birth of a major trade agreement on trade facilitation from a body of stalled Doha negotiations that had shown few signs of life. While that story has not concluded, the focus among 12 participants in the Trans-Pacific Partnership (TPP) negotiations has moved substantially to when the TPP might conclude and to the level of commitment that can be attained.

How do the negotiating partners get from here, the work on finalization of the texts of the agreement by the Chief Negotiators, to the best possible conclusion? In the final analysis this will rest on three “trade ministers” (Amari, Fast and Froman) delivering their principals – Japanese Prime Minister Abe, Canadian Prime Minister Harper and U.S. President Obama. None is in a position to move alone. Japan’s position is that it has done all that it can do on agriculture (at least for the present) and, disturbingly, there are key Japanese voices that say that no more is necessary. The argument they make is that the United States is preserving its areas of sensitivity – e.g., coastal trade, sub-central government procurement, sugar, and protection for textiles and apparel, dairy and footwear – so Japan is just following suit. Prime Minister Harper is no doubt comfortable not doing anything much on poultry, eggs and dairy market liberalization before standing for election which must occur by fall 2015, but could occur early next year. Prime Minister Abe had been back-pedaling on his third arrow of Abenomics – economic growth through reform and liberalization (seen abroad as an opportunity for Japan to lower dramatically protection contained in some 600 tariff lines covering five “sacred” agricultural products).

After meeting with New Zealand Prime Minister Key, President Obama has called for a conclusion to TPP by the November APEC leaders meeting, but has not indicated what the United States would put on the table that would satisfy others: as of this writing, reportedly nothing on sugar and very little on apparel liberalization. A key question is whether a major deal comes together at the end of this year, or shortly thereafter. And if not then, when? Voices in Congress, more than abroad, suggest that Trade Promotion Authority must be passed first, before TPP is concluded, and Mr. Camp wants to see this legislation move forward on his watch, meaning the end of this year.

Coming into office, Woodrow Wilson, the American President that in effect called the NFTC into being 100 years ago, made trade (lowering tariffs) his number one priority, a goal he achieved early in his first term. Seven years later, his top priority was putting into place an effective League of Nations. Abroad, he showed himself to be both a visionary and practical, cutting deals and using American leverage to obtain his central objective. At home, he could not obtain majority Congressional support. There are a number of lessons in this for TPP (to be addressed in detail later). In the end game, President Obama must find a path to obtaining a maximum result, and then come back and obtain the blessing of Congress. It is a tall order. I believe that it is doable, but he will need our help.

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.

Step Up the Pace of U.S.-China BIT talks

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

Bilateral Investment Treaty (BIT) negotiations between the United States and China were launched back in 2008 at what was then called the Strategic Economic Dialogue. After 13 rounds of relatively unproductive talks, the two sides got down to serious business early this year. Now that the United States and China are about to take up the key issue of the Chinese negative list, negotiators should make a major effort to accelerate progress. Why? Because it's in the U.S. interest that China resist mercantilist restrictions on FDI and because China is rapidly increasing its investment in the United States. According to a recent report by the Rhodium Group and the U.S. Chamber of Commerce, "after 5 years of rapid growth, Chinese annual FDI in the U.S. now exceeds FDI by U.S. companies into China." The result is that by MOFCOM's account the Chinese stock of FDI in the United States rose from $1.9 billion in 2007 to $14 billion in 2013. By comparison the growth of the U.S. FDI stock in China of $70 billion is not growing. UNCTAD's 2014 World Investment Report predicts that China's global investment outflows will surpass its inflows in two to three years.

The most important goals of a successful BIT negotiation are to help China rebalance its economy by opening its service sector to more foreign investment, address cybersecurity threats to U.S. companies, keep China's market open to FDI by minimizing its negative list and assure greater compliance by Chinese companies with international norms. Given this significant increase in Chinese FDI in the U.S., the BIT should ensure that the U.S. screening process does not expand beyond national security criteria to include economic "net benefits" as Canada and Australia do.

A successful U.S.-China BIT would also restore momentum to the U.S. BIT program. Of the 41 U.S. BITs currently in force, the vast majority were negotiated in the 1990s. The treaty with Rwanda was signed in 2008 and came into force in January 2012 just before the new model BIT was released. None have been signed since then. Meanwhile other countries have been busy negotiating BITs including China, which has over 80 in force with more in the pipeline. This is important for two reasons. First, ever since the failure of the Multilateral Agreement on Investment in 1998, it has been clear that, unlike trade under the WTO, rules governing FDI are unlikely to be covered by an international treaty. Secondly, in 2013 for the first time since the financial crisis, global FDI flows grew by 9 percent with growth expected to accelerate, especially private equity FDI. China now ranks second to the United States as a recipient of FDI and third, behind the United States and Japan in outbound FDI.

Some have argued that the fact that China is the recipient and source of so much FDI in the absence of a BIT with the United States only shows that a treaty is not needed. On the contrary, the relationship is beset with numerous problems that a treaty could ameliorate. Rules governing intellectual property theft, especially cyber theft, state-owned enterprises and digital commerce, especially forced-localization of facilities engage in cross-border data flow, lead the list of serious problems that would be ameliorated by a BIT.

There are reasons to be optimistic. On the eve of the annual meeting of the Strategic and Economic Dialogue, Ambassador Baucus said that concluding a BIT is his highest priority and Zhan Xiaoning, China's representative to UNCTAD, said "China needs to engage in the building of higher global investment rules through participating in high-standard bilateral regional and multilateral investment pact talks."

We've Moved: NFTC Relocates New York Office

Effective immediately the National Foreign Trade Council, International Human Resources team, located in New York, has relocated to **60 East 42nd Street, Suite 1136, New York, NY 10165-0015**. The telephone number remains at 212-399-7128 as does the fax number 212-399-7144. If you have any questions please feel free to direct them to Sandra Rodriguez at srodriguez@nftc.org.

In Geneva, NFTC Helps Launch Business Support for Environmental Goods Agreement

By Jake Colvin, Vice President, Global Trade Issues, jcolvin@nftc.org

NFTC staff traveled to Geneva the week of July 7 with member companies and other global business associations to support the launch by the United States, China, the European Union and other trading partners of a process to eliminate tariffs on green technologies as a means to encourage their development and use.

In Geneva, Jake Colvin of NFTC moderated a global business discussion featuring representatives from Asia, Europe and the Americas, who outlined their priorities for an environmental goods agreement. He also spoke a panel discussion hosted by the International Centre for Trade and Sustainable Development.

In addition, more than 40 associations, representing economies from Canada to Singapore to South Africa, released a letter that calls for trade officials to negotiate swiftly an ambitious agreement to eliminate tariffs on a broad set of green goods.

NFTC, along with the National Association of Manufactures and United States Council for International Business also launched the Coalition for Green Trade, whose purpose is to align U.S. business interests and support the swift conclusion of an ambitious environmental goods agreement.

At the launch, participating countries framed the effort as a unique opportunity to improve economic and environmental outcomes. While cutting tariffs is normally seen as painful, as Costa Rica's Ambassador to the WTO Ronald Saborio Soto observed, this agreement provides a platform for developing countries to facilitate the deployment of clean technologies.

“We see this as a win-win exercise,” said Ambassador Saborio, adding, “We approach other developing countries and try to explain that this is something that can be done by any country. It's for our own good that we do it.”

While the launch was successful, now the hard work begins. Negotiators plan to meet throughout the rest of the year and into 2015 to establish a list of products that will be subject to tariff elimination. NFTC has provided a submission to the U.S. government of products that its members have indicated should be included, and will continue to work with its members, other business associations and U.S. officials to advocate for its members' priorities.

Global Compensation Seminar: Dearborn, Michigan, August 20, 2014

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

Once again the NFTC co-hosted a seminar in Dearborn, MI, with the American Society of Employers (ASE). This year’s program focused on developing and managing global compensation programs. The agenda included sessions on strategy development and management, global equity awards, understanding how host country employment and labor laws interact with compensation programs, data sources, tax compliance and management, and corporate case studies. There were subject matter experts from KPMG, AIRINC, Littler Mendelson, Ford Motor Company, the NFTC, Towers Watson and Yazaki USA.

Re-Thinking Economic Sanctions

*By Richard Sawaya, Vice President, USA*Engage, rsawaya@nftc.org*

Against a backdrop of escalating violence in eastern Ukraine, the principal U.S. policy response has heretofore been to target Russian individuals and firms – from the chairman of the State Duma to a Russian company that makes mineral water and soft drinks.

How effective these measures have been so far is difficult to gauge. But at least the policy hasn't yet resulted in a significant adverse impact to the U.S. economy. Unfortunately, a plan currently being considered by the White House to launch a new wave of "sectoral" sanctions, and perhaps even do so unilaterally, has the potential to do just that – doing lots to block U.S. companies from competing in international markets, while doing very little to impact or influence Russia's current activities.

Given the much greater degree of trade and investment among and between Russia and many European countries, E.U. members have been notably reticent to adopt a more adversarial stance with respect to sanctions. Predictably, U.S. editorial writers and lawmakers have called for the United States to proceed with sanctions even on a unilateral basis, notwithstanding the long history of major investment by U.S. companies across the Russian economy and the admission of Russia into the WTO.

The stubborn fact is that unilateral U.S. sanctions targeting key sectors of the Russian economy – energy, defense, and banking – would only result in the replacement of U.S. companies in the Russian economy by non-U.S. global competitors, to the detriment of U.S. commerce and employment. Moreover, as sanctions are deemed by their objects as an act of aggression, they will invite response that has the potential to further destabilize the situation.

If all you have is a hammer, the saying goes, everything tends to look like a nail. U.S. dominance over the global financial system has made sanctions the U.S. hammer; inevitably, those damaged by its blows will search for means to change that status quo. More broadly, even when sanctions are multilateral, they are premised on the assumption that their presumed tactical success trumps the rules-based global trading system. Perhaps it is time to put aside the hammer in the strategic interest of strengthening and expanding the trading system, rather than making holes in it.

Given the realities of Russia's place in the global economy, as well as the realities within and around Ukraine, would it not be in the U.S. national interest to work with the E.U. in support of Ukrainian economic renewal by, among other means, reaching a modus vivendi with Russia and by doing no further harm to the rules-based global trading system?

The United States has embarked upon ambitious trade negotiations with Asian countries (the Trans-Pacific Partnership) and with the E.U. (the Transatlantic Trade and Investment Partnership). By their nature, economic sanctions depart from the principle of free trade among sovereign states. Would it not make strategic sense for the United States to abjure the sanctions hammer?

Such an act would send an unmistakable message that the United States means what it says about the benefits of global trade – not only as a tool of shared economic growth, but of diplomacy and geopolitics. After the years of military and financial misadventures following 9/11, perhaps it is time to wipe the foreign relations playbook clean and recalibrate what are U.S. strategic national interests.

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Re-Thinking Economic Sanctions

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One can fairly conclude the argument has no traction at this juncture in the U.S. foreign policy playbook. Indeed, the Treasury Department recently celebrated the 10 years of sanctions policy and practice that has been memorialized in Juan Zuarate's book, "Treasury's War: The Unleashing of a New Era of Financial Warfare."

It's one thing to assert that the costs of sanctions – to the U.S. economy and to U.S. companies – is "worth" the benefits – achieving the policy objectives of the sanctions. It's another thing to make that assertion with no demonstrable proof that sanctions have achieved anything. The latter is the fact of the matter, whether one reviews the history of sanctions on Cuba, or Iran, or North Korea, or Burma, or Sudan or Russia.

Grant the fact that the "new" generation financial sanctions, based on the dollar as the world's reserve currency and the consequent dominance of U.S. banks in the global financial system, gives the U.S. the capacity to inflict great economic damage on targeted countries. But damage from "crippling sanctions" (to use a favorite Congressional phrase) does not constitute success.

And over the longer term, Darwinian adaptation will inevitably result in blowback to U.S. policymakers' addiction to sanctions.

But the political benefits of sanctions – for any given administration, for members of Congress, for NGOs, for other organized interest groups – remain a powerful motivator. The largely dispersed economic interests of the United States in a globalized economy pale in comparison with the imperative to "do something."

(*The opinion piece on page 9 was published in Roll Call, shortly before the administration announced further sanctions, ostensibly coordinated with the EU, widening the scope of an attack on Russia's banking system and targeting future transfers of oil exploration and production technology to Russia's oil and gas sector*.)

Trade Facilitation Agreement Fails to Advance

By Jake Colvin, Vice President, Global Trade Issues, jcolvin@nftc.org

The Trade Facilitation Agreement negotiated under the World Trade Organization (WTO) last December failed to advance as scheduled at the end of July, as India led a handful of countries who refused to sign off on the deal. In response, NFTC called on the more than 150 members of the WTO who were committed to this outcome to engineer a solution that permits this important agreement to move forward.

NFTC also suggested that the developments suggest that there is little hope for truly global trade talks to take place. Businesses are multilateralists at heart, but they're also pragmatic and will look to talks among smaller groups to achieve what now appears to be impossible among the entire membership of the WTO.

NFTC is working to encourage the vast majority of countries who understand the importance of modernizing trade rules to pick up the pieces and figure out how to move forward in ways that avoid letting one country hold up the agreement.

Tax Inversions—Why Now and What's Next

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

In May 2014, Pfizer announced that they were going to try to merge with AstraZeneca, which is a U.K.-based corporation. The merger did not place as the parties were unable to reach a price agreement. Since that time, several other U.S. headquartered companies have announced their intent to merge with companies based in jurisdictions with lower taxes, particularly the U.K. and Ireland, and change the status of their corporate residency. This increase in the number of U.S.-based companies moving their headquarters out of the United States, or "inverting" has caused a firestorm on Capitol Hill.

Following the announcement of the potential Pfizer deal, Senate Finance Committee Chairman Ron Wyden wrote an editorial for the *Wall Street Journal* in which he said that Congress would act to reform the tax code and stop inversions, and he declared that any inversion that took place after May 8, 2014, should be aware that the tax benefits of the deal would no longer be applicable. However, his statement did not have the desired effect, and the deals continued.

Senator Carl Levin, Chairman of the Senate Permanent Subcommittee on Investigation, which is a Subcommittee of the Homeland Security Committee, introduced legislation in the Senate that mirrored the Obama budget proposal on inversions. The legislation changed the threshold for a Section 7874 inversion from an 80/20 stock ownership to a 50/50 stock ownership for a merged company not to be hit with the 7874 excise taxes. The proposed legislation also adds a "management and control" test that would require a company with a foreign parent to be treated as a domestic company for tax purposes if it was effectively managed and controlled in the United States. This provision was included to try to assure that a company that changed its domiciliary for tax purposes but did not make any significant changes to its U.S. operations, would still be treated as a U.S.-based company for tax purposes. Senator Levin's brother, Congressman Sandy Levin, who is the Ranking Member on the House Ways and Means Committee, introduced identical legislation in the House.

As more corporate mergers were announced following the introduction of the Levin brothers' legislation, members of Congress became more vocal against the inversion deals. On July 15, Treasury Secretary Lew sent a letter to the Chairmen and Ranking members of the Senate Finance Committee and House Ways and Means Committee. In his letter, Secretary Lew called on Congress to make legislative changes to stop corporate inversions and to push for a new sense of "economic patriotism" for American corporations. In response to Secretary Lew's letter, Senator Orrin Hatch, Ranking Member on the Senate Finance Committee, agreed that corporate inversions were detrimental to the economy, and asked for support for other tax changes that would be more helpful, such as tax reform. Senator Hatch opposes the Obama/Levin brothers tax changes and said that they would lead to the takeover of American companies by foreign entities and would not solve the tax base erosion problem. He recommended other non-tax legislative ideas, but said that he was willing to work with the administration.

On July 22, the Senate Finance Committee held a hearing on international tax reform, and although the hearing was also intended to focus on the OECD Base Erosion and Profit Shifting (BEPS) project, most of the hearing focused on the inversion issue. Senate Finance Committee Chairman Wyden reiterated his support for reforming the tax code, but said that interim measures would be necessary to stem the flow of taxes from the United States. The Republicans on the Senate Finance Committee remained united and strong for reforming the tax code as the solution. Many of the Republican Senators explained that the inversion phenomena were a reaction to the broken tax code. Rather than penalizing companies for minimizing their taxes and doing what is necessary to compete in the global marketplace, the United States should reform the tax code to make the United States a better environment for business by lowering the corporate tax rate and going to a territorial-style tax system.

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Tax Inversions—Why Now and What's Next

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The Senate took up legislation introduced by Senator Walsh that would encourage companies to bring business back to the United States and take away tax breaks for outsourcing companies. This legislation is identical to legislation introduced in 2012 by Senator Stabenow, and is meant to give the Senate Democrats a Senate floor opportunity to talk about corporate inversions. It is a purely political bill that was never intended to be accepted by the Senate. The Republicans voted to proceed to the bill and have filed multiple amendments to it. Senate Majority Leader Reid will not permit these amendments and the bill will fail.

Following the Senate Finance Committee hearing, several Senators have come up with alternative plans for doing a stop-gap solution to slowing inversions without doing a full tax reform package. The Senate Finance Committee is now discussing marking up a tax inversion bill in September when they return from the August recess. Senator Schumer is preparing a Finance Committee amendment that will target corporate interest deductions for loans between inverted companies and domestic affiliates. He has also discussed including the stock ownership change that was included in the Levin bill, but without the management and control language. The Section 7874 stock ownership levels would change from 80/20 to 50/50. Schumer called on July 24 for quick action on legislation to "not only curb inversion but limit the interest expense deduction for companies that have already inverted."

Senator Hatch declined to embrace Schumer's approach, but said he was interested in developing a bipartisan proposal that would prevent companies from employing earning stripping measures that push profits overseas to low-tax countries while increasing the deductible debt of U.S. affiliates.

"We have to fight income stripping. And there's a way of doing that, and we're going to come up with that. . . . Companies flip the debt over here, where they can deduct the interest, and put the income over there," Senator Hatch said in an interview.

The Senate Finance Committee members are not united in moving legislation in September. Senate Finance Committee Democrats Tom Carper of Delaware, Michael Bennet of Colorado, Mark Warner of Virginia, and Bob Casey of Pennsylvania have all declined to back a stand-alone retroactive tax bill to limit inversions. They all support reforming the tax code as the way to address the underlying corporate tax problems.

On July 29, legislation was introduced by Democrats in both the House and the Senate to further restrict inverted companies from receiving government contracts. Other provisions to restrict inverted companies from receiving government contracts have been added to appropriation bills in both the House and the Senate. Congress will not reach agreement on the appropriation bills and a Continuing Resolution (CR) will be necessary to keep the government functioning past the beginning of the October 1 fiscal year. Congress will pass a short-term CR and will have to deal with a longer term CR in the lame duck session.

The Senate Democrats have seized on the inversion issue as an election year campaign issue. The Senate majority is on the line in the November mid-term elections, and the Democrats would like to change the political narrative away from the Obamacare and foreign crisis to the tax inversion issues, and paint the Republicans as uncaring on the economy. The Senate Republicans see this as an election year ploy and are working to show their concern about corporate inversions, while not being supportive of the solutions being presented by Senate Democrats.

As we move into September, there is a chance that more corporate inversions will occur. If another large company announces an inversion, it will put additional pressure on Congress to act.

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Tax Inversions—Why Now and What's Next

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The House Republicans have been united in their position that inversions are a symptom of a broken tax code. The only way to resolve the issue is to reform the code. The heated inversion discussion has not yet reached most constituents. If a larger health care company that has facilities in most Congressional jurisdictions announces an inversion while Congress is home for the August recess, inversions will resonate with local voters, and that could have an effect on what the House is willing to do in September. The pressure could mount for action before tax reform is enacted.

Steve Shay, a Harvard law professor and the former Treasury Deputy Assistant Secretary International, wrote an article for Tax Notes that said that the administration already has the ability to curb corporate inversions through the regulatory process by reclassifying debt as equity under Section 385, thereby transforming a deductible interest payment into a nondeductible dividend. Treasury has said that it does not have the statutory authority to make regulatory changes that can stop inversions, and that any changes must come from Congress. The administration continues to berate Congress for their lack of action to stop corporate inversions, and will continue to use this dialogue as a campaign tool. If it became clear that the administration could slow down inversions through regulations and did not do so, the dialogue would change and could turn on the inaction of the IRS and Treasury, a change that would not be welcome by the political people working to retain the Senate for the Democrats.

Expect the corporate inversion issue to stay heated when Congress returns in September, and remain hot through the November election. How Congress acts in the lame duck session in dependent on the outcome of the election and who wins control of the Senate. The corporate inversion issue is not going away anytime soon.

Centennial Update

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

After an extremely busy spring culminating in International Trade Month and the May 28th Centennial Birthday reception at the National Archives, our year-long Centennial Celebration took a bit of a breather for June.

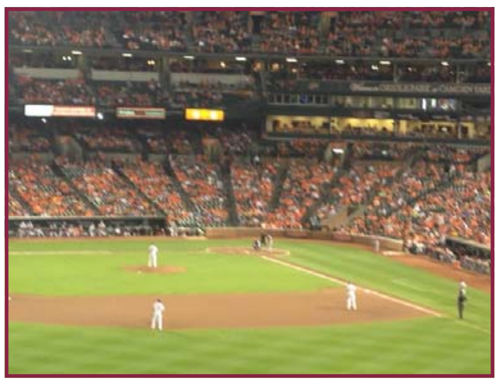
July was dominated by the Board of Directors meeting. Traditionally, the summer Board meeting is held offsite, and this year's location was Baltimore, MD. In lieu of the traditional pre-meeting cocktails and formal dinner, the Board opted to attend the Orioles-Nationals game at the beautiful stadium at Camden Yards. The O's even recognized the NFTC Centennial on the giant scoreboard during the 3rd inning! But it was of little help to the hometown side as our Nationals dominated the game, 6-2.

Alan Wolff, NFTC Chairman of the Board and Mary Jane Norris the Maryland Port Administration.

The Board meeting the next day at a downtown Baltimore hotel was spiced up by a centennial gift, courtesy of board member and iconic 'charm city' company McCormick. After tackling administrative matters and approving the annual budget, the Board enjoyed crab cakes and other Baltimore specialties at the historic Pratt Street Ale House for lunch.

The highlight of the two-day meeting was a 90-minute guided tour of the Port of Baltimore, led by Mary Jane Norris of the Maryland Port Administration. The Port has invested heavily in dredging projects and dockside infrastructure in the past few years to prepare for massive 'post-Panamax' container ships, which will begin steaming through the newly widened Panama Canal in 2015. The NFTC was born in part a century ago to prepare U.S. companies and ports to take advantage of the opening of the Canal; so it was only fitting we tour one of the top U.S. ports 100 years later to witness the next great phase of Canal-enabled shipping coming to life.

The Board also learned that Baltimore is the largest 'Roro' (Roll on, roll off) port in the United States, and is in the top three in container volume every year (both import and export). Because of its relative inland location, proximity to railroads reaching far into the Midwest, and the natural deep draft of its Patapsco River location, the Port has been an economic engine for Baltimore and the region for generations. With dredging to depths of 50 feet dockside to accommodate post-Panamax ships, the Port's activities will continue to drive Maryland forward well into the 21st century.



July ended with two meetings just a week apart with two new major players in international trade policy. Stefan Selig, newly minted Undersecretary of Commerce for International Trade, met with the Trade Committee on July 24 to learn about the overarching international business concerns of the NFTC member companies. The following week, on July 29, an old friend of the NFTC (formerly the representative of USTR in Geneva), David Shark , now Deputy Director General of the WTO, met with the trade committee to talk about the recent Trade Facilitation Agreement and other matters on the WTO Agenda. NFTC Vice President for Global Trade Affairs Jake Colvin arranged both meetings.

During the relatively quiet time of August, the NFTC will redecorate the main conference room in the Washington, DC, headquarters to emphasize the organization's history and influence. On your next visit to, take a look and let us know what you think! Send your thoughts and comments to James Wilkinson at jwilkinson@nftc.org.

Save the Dates!

- **September 23-25, 2014 -** Expatriate Management Committee – Dearborn, MI (*By invitation)*
- **October 1, 2014 -** International Assignment Management Committee (IAMC) Meeting - Minneapolis, MN *(By invitation)*
- **October 14, 2014 -** International Benefits Committee - New York City *(By invitation)*
- **October 30-31, 2014 -** NFTC Fall Tax Committee Meeting – Washington, DC
- **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
- **March 25-26, 2015 -** Annual International Human Resources Conference - Houston, TX

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

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USA ★ ENGAGE

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National Foreign Trade Council
E-mail: nftcinformation@nftc.org
www.nftc.org

Washington DC Office
1625 K Street, NW, Suite 200
Washington, DC 20006
Phone: 202-887-0278
Fax: 202-452-8160

New York Office
60 East 42nd Street, Suite 1136 (*New Location*)
New York, NY 10165
Phone: 212-399-7128
Fax: 212-399-7144

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