COUNCIL HIGHLIGHTS

NATIONAL FOREIGN TRADE COUNCIL

"SERVING AMERICA'S GLOBAL BUSINESSES SINCE 1914"

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

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View From the NFTC Chair

By Alan Wm. Wolff, NFTC Chairman

In 1904, Winston Churchill gave what was considered one of his most brilliant speeches of his career up to that point. It was on the subject of trade:

> *Here we are, in the dawn of the twentieth century, in spite of the drain of a costly war, in spite of our easy-going methods, in spite of the profuse and profligate expenditure, in spite of the luxury of our wealthy classes [hear, hear], here we are in the dawn of the twentieth century not inferior in wealth, power, contentment, and in fame to any nation on the face of the globe. [Cheers.] But what is the conclusion to which these reflections lead us? Surely it is full of encouragement and inspiration. Large views always triumph over small ideas. Broad economic principles always in the end defeat the sharp devices of expediency; science is better than sleight of hand; justice outwits intrigues; free imports can contend with hostile tariffs; … . [Therefore . . .] I move 'That this meeting affirms its unshaken belief in the principles of Free Trade adopted more than fifty years ago, and expresses its conviction that Free Trade is now more than ever necessary for the well-being of the United Kingdom."*

Here we are one hundred and twelve years later, in a country in somewhat similar circumstances to that of Great Britain then, having much the same debate. Trade is almost always controversial. In America, around the time that the NFTC was founded, it was the Democrats led by Woodrow Wilson who were the primary advocates of free trade and the conservative Republicans who were dug in in opposition. The parties have reversed their stances, but the argument continues.

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A Word From the President

By Bill Reinsch, NFTC President

I have only two of these left to write, and I've decided to devote both of them to the idea of American exceptionalism, a concept that underlies a lot of the debate we will see during this presidential election year. The term means different things to different people, as we will no doubt see during the year, and I want to spend my few words over the next several months talking about what it means to me, which may be different from conventional thinking about the term.

For me, the most exceptional thing about Americans is our ability to embrace change. We moan and whine and grumble, of course, but in the end we face reality and get on with it. This contrasts sharply with many traditional societies where maintaining existing relationships and doing things as they have always been done are key values and where denying the realities of modern life can become national policy.

In thinking about that, I have always been struck by a phrase from a Tom Petty song about going out into the "great wide open" a marvelous phrase that defines us as a country and society our search for the frontier.

From the original settlers crossing the Atlantic in their tiny ships, to the pioneers who first crossed the Appalachians, to the homesteaders of the Great Plains and the gold miners of California, Americans have always sought the new, the dangerous, the untried, untested, and unexplored the great wide open.

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A Word From the President

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It was no mistake that professors of the first half of the 20th century taught Frederick Jackson Turner's Frontier Thesis as an integral part of the growth of America 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."

At a less lofty level this search is captured in a 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 who and what we are, whether our 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 now the Middle East, 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 on the Statue of Liberty. But those masses are not a mysterious "them" in some other part of town, they are "us" pure and simple. Of course, we're dressed up now our hair is combed; we have our good clothes on. We may not look like the huddled masses of our ancestors, but our roots are there nonetheless, and we should pay attention to them, particularly as we face the next wave of people coming here because they see the same opportunities our ancestors saw.

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 have prevailed once they arrived, and the strong who inexorably sought out our physical and social frontiers and proceeded to tame them one by one in a process that continues today. It is America that is stronger and more prosperous as a result.

Today's frontiers are different. In the beginning, our thirst for the great wide open was literal open spaces, untilled fields, grassy plains. Now, as the physical frontier, at least on land, is swallowed up by roads, bridges, and airports, our search has moved to new depths and heights as we explore the oceans and reach for the stars literally and figuratively. Today's frontiers and tomorrow's lie in the laboratory, the computer and the human mind -- the frontiers of technology, research, and knowledge and the challenge of pushing back their boundaries to advance the state of humankind.

Our enthusiasm for tackling those new frontiers with the same energy, imagination, and persistence of our predecessors defines America today not without warts by any means, but nonetheless as the world's leader as well as the world's innovator. It would be a cliché to say we are boldly going where no one has gone before, but it would be true to say that much of today's innovation, whether it is in software, hardware, biotechnology, nanotechnology, genetics, new materials, health care, environmental science, or space, is taking place here in America, in many cases through work by some of our most recent arrivals.

That activity, and the spirit of exploration and optimism that underlies it the spirit of the frontier is what makes America exceptional. It is also our forebears' gift to us. What we do with it will be our gift to future generations, a gift that will fulfill our obligation to those that have gone before. The twin dangers we face in 2016 are forgetting where we came from as we attempt to deal with numerous tragedies around the world and squandering the gift of our forebears as we attempt to maintain our global competitiveness. More about those later.

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

View From the NFTC Chair

(Continued from page 1)

At the hearing on Trans-Pacific Partnership (TPP) at the International Trade Commission, the opening panel of private sector witnesses spans the spectrum of current opinion, from the NFTC and ECAT on one side, to the United Steelworkers and the AFL-CIO on the other. There should not be this divide.

First, from a defensive point of view, a salient point is that trade remedies have not been weakened at all by TPP -- they have been strengthened. For the first time, there is a trade agreement remedy against subsidized state-owned enterprise (SOE) competition from foreign investment located in the United States. Moreover, there are a series of rules designed to make SOE competition fairer in all markets. This is a major step forward.

Second, investor-state dispute settlement (ISDS) is not and never has been a way to undermine valid health, safety and environmental regulations. Parties to TPP have reserved the right to regulate in the public interest. What ISDS grants is what we call "due process". An investor of one TPP Party has a right to be heard by an independent tribunal when another TPP Party has acted in violation of its commitments causing injury to the investor. Due process is a concept traced back to the Magna Carta and imported into the U.S. Constitution. It is not surprising that U.S trade negotiators insisted that its protections needed to be included in the Trans Pacific Partnership in the form of investor state dispute settlement.

Third, a beginning was made to address currency manipulation – where government intervention in exchange rates can provide import protection at home and subsidize exports. The means chosen is short of what critics wanted, but it was as far as trade ministers could go – that is, getting each of their finance ministers to the table to address the issue.

It is required of all articles at present that they refer to the latest extreme statement uttered by Donald Trump. So here goes:

> *The trade deal is a disaster for many reasons. Number one, we don't have any good negotiators in our government.*

Well, of course I differ with respect to both of these statements. Our negotiators may not have gotten everything exactly right from the viewpoint of each of our members, but they understood the general direction that needed to be taken. They knew that the digital economy had to be nurtured. They knew that the U.S. market -- despite its islands of unjustified residual protection (think sugar) -- is already among the world's most open. They recognized that our economic future depends upon access to foreign markets where most of the world's customers reside. And they made major strides in this direction.

At the extreme there are those who will work against Congressional approval of TPP regardless of its contents. The case for trade has to be made all over again, as it was in 1904 in the U.K. and in the U.S. in 1914 and many times thereafter. The NFTC and its members have to weigh in now with Congress to address remaining issues with the firm goal of obtaining approval of TPP in 2016.

Ambassador Alan Wm. Wolff is a Senior Counsel of the International Trade Practice at Dentons US LLP and is the Chairman of the NFTC Board of Directors.

BITs and the WTO GPA and FDI Flows

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

Let's stipulate that Direct Investment (FDI) is a significant driver of global GDP growth. Let's also stipulate that recent FDI has fallen short of optimal levels. We also are well aware that corporate decisions about foreign investment are made on commercial grounds with other things such as political risk, factored in. At the same time, expansion of U.S. FDI is in the national economic and political interest. How can policy further that interest?

Governments of all sorts – American state governments, developing world governments and even developed country governments, witness the Selct-USA program, court foreign investors with a variety of schemes. Two national policies, one direct and the other indirect, are deemed to improve prospects for increasing FDI. One is the negotiation of bilateral investment agreements, (BITs) which provide a range of protections for foreign investors and access to dispute resolution procedures and are intended to facilitate FDI by ensuring a predictable investment regime in the recipient nation. A second is accession to the WTO's Government Procurement Agreement (GPA) which indirectly facilitates FDI by enhancing the transparency of procurement policies, especially for investors in major infrastructure projects.

First, BITs. The number of existing and in-process BITs would lead one to believe that barriers to FDI are falling worldwide. According to the International Center for Settlement of Investment Disputes at the World Bank, 178 countries have entered into nearly 2,000 bilateral investment treaties of varying quality. For example, Germany is on record as having signed 147 BITs, Switzerland 127, France 103, the UK, 102, Egypt, 91, China, 90, Russia, 50 and the U.S., 48. The U.S., having revised its model BIT in 2012, is in the early stage of BIT negotiations with China and India.

So, whatever their shortcomings as an investment promotion vehicle, BITs would seem to be a positive instrument in service of that objective. Not so, says one country: South Africa. In 2010 the South African cabinet declared that "the relationship between BITs and FDI is ambiguous at best and that BITs pose risks and limitations on the ability of the Government to pursue its transformation agenda." The cabinet went on to decide not to negotiate more BITs and to review their existing 41 BITs "with a view to termination." Indeed, this September South Africa has allowed 12 existing BITs to expire, including those with several of its major trading partners, Germany, Spain, the Netherlands, Switzerland, Belgium and Luxemburg while other BITs are "under review," including a weak one with China.

Now South Africa may be a special case since its "Broad-based Black Economic Empowerment" program to require foreign investors to partner with black-owned companies would almost certainly violate core BIT principles. The government also suggested that it wanted more latitude to expropriate, clearly at odds with BIT principles. Incidentally, South Africa's recent action on BITs throws a spotlight on the reasons for the failure of the United States' three year effort to negotiate a free trade agreement with the Southern African Customs Union.

Does this matter to anyone outside of South Africa? Well, yes, because the persistent effects of the global recession will generate mercantilist pressures on many governments, and domestic imperatives will tempt some to deny national treatment to foreign investors.

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BITs and the WTO GPA and FDI Flows

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

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Second, the GPA. The $60 trillion global infrastructure market represents about 15% of global GDP. The GPA is a plurilateral agreement among 42 nations who commit to non-discrimination and transparency in government procurement. The GPA was revised in 2011 to expand its coverage for the first time to include, among other things, local and sub-central entities. GPA membership consists of most of the OECD countries plus Singapore, and several non-EU European countries. Its limited membership reflects the interest of major developing countries to protect and regulate their government procurement markets.

Jose Fernandez, former Assistant Secretary of State for Economic and Business Affairs, has written an excellent article in the current issue of Foreign Affairs in which he argues that since major countries such as China, India, Colombia, and Turkey are only observers to the GPA and Brazil and South Africa are not even observers, U.S. companies are at a major disadvantage in bidding on big-ticket infrastructure projects in those countries. Fernandez points out that this is especially the case in nations such as the BRICS, many of which have state-owned enterprises that compete for infrastructure projects outside the rules of the GPA. Given the anticipated expansion of infrastructure spending globally (China is spending $150 billion and Brazil $130 billion on infrastructure projects in 2013), the GPA's non-discrimination, transparency and dispute resolution provisions could mean major earnings for U.S. companies.

To be sure, infrastructure projects do not equate to FDI, but many "build-own-operate-transfer (BOOT) projects, especially where they are public-private partnerships do qualify as FDI. And of course, the U.S. exports in these projects are a positive contribution the U.S. merchandise balance of trade. As Fernandez concludes, "If non-U.S. companies build these roads, ports, power stations and other projects, it will boost the image of the countries they represent at the expense of the United States… U.S. firms risk falling further behind their foreign competitors or simply being left out of this (public procurement) boom altogether." Either more extensive coverage of even high-standard BITs nor expanded membership in the GPA are panaceas for U.S. FDI, but a more aggressive use of these tools will create a more level playing field for U.S. companies.

NFTC Hosts 2016 Trade & Tax Outlook Media Roundtable

On January 7th, NFTC President Bill Reinsch and the team of NFTC experts delivered remarks before a room packed with reporters to share their forecasts on what is likely to happen on the international engagement front in 2016. The roundtable covered a wide range of issues and included all of the NFTC experts' predictions for the year ahead – from NFTC Vice President for Regional Trade Initiatives Chuck Dittrich discussing the TPP agreement and the Transatlantic Trade and Investment Partnership (TTIP) negotiations, to NFTC Vice President for Tax Policy Cathy Schultz detailing what can be expected on corporate tax reform, tax treaties and inversions.

In addition, following a recent trip to Geneva, NFTC Vice President for Global Trade Issues Jake Colvin provided an outlook on next steps at the World Trade Organization after the Nairobi ministerial, including the Environmental Goods Agreement, and discussed expected EU-U.S. cooperation on digital trade. On the sanctions front, NFTC Vice President Dan O'Flaherty and Vice President and USA*Engage Director Richard Sawaya talked about action on the state level in conflict with federal law, as well as U.S. Cuba policy, Iran sanctions and North Korea's latest provocation.

Coverage of the roundtable has appeared in *Bloomberg BNA, POLITICO Pro Trade*, *POLITICO Pro Tax* and *Tax Notes*, among other outlets..

NFTC Hosts Forums in Geneva, Paris as EGA Talks Inch Closer to Conclusion

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

A December Round of talks in Geneva failed to yield an agreement on Environmental Goods and negotiators will reconvene in early 2016 to attempt to close out a deal. NFTC's Jake Colvin and Jordan Gerstler Holton led a delegation of companies and associations to Geneva on behalf of the Coalition for Green Trade, which the Council co-chairs with US Council For International Business and National Association of Manufacturers . The group met with negotiators from most of the economies involved in the EGA negotiations and hosted a global business community reception along with the Japan Machinery Center for Trade and Investment and the Europe-based Sustainable Energy Trade Initiative Alliance for negotiators and friends.

Despite expectations that the talks would continue throughout the weekend, formal negotiations were suspended on the evening of Friday, December 4, with a recognition that negotiators would be unable to finalize a deal by the December 15-18 World Trade Organization (WTO) ministerial in Nairobi, Kenya. While the lack of an outcome by the Nairobi ministerial was disappointing, it was not unexpected, and many delegations indicated that they had narrowed their differences among each other and that there remained flexibility and will among negotiators to arrive at a deal. Significant progress was made on customs issues that will facilitate implementation of an eventual agreement.

From Geneva, Colvin participated in the Paris Conference of Parties under the United Nations Framework Convention on Climate Change, where the Council hosted a discussion with corporate representatives, New Zealand Trade and Climate Minister Tim Groser and former WTO Director General Pascal Lamy in cooperation with the International Centre for Trade and Sustainable Development. During the discussion, Lamy told participants that, "Putting high tariffs on environmentally friendly goods is a stupid thing to do. That's not a market failure, that's a government failure."

NFTC, KITA host Seoul Forum on Environmental Goods

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

On November 11, the Council co-hosted a business forum in Seoul, South Korea, with the Korea International Trade Association (KITA) on the anticipated benefits of an Environmental Goods Agreement for Korean and U.S. industry. The discussion emphasized the joint commitment of the U.S. and Korean business communities to the success of an international trade agreement to eliminate tariffs on environmentally-friendly goods.

Left-to-right: Ms. Jennifer Prescott, Assistant U.S. Trade Representative for Environment and Natural Resources; Mr. Gunsu Park, Director General of the Ministry of Trade, Industry and Energy; Kwangsu Park Professor of Gunkuk University.

Ms. Jennifer Prescott, Assistant U.S. Trade Representative for Environment and Natural Resources, and Mr. Gunsu Park, Director General of the Ministry of Trade, Industry and Energy provided a briefing on the scope of the agreement, the U.S. and South Korean Governments'positions on the EGA, and the prospects for its conclusion and implementation. Jake Colvin moderated a discussion with corporate representatives including Inkwan Hong, Independent director of Kokam, Haenghee Lee, President of Corning, Jeongmi Cho, Executive Director of Hankuk Carbon, BY Yoo, Director of John Crane, and Hong Chul Yoon, GE Power about the extent to which the agreement could help Korea and U.S. businesses economically and to address pressing environmental challenges.

Cuba

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

The romance endures. One year after the Administration's change of policy, diplomatic relations between the U.S. and Cuba have been established; targeted executive amendments of the Cuba Assets Control Regulations (CARC) intended to benefit the economic liberty and communications access of individual Cubans have been put in place, and the island nation has witnessed an influx of U.S. visitors, not least Members of Congress from both parties.

U.S. public opinion, including a majority of Cuban Americans, favors the effort to normalize relations. Significantly, there is a real division of opinion within the Republican membership in both the House and Senate. At present, there appears to be a majority, bipartisan view that "the ship has sailed," coupled with a reluctance to embrace outright repeal of the embargo in the face of continued devotion to the status quo ante on the part of the Cuban regime.

Apart from the U.S. presidential sweepstakes, the result of the April 2016 Cuban Communist Party Congress expected to adopt new electoral and succession procedures may signal new terms of engagement. Raul Castro's decision to give up power in 2018 and the presumed standing of his first Vice President, Miguel Diaz Canal Bermudez, as his executive successor may usher in sufficient constructive change in Cuban governance to accelerate political momentum in Congress – and in the next U.S. administration, Democrat or Republican – to repeal the embargo.

In sum, the case for repeal has political legs and the grounds for persistent advocacy are strong.

USA*Engage has joined the agricultural coalition, US Agriculture for Cuba (USACC); helped to stand up the multi-sector coalition, EngageCuba; worked cooperatively with the U.S. Chamber of Commerce Cuba effort, and continues to act as all-coalitions focal point for sharing intelligence and coordinating Congressional advocacy.

In December, USA*Engage submitted detailed suggestions to the executive branch, making the comparative case with other sanctions regimes, for further reformation of CARC in order to facilitate U.S. commerce with Cuba. Suggestions included:

One. Modify the prohibition on dealings in any property in which any person in Cuba or any other Cuban "national" has held an interest from 1963 forward to permit transactions with Cuban nationals not on Treasury's "Specially Designated Nationals" (SDN) list, or, at the least, instruct U.S. financial institutions to reject rather than block (return the funds rather than freeze the account) any unlicensed payments to, from or on behalf of such non-SDN Cuban nationals.

Two. Modify the existing prohibition on dealing or transacting worldwide any goods with a scintilla of Cuban content to authorize all dealings in such goods outside the U.S. if no SDNs have an interest in them while continuing to require a license for importation into the U.S. of such goods.

Three. Limit the scope of SDN identification for the CARC to present circumstances, rather than prior/historic ownership or affiliation.

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Cuba

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Four. Permit non U.S. subsidiaries of U.S. companies to engage in Cuba-related transactions that do not involve the U.S. parent or any other U.S. persons.

Five. Permit U.S. involvement in all exports from any country to Cuba that do not involve any SDNs or the Government of Cuba, if such exports would not violate any Commerce Department regulations.

Six. Permit the processing of all personal remittances and the holding of U.S. bank and securities accounts by Cuban nationals not on the SDN list or in the government of Cuba.
Seven. Permit U.S. banks to process Cuba-related payments if there is no SDN or government of Cuba involvement and no other U.S. person involvement.

While the correct policy action has been and will continue to be full repeal of the embargo, these are important interim steps that will expand our economic relations with Cuba and help move the political process in the direction of repeal.

NFTC Issues TPP Statement

On December 22, the NFTC issued the following statement on the TPP agreement:

> *"The National Foreign Trade Council supports the Trans-Pacific Partnership agreement because we believe it is in the United States' national interest.*
>
> *"We are encouraged by discussions that are underway between Congress and the Administration to address provisions in the agreement in order to further improve trade and investment liberalization, and strengthen the system of international trade and investment disciplines and procedures, including dispute settlement, for all of American business. Early resolution of areas for improvement identified by the business community will speed approval by Congress in 2016.*
>
> *"It is imperative that TPP provide very high standards, comparable to those which business enjoys in the United States, so this agreement can serve as a strong foundation for other trade agreements going forward.*
>
> *"The NFTC believes that the agreement can be a major step forward in establishing rules-based international trade and in opening foreign markets; enhancing economic growth for the United States, as well as for its Pacific Rim trading partners; providing major new market opportunities for goods, servicesand investment; reducing barriers to trade and investment; and providing disciplines over state-owned enterprises that compete with private companies.*
>
> *"The NFTC believes this path will serve the interests of American workers, as well as businesses of everysize in industry, services and agriculture."*

http://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=4012&category=All

GIF Hosts EU Ambassador, Startups and Corporate Executives at 1776 in DC

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

On December 17, the NFTC's Global Innovation Forum (GIF) hosted a breakfast and a discussion among startup, business and policy communities about the rise of engagement by startups and small businesses in the transatlantic marketplace and the policy frameworks that can enable their global journeys. The discussion featured a keynote conversation between the Honorable David O'Sullivan, Ambassador of the European Union to the United States of America, and Thomas Miller, Diplomatic and Global Business Lead, Bloomberg BNA.

The GIF's Jake Colvin moderated a separate conversation with Brian Bieron, Executive Director of the Public Policy Lab at eBay Inc.; John Gossart, Cofounder and Chief Operating Officer of GoodWorld and an original partner at Ridescout; Michele Lynch, Public Policy & Government Affairs Manager, Diplomatic Relations, Google; and Brandon Pollak. Director, Global Affairs, 1776.

The discussion covered a range of issues, from the increasing participation of startups in the transatlantic marketplace to the role of policy levers such as the TTIP, Safe Harbor and the Digital Single Market in enabling startups to succeed globally. Ambassador O'Sullivan mentioned a European proposal in TTIP to create a one-stop web platform to highlight opportunities for companies to do business across the Atlantic.

As Bloomberg BNA reported, Ambassador O'Sullivan also mentioned that he is "a bit worried, frankly, by the visa waiver discussion" in the 2016 spending bill discussions, emphasizing the need to maintain an open transatlantic marketplace for travelers.

NFTC Responds to the President's State of the Union Address

NFTC President Bill Reinsch issued the following statement in response to President Obama's State of the Union address:

"The President talked about the need to continue strengthening the U.S. economy and ensuring well-paying jobs for American workers. Keys to unlocking that economic potential are found in trade and a competitive corporate tax system.

"We applaud the President's remarks on the TPP agreement. The NFTC believes firmly that the TPP is in our national interest – from generating economic growth to supporting jobs – and we call on the Administration and Congress to address remaining issues to ensure that the agreement provides the most benefits possible across the whole of the U.S. economy. The Asia-Pacific region is dynamic and ever-growing, and opportunities abound for the expansion of U.S. market access in the 11 other TPP economies.

"We also welcome the President's call for ending the outdated embargo with Cuba.

"Finally, critical for sustained economic growth is a sound U.S. tax policy that doesn't put U.S. businesses at a competitive disadvantage when compared to their counterparts around the world.

"In 2016, we look forward to working with the Administration and Congress to make meaningful progress on all of these fronts."

Country-by-Country Reporting

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

On December 21, 2015, the Internal Revenue Service and Treasury issued the proposed regulations on Country-by-Country (CbC) reporting, which includes a template for the form that will be required for reporting purposes. The proposed regulations are generally modeled on the Organisation for Economic Co-operation and Development (OECD) recommendations for CbC reporting, but there are some key differences. The most significant difference from the standards reflected in the OECD Action 13 report involves the potential implementation date and the potential filing date. The OECD recommendation contemplates preparation of the CbC reports for the 2016 year and the filing of those reports by the end of the following year. Under the proposed Treasury regulations, if final regulations are issued in 2016, U.S. multinational corporations filing their tax returns on a calendar-year basis would generally be required to prepare the CbC Reporting Form for 2017 and file it with their U.S. income tax return by the return due date in 2018. The countries that have implemented the OECD CbC reporting requirements to date typically require such reports for 2016. Therefore, given the possibility that other countries could seek direct filing of CbC reports for 2016 from U.S.-based multinational corporations with subsidiaries or permanent establishments in such countries, companies may have to move forward with their CbC reporting preparations ahead of the U.S. filing date.

There are other areas where the proposed regulations differ from the OECD Action 13 report. The proposed regulations specify that information regarding employees is to be reported based on where the employees perform their activities and the proposed regulations also provide specific guidance on the treatment of constituent entities that are treated as partnerships.

Treasury has requested comments on the proposed regulations, and the NFTC will be drafting comments. Some of the areas where comments are requested include:

1. Whether additional guidance is needed for determining which U.S. persons must file a CbC Reporting Form, or which entities are considered constituent entities of the filer.
2. Whether an exception to filing some of the information should be granted for national security reasons, and the procedures to be followed to demonstrate a national security reason.
3. Whether any of the other items of information requested should be refined or whether additional guidance is needed on how to determine any of the items of information proposed to be submitted.

When the proposed CbC regulations were issued in December, House Ways and Means Chairman Brady raised concerns with them. He said:

> *"With the highest corporate tax rates in the world, American companies are already at a tremendous disadvantage in the global marketplace. New country-by-country reporting requirements on U.S. companies must be limited and should not make it even harder for our companies to compete. Chairman Boustany and I will closely review this regulation. Congress will not allow Treasury to move forward with Base Erosion and Profit Shifting (BEPS) policies that enable foreign governments to misuse information reporting and exploit American companies."*

House Ways and Means Tax Policy Subcommittee Chairman Boustany introduced legislation, on December 18, 2015, H.R. 4297 to delay the transmittal of both the CbC report and the Master File. The legislation prohibits Treasury from collecting or transmitting to any foreign jurisdiction any CbC report information of any U.S. person with respect to taxable years beginning before January 1, 2017. The legislation also requires Treasury to suspend the transmission of the CbC reports to any jurisdiction that does not safeguard the confidentiality of the information contained in the CbC report or the Master File. Treasury would also be required to file an annual report with the Ways and Means Committee on any allegations or reports of abuse of the Master File requirements.

Companies should closely examine the proposed CbC regulations, and comment on them. Companies should also send comments to the NFTC to be included in the NFTC comments that will be submitted. Comments are due 90 days after the proposed regulations were introduced. Congress will continue to closely monitor the OECD BEPS reporting requirements, and we expect that the tax-writing committees will hold additional BEPS hearings in 2016.

International Human Resource Management Activities-2015 and 2016

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

The year of 2015 was a busy one for the NFTC and members responsible for international human resources. Some of the highlights:

- Four working committee meetings on the range of International Benefits and Compensation Management (in Houston and New York City). The committees are comprised of senior corporate colleagues who are responsible for the design and management of employer-provided plans around the world; with the participation of subject matter experts from the major international actuarial, accounting, insurance and law firms. The subject matter experts provide technical expertise on plan design, integration with Host Government social insurance requirements and competitive corporate plans.
- In 2015 the meetings included presentations on: Use of Data Analytics to Inform Compensation and Benefit Plan Design Decisions (Mercer); International Labor Costs and Trends (Towers Watson); Total Rewards Management in the ASEAN Region (Aon Hewitt); Employee Benefits Survey Report (MetLife); Employer Benefits in the Nordic Region(Danica); Implementing A Global Job Evaluation Plan (CEMEX Corporation); Compensation In Mexico-Current Trends (Aon Hewitt); Designing Global Employment Companies (ITX Switzerland); International Pension Plan Governance (Towers Watson); Benefits in Germany and the Netherlands (Mercer), Global Benefit Strategies : A Framework (Digital Benefits Advisors); Japan Inheritance Taxes-Implications For Long Term Expatriate Assignees (Ernst & Young); Global Wellness Management (Buck Consultants and MetLife); Pension Risk Transfer (Prudential) and Cross-Border M&A Integration (PwC).
- Two meetings each of the Expatriate Management Committee and the International Assignment Management Committee. Both committees are comprised of senior corporate Global Mobility program directors from a total of 80 major U.S. and Non-U.S. MNCs in all economic sectors. The discussions cover such topics as: Policy Design and Management; Process Improvement; Immigration, and Employment/Labor Law and Tax Compliance; Use of Technology; and Communications.
- Sponsorship of topical surveys on: Immigration Compliance Requirements for Short-Term Business Travelers; the International Assignees' Perspective on Value of Employer Provided Allowances and Support; Global Relocation Cost Management; and Dual-Career Challenges.
- Participation in conferences with major European MNCs in Paris, France and Hannover, Germany on global mobility/career development and security.

For the first two quarters of 2016 the NFTC will host:

- February 18, New York City: meeting of the International Benefits and Compensation Committee,
- March 16-17, Houston: annual conference on international human resources,
- April 6-8, Orlando: Spring meeting of the International Assignment Management Committee,
- May 10-12, Seattle: Spring meeting of the Expatriate Management Committee,
- May 26,New York City: annual conference on international human resources,
- Additionally there will be a series of seminars in the Midwest and on the West Coast late in the second quarter.

For information about the programs contact Bill Sheridan at wsheridan@nftc.org.

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NATIONAL FOREIGN TRADE COUNCIL

"SERVING AMERICA'S GLOBAL 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.

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