

Council Highlights



December 2004/
January 2005

NATIONAL FOREIGN TRADE COUNCIL

A Word from the President

No issue has occupied more of the Council's collective time this past year, and my own time as well, than the ongoing saga of our national policy on visas. The Council originally waded into this swamp in response to loud complaints from many members that they:

- Couldn't get their customers into the country;
- Couldn't get their buyers in for training or to take possession of their purchase;
- Couldn't get their own foreign employees in for conferences or collaborations.

There is no question that changes in government policy in the spring and summer of 2002 have had serious adverse economic effects. You may recall the survey we undertook and released last June that calculated the damage in lost sales since the policy change to be at least \$30 billion - a highly conservative estimate.

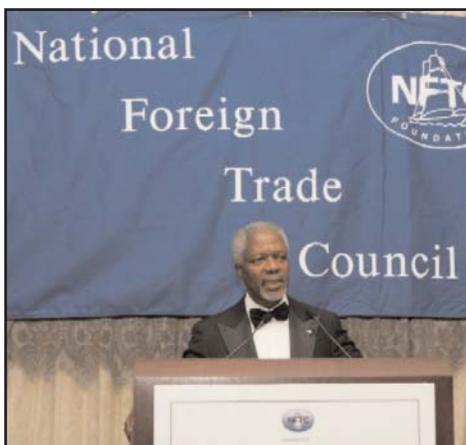
In late summer and early fall some evidence that the government was listening arrived. Although there has not been a formal announcement, it appears that time limits on consideration of certain applications have been reinstated, a process for adjudicating interagency disagreements has been established, and the FBI is no longer weighing in on the merits of individual applications. (These changes related to the so-called MANTIS program - visa applications that involve access to

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NFTC Celebrates Its 90th Year Anniversary with UN Secretary General Kofi Annan

The NFTC celebrated its 90th anniversary with UN Secretary General Kofi Annan at our Annual Dinner on December 10, 2004, at the St. Regis Hotel in New York. The dinner was a sold out event with over 300 guests, 22 countries represented as well as corporate executives, including several CEOs, in attendance. At the Annual Dinner, Chairman, President and CEO of Merck & Co., Inc. Raymond V. Gilmar-tin received NFTC's prestigious 2004 Trade Award for Merck's leadership and dedication to tackling major health problems by increasing access to medicines and vac-

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*Kofi Annan, UN Secretary General,
Keynote Speaker*

TOP COUNCIL NEWS

NFTC Plans a Full and Very Active Trade Agenda in 2005

"Next year is shaping up to be a major year on trade policy in both Congress and the Executive Branch with a range of trade negotiations and important legislative initiatives on the agenda..."

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NFTC Fall Tax Committee Meeting is a Big Success

"The Tax Committee held its annual Fall Meeting in Washington, DC, November 16th and 17th. The meeting continues to draw a large group of attendees, and the program did not disappoint..."

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The U.S.-SABC and USA*Engage Hail Dismissal of Apartheid-era Lawsuits

"The U.S.-SABC and the USA*Engage coalition hailed the November 29 decision by Federal District Court Judge John Sprizzo to dismiss the consolidated lawsuits filed against dozens of U.S. and other multinationals ..."

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World Trade Dinner Photos

2004 NFTC Annual World Trade Dinner



Mr. and Mrs. Kofi Annan, UN Secretary General and Ragan Family, Bechtel

Tom Gorrie, J&J, Kofi Annan and Chuck Dittrich, NFTC



Morocco Trip Winner and Mohammed Ariad, DCM Embassy of Morocco

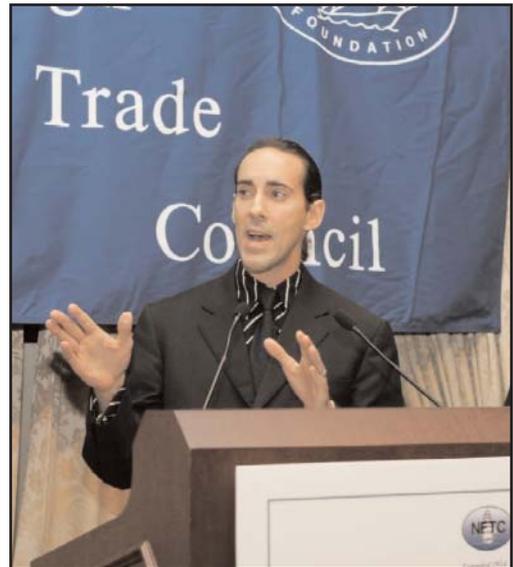


Mr. and Mrs. Ray Gilmartin, Merck, Mr. and Mrs. Michael Jordan, EDS and Mr. and Mrs. John Wood, New Zealand Embassy



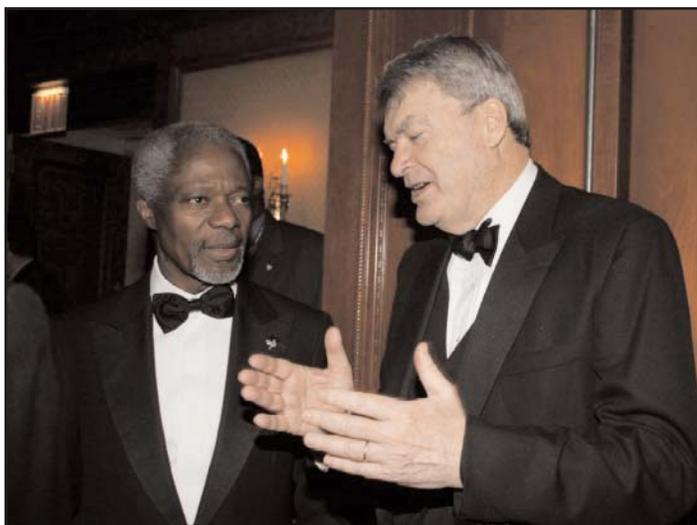
World Trade Dinner Photos

Clockwise: (1)Herbert Henkel, Ingersoll Rand, Gerry Swimmer, Ingersoll Rand, Mr. and Mrs. Kofi Annan, Peggy Hudson, BP and Bill Sweeney, EDS, (2)Steve Ciccone, Eastman Kodak, (3)Fruszina Harsanyi, Tyco, and guests, (4)Geoff Gamble, Dupont Birthday Toast, (5)Dinner Award Committee





World Trade Dinner



Kofi Annan, UN Secretary General and Michael Jordan, EDS

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cines particularly in developing countries, such as South Africa, and elsewhere.

Dinner highlights included a champagne birthday toast by NFTC's senior-most Board member, Geoffrey Gamble of Dupont, as well as the raffling of 22 fabulous door prizes including trips to Jordan and Morocco, a cruise on Radisson Seven Seas donated by Active International, as well as a Kodak Digital Camera package, BP logo watches, Johnson & Johnson gift baskets, gift certificates from Banana Republic, the wines of Sterling Vineyards and Beaulieu Vineyard, and weekend stays at Chez Amis Bed & Breakfast in Annapolis, MD, and St. Regis hotels in New York and Washington. Guests at the event also left with gifts from Pernod Ricard USA and Mars, Inc. The Annual Dinner was a fun and fitting end to a successful NFTC year!

The following is a brief excerpt from Kofi Annan's speech at the World Trade Dinner:

It is a pleasure to be with you tonight with my wife. I have wanted to speak to the National Foreign Trade Council for quite some time now. I am glad we were able to make it happen this year, since this is an important moment for the global trade agenda and for my own agenda of change at the United Nations...

...The world's trading system is not what it could or should be. There are too many barriers, and too much closed-door decision-making. Subsidies that rich countries give to their own producers tilt the playing field against the poor. Significant changes are needed if all people are to realize the potential benefits of trade...

...Good news has emerged from the Doha negotiations in recent months. Much is riding on a successful, speedy outcome, including our ability to achieve the Millennium Development Goals set by all world leaders in 2000. We should be able to work together to make it happen...

...Trade and development are crucial for security. But just as we need to rebuild faith in the multilateral trade framework, so do we need to strengthen the multilateral security framework...

...One year ago, I appointed a panel of 16 distinguished men and women to assess the threats facing humanity today, and recommend changes in both our policies and our institutions in order to meet those threats...

...Last week, the panel delivered its report, entitled "A more secure world: our shared responsibility". One of its key messages is that we live in a world of inter-connected threats and mutual vulnerability between rich and poor, and weak and strong...

...The report is actually the start of a process that will culminate in a summit meeting of heads of State at the United Nations next September... I urge you to make your voices heard...

...Development, spurred on by trade, is the indispensable foundation of collective security. And effective collective security creates the stable environment that societies -- and businesses -- need in order to thrive. Ultimately both you and we at the United Nations are vitally concerned with managing and mitigating risk. Let us work together to confront the real and present dangers that lie in wait for us, and to seize the opportunities for a safer, more just world.



A Word from the President



(Continued from Page 1)

technology - and not to the CONDOR program, which focuses on potential terrorists.)

At the same time, we learned that some other actions were not taken, and are not likely to be taken. The requirement for an interview prior to acting on an application will remain. No changes in the Technology Alert List (TAL) - the list of technologies against which applicants are judged - have been made. Efforts to develop a direct channel between the government and the U.S. company that would be receiving the customer or employee in order to provide information that could validate the visa application's statements have been rebuffed.

Worse, just like "Whack-a-Mole" at the beach, as we beat down some problems, new ones spring up. Gains in application processing times have been offset by long waits for the interview. The rate of rejections based on inability to prove intent not to immigrate continues to grow. Various humiliations at points of entry - fingerprinting, arbitrary detentions and summary deportations, for example - continue to make foreigners nervous about coming here. It is no surprise that our members continue to tell us that the situation is not improving across the board, despite the occasional consular bright spot.

As this extended soap opera has unfolded, it is becoming clear that there is a lot more at stake than short term business opportunities, though those are, by themselves, a significant factor.

More important for the long term is the message our policy sends to the rest of the world about our country and what that message means for our long term ability to compete globally.

Stripped of the "national security" and "war against terrorism" rhetoric that accompanies our actions, our message is: you are not welcome here because we suspect you might be a terrorist planning to kill us or a spy planning to steal our technology. Unfortunately, intended or not, it appears the world is getting that message and turning its attention elsewhere.

What does that mean for us in the long term? It means that foreign buyers will look for products outside the U.S. because they don't want to run the security gauntlet that a trip here would require or because they have growing doubts that U.S. companies will be allowed to supply them with what they need - doubts, by the way, which are fueled by our competitors.

It means that foreign students will go elsewhere for their undergraduate and graduate educations. Aside from the hit university budgets will take, our real loss is the brain power that has enriched our country throughout its existence. We have always been an attractive location because of the quality of our education and the freedom we offer to pursue whatever line of inquiry a smart person is interested in. As a result, the U.S. has, over the years, become a source of new ideas, inventions, and innovations that have transformed the global economy and kept us the lead dog, competitively speaking. That historic leadership is now in jeopardy as students go elsewhere for their education and ultimately the professional relationships that will guide their careers.

And, finally, it means that U.S. multinational companies will be tempted to move more activities overseas. The reasoning is simple - can't get your engineers into the U.S.? Build the lab over there. Can't get your customers here? Expand your manufacturing abroad and sell through your subsidiaries. This won't happen overnight, and visa policy will not usually be a dispositive factor in a company's location decision, but it will be an important addition to the accumulation of reasons to go abroad. The irony, of course, is that this will likely result in more technology transfer to China than will admitting their engineers on business travel visas.

What worries me is that we are focusing on trees and missing the forest. Our determination to interdict every possible terrorist or spy is leading us to turn away the reputable business people and brilliant students we need for our future. Twenty years from now, people will say the price we are paying for our reaction to the September 11 attack, though not as horrible in terms of human life, is just as high.



International Trade and Finance



Positive Final Outcome on Critical Export Finance Issues in FY 05 Foreign Operations

The final outcome on the foreign operations appropriations bill (H.R. 4818) was a positive one from the perspective of the NFTC and its Export and Project Finance Working Group. After a great deal of lobbying since the summer, the NFTC prevailed in convincing conferees to drop the Sanders Amendment, which would have restricted Ex-Im's financing for offshore facilities. The other very important action taken by the conferees was to include authority to waive the existing Section 507 ban on Ex-Im financing in Libya.

The final foreign operations bill also watered down significantly an amendment by Senator Grassley on Ex-Im financing of ethanol plants. The provision only calls for reporting on the details of a past transaction. Finally, the funding levels for Ex-Im Bank, OPIC and TDA were all in line with the Administration's needs and requests.

NFTC Revising Major Position Papers as Part of Next Year's Agenda

On both the export finance and trade fronts, the NFTC is in the process of revising and updating major position papers. On export finance, the NFTC is working with other major business groups to update and re-issue a paper laying out business community policy recommendations on Ex-Im Bank. The main focus of the paper will be to call for improving the overall competitiveness of Ex-Im Bank. The final paper will be sent to President Bush and his new administration.

The NFTC is also revising its comprehensive position paper on the Doha Development Agenda to take into account the recent framework package that was agreed to by WTO members in July. The paper will continue to emphasize the importance of an ambitious outcome across the board while providing new recommendations on how to get there. The paper will be used as the main document in upcoming NFTC delegation visits to the WTO and also in lobbying meetings on Capitol Hill.

The NFTC Plans a Full and Very Active Trade Agenda in 2005

Next year is shaping up to be a major year on trade policy in both the Congress and the Executive Branch with a range of trade negotiations and important legislative initiatives on the agenda. The NFTC met recently with the USTR on the anticipated agenda in 2005 and the NFTC areas of priority focus.

On the negotiating front, 2005 will be a critical year for the Doha Development Agenda which will culminate in the Hong Kong Ministerial meeting in December 2005. In building on the recent "framework text" that was achieved in July, the most important area of focus next year will be achieving much greater detail and agreement on the final outlines of the negotiations on industrial market access, services, agriculture and trade facilitation. The NFTC, through its special project on the Doha Round, will continue its major work program and comprehensive strategy toward an ambitious level of trade liberalization and improved rules as the chief outcome of the Doha trade talks. Some of the steps planned include continued NFTC delegation visits to Geneva and a prominent US business presence at the Hong Kong Ministerial meeting.

The other main area of NFTC focus on the trade negotiating front will be to support and shape major bilateral free trade negotiations. A range of FTA negotiations are underway the NFTC will play a role in leading or supporting the various business coalition efforts to support them. An important area of NFTC leadership is in the Middle East and its ongoing work to support bilateral FTA's in the region and the President's bold initiative to achieve a Middle East Free Trade Area (MEFTA) by 2013 (see separate article on the NFTC's new MEFTA coalition). In addition the Middle East, important FTA negotiations are underway with Thailand, Panama, Columbia, the Southern Africa Customs Union (see separate article), Peru and Ecuador.

On the congressional front, completed FTA's on CAFTA and Bahrain will need to be implemented and approved by Congress. There are also two very important trade votes on the horizon: 1) a two-year extension of the President's

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NFTC Tax Treaty Project, Part I Completed OECD Report on Attribution of Profit to a Permanent Establishment

The NFTC began a two-year Tax Treaty Project in early 2004. The Project was undertaken to examine and make recommendations on a number of significant issues regarding tax treaty policy in response to various recent developments in the tax treaty area including the completion of an increasing number of significant agreements with important U.S. trading partners. Part I of the Project has been completed and was rolled out at the NFTC Fall Tax Committee Meeting on November 16, 2004. Part II will be completed in 2005.

Part I of the Project included responses to the OECD's requests for comments on two issues: the "Discussion Draft on the Attribution of Profits to Permanent Establishment - Part I (General Considerations)" and the Draft Progress Report on Cross Border Tax Treaty Dispute Resolution. The NFTC's comments on both issues are included in the first three chapters of the project, "The NFTC Tax Treaty Project: Towards a U.S. Tax Treaty Policy for the Future: Issues and Recommendations," which is available on the NFTC website, www.nftc.org.

The OECD, in recent correspondence to those who responded to the request for comment on the Discussion Draft on Attributing Profits to a Permanent Establishment, indicated that the timing for issuing their final report on the topic has changed. The OECD initially intended to complete their report in January of 2005, but after reviewing the comments that were put forward, OECD Member Countries, at their late October meeting, decided to give further consideration to items discussed in the submitted comments and have postponed finalizing their report.

A memo discussing the revised timetable for completion of the report can be found at the OECD website, www.oecd.org. Comments submitted to the OECD, including those of the NFTC, will be posted on the website in mid to late December.

The OECD's memo notes that the OECD's Working Party 6 will recommend that the organization's Committee on Fiscal Affairs review the process for taking the work forward at their January meeting. Further, the memo mentions how valuable business input has been in "identifying potential misunderstandings and in identifying areas where further factual input and clarification is required." It also notes that there will be further discussion of the comments made by business at the OECD's March meeting and that feedback will be provided to those who commented.



Jeffrey Owens, Head of the Center for Tax Policy and Administration, Organization for Economic Cooperation and Development

U.S.-Netherlands Protocol is Cleared for Ratification by Senate

On November 17, the Netherlands Protocol was passed by unanimous consent in the Senate in the post election session. The Dutch have concluded their approval process. The instruments of ratification are expected to be exchanged in December making the elimination of the withholding tax on related party dividends available to taxpayers as of February 1, 2005. The remaining treaty benefits will be available on January 1, 2005.

Bill Reinsch, NFTC President, testified at the Senate Foreign Relations Committee ratification hearing Friday, September 24th. The hearing, which was the second tax treaty hearing in 2004, set a precedent and advanced the potential for ratification of the protocol to amend the decade old tax treaty between the U.S. and the Netherlands signed earlier this year. A written version of his testimony can be found on the NFTC website at www.nftc.org.

The trading relationship between the Netherlands

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Tax Policy



Bob Green, Director International, U.S. Competent Authority, Internal Revenue Service

NFTC Co-Hosts OECD Meeting in January

The NFTC will join the U.S. Council for International Business/Business and Industry Advisory Committee to the OECD, the Organization for International Investment, and the International Fiscal Association-USA Branch, in hosting a meeting for the Organization for Economic Cooperation and Development. The meeting will be held in Washington, DC, January 13-14.

The meeting will focus on the most recent OECD initiatives; permanent establishment issues and dispute settlement procedures. OECD officials, Jeffrey Owens, Head of the OECD's Center for Tax Policy and Administration, Jacques Sasseville, Head of Tax Treaty Unit, and John Neighbour, Head of Tax Treaty/Transfer Pricing Division, will partici-

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The NFTC Fall Tax Committee Meeting is a Big Success

The Tax Committee held its annual Fall Meeting in Washington, DC, November 16th and 17th. The meeting continues to draw a large group of attendees, and the program did not disappoint.

At the dinner that kicked off the meeting, retiring Senator John B. Breaux of Louisiana was honored. Joe Luby of ExxonMobil authored a doggerel recounting the Senator's significant contribution to helping the Senate Finance Committee reach compromise on various tax issues and his willingness to engage business. The Senator talked about his career in Congress and the many friends that he made in the business community.

Barbara Angus, International Tax Counsel, U.S. Treasury, opened the meeting on December 17th with a tax and treaty update. Her remarks included a synopsis of the significant success in the tax treaty area in this session of Congress including ratification of tax agreements with Australia, Mexico, Sri Lanka, Japan, Barbados, and the U.K. (the Senate ratified the Protocol with the Netherlands later that night). Ms. Angus also discussed the significant changes in the international tax area that resulted from the FSC/ETI reform legislation.

Bob Green, Director, International, U.S. Competent Authority, IRS, made his first NFTC appearance at the meeting. He discussed the challenges of the position that he has now held for almost a year, and encouraged NFTC members to keep him informed as they faced tax challenges with other countries.

Key members of the staffs of the Senate Finance and the Ways and Means Committees engaged in a lively dialogue about the busy tax year and what the future could hold for the 109th Congress. Jeffrey Owens, Head of the Center for Tax Policy and Administration, Organization for Economic Cooperation and Development, discussed current OECD projects and the upcoming January meeting in Washington, DC, being held jointly with the U.S. Council for International Business, the International Fiscal Association, the Organization for International Investment and the NFTC.

In his keynote luncheon address to the tax committee, Greg Jenner, Acting Assistant Secretary for Tax Policy at the Department of Treasury, revealed his deep understanding of various tax regimes. He provided some insights into the process that the President will use to consider various tax regimes as he begins his examination of tax reform.

Many thanks to all the members of the tax committee that continue to support the NFTC's tax programs.



U.S. – Middle East Free Trade Coalition



U.S.-Bahrain FTA Garnering Strong Support in Congress

Due to the elections and issues associated with the timing of consideration of both the Bahrain FTA and CAFTA, Congress did not take up either agreement in the closing days of the session. The U.S.-Bahrain FTA coalition used that time to meet with over 100 offices in the House of Representatives, and feedback indicates very strong support for the U.S.-Bahrain FTA. The coalition will be active in the new session to increase support for early passage of the agreement.

U.S. to begin FTA negotiations with United Arab Emirates, Oman

The U.S.-Middle East Free Trade Coalition enthusiastically endorsed the United States Trade Representative's announcement that he has notified Congress of the Administration's intent to initiate negotiations for free trade agreements (FTA) with both Oman and the United Arab Emirates. USTR formally notified Congress of the intention to initiate negotiations in a letter sent on November 15, 2004.

The United States signed Trade and Investment Framework Agreements (TIFA) with both the UAE and Oman earlier this year. The TIFAs provide a forum for the United States to examine ways to expand bilateral trade and investment, and provide an excellent basis to launch FTA negotiations.

- U.S. goods exports to the UAE in 2003 were \$3.5 billion, including machinery, aircraft, vehicles, electrical machinery and optic and medical instruments. U.S. exports of agriculture products to the UAE totaled \$259 million in 2003, including live animals and tree nuts.

- U.S. goods exports to Oman in 2003 were \$323 million, including machinery, aircraft, vehicles, and electrical machinery. U.S. exports of agricultural products to Oman were \$13 million, including sugars, sweeteners and beverage bases, and vegetable oils.

The U.S. Government inter-agency Trade Policy Staff Committee will hold public hearings on the negotiation of an FTA with the United Arab Emirates on January 12. Those wishing to testify must notify USTR and provide a copy of their testimony by January 5. Details may be found at: <http://www.nftc.org/default/trade/mefta/04-26677.pdf>. A public hearing for the Oman FTA will be on January 14, with notification of intention to testify and a copy of testimony also due to USTR by January 5. Details may be found at: <http://www.nftc.org/default/trade/mefta/04-26676.pdf>

MEFTA Coalition Steering Committee Meets, Maps Out Future Plans

The Steering Committee of the U.S.-Middle Free Trade Coalition met on November 16 to map out its priorities for the coalition. Task forces were established for the following: U.S.-UAE FTA Coalition, U.S.-Oman FTA Coalition, U.S.-Qatar Trade Relations and a task force on FTA implementation issues. Since its launch on October 7, coalition membership has grown steadily, with over seventy companies and associations now participating.

Among the recent activities of the coalition were a dinner with His Excellency Rachid Mohamed Rachid, Minister of Foreign Trade and Industry, Arab Republic of Egypt, a business roundtable with His Excellency Ahmed M. Sofan, Deputy Prime Minister and Minister of Planning and International Cooperation of Yemen, a breakfast briefing with His Excellency Bassem Awadallah, Minister of Planning and International Cooperation of the Kingdom of Jordan, a working lunch with House Ways and Means Committee member Representative Phil English and a lunch discussion with Qatari Minister of Economy and Commerce, HE Sheikh Mohammed Bin Ahmad Bin Jassim Al-Thani.

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and the United States is one of the oldest and most significant. Both countries have long been advocates of opening markets and expanding free trade. Important provisions in the Protocol are expected to enhance the already vigorous cross-border investments between the two countries. One of the most important provisions is the elimination of the 5% withholding tax on related-entity dividends, making further progress on the standard set in recent agreements between the U.S. and the United Kingdom, Australia, Mexico, and Japan. Other important provisions included in the agreement are: changes to the limitations of benefits provisions, reciprocal treatment for certain pension plans, and hybrid entity provisions.



USA*Engage Files Comment with Commerce Department on Futility of Foreign Policy-Based Export Controls

On November 19, the coalition submitted the following comment with the Bureau of Industry and Security in reference to Federal Register notice about the effectiveness of foreign policy-based export controls under the Export Administration Regulations (15 CFR Chapter VII):

- 1) The pursuit at every opportunity of heightened multilateral cooperation to develop more uniform controls and to enforce controls on target countries is of the utmost importance:
 - a) The combination of U.S. corporations' commitment to compliance and the complexity and breadth of the U.S. export control regime relative to the regulations to which competitors are subject creates a competitive disadvantage for U.S. exporters. In an increasingly globalized economy, both sensitive and non-sensitive commodities are increasingly available from foreign sources. In the absence of significant price or availability issues, foreign customers may simply find doing business with foreign suppliers more efficient and less risky. As a result, U.S. companies surrender revenue and market share, while the target of our controls obtains the item it needs from other sources;
 - b) The potential for export controls to achieve intended foreign policy goals is extremely unlikely without multilateral cooperation. Only in cases where the U.S. is the only viable or measurably preferable supplier do controls have substantial impact - an increasingly unlikely situation. Otherwise, buyers simply turn to foreign suppliers for commodities to the exclusion of U.S. companies, rendering our policy goals moot;
 - c) The importance of multilateral efforts cannot be understated as efforts to impose U.S. export controls on foreign companies beyond U.S. jurisdiction are all the more ineffective. Efforts to extend U.S. law extraterritorially damage trade relationships with allies and can result in litigation and/or retaliation.

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USA*Engage Opposes Removal of Language Repealing Regulations Prohibiting Cuban American Family Travel

Language to repeal Executive Branch regulations adopted in June to further restrict family travel by Cuban Americans was removed from the FY05 Omnibus Appropriations legislation. These regulations limit Cuban-Americans to one visit to Cuba every three years (previously a yearly trip was allowed) and fail to provide any contingency in licensing for travel related to humanitarian efforts or emergencies, such as hurricane relief efforts, caring for a sick relative or attending a funeral. In addition they exclude aunts, uncles, and cousins from the definition of family for the purposes of travel licensing. On September 22 the House approved by 225-174 an amendment by Congressman Jim Davis to deny funding for further implementation of these measures. At the same time language passed in the Senate to deny funds to enforce the general travel ban was also stripped. This instance marks the fourth consecutive year that conferees have excluded provisions to liberalize travel to Cuba from appropriations bills.

USA*Engage Commends Inclusion of Language to Remove Restrictions on Export-Import Bank Programs in Libya

Congress included language in the FY05 Omnibus Appropriations bill to give the President the authority to waive application of Section 507 of the Foreign Operations Act with respect to Libya. The provision annually prohibits businesses from using Ex-Im Bank programs including direct loans, guarantees, and assistance in relation to investments in Libya and other designated countries. Libya still remains on the State Sponsors of Terrorism list which also restricts Ex-Im funds. However, the President currently has discretion to waive that provision.



USA*Engage Files Comment with Commerce Department on Licensing Procedures for Agricultural and Medical Exports to Cuba

On October 28, USA*Engage submitted the following comment to the Bureau of Industry and Security in reference to Federal Register notice concerning licensing procedures under the Export Administration Regulations governing agricultural exports to Cuba as allowed by the Trade Sanctions Reform and Enhancement Act of 2000 or TSRA:

Generally, the maintenance of the agricultural exemption licensing program has been handled satisfactorily by the Bureau. The modern online "SNAP" system is efficient and the Bureau has consistently granted notice prior to the 11 business day deadline as outlined in the regulations.

We proposed two further measures to facilitate the process:

- 1) The obligation to obtain separate licenses for commodities and for transport vessels for approved commodities is duplicative and cumbersome. This requirement is not mandated in the TRSA legislation, and its removal would streamline the process and reduce work load and processing times.
- 2) The dual licensing jurisdiction shared between BIS and OFAC is complicated and unnecessary. One of our member companies noted that agricultural products being imported for research purposes, but not designated for agricultural exemption under TRSA, require OFAC as opposed to BIS scrutiny. In this instance, applications remain pending for extraordinarily longer periods of time because the 11 business day response deadline under TSRA is inapplicable.

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2) Bids by U.S. companies that would be eligible are often hindered by certain restrictions that make finalization of the deal, further investment, or continued maintenance or upgrade of product after the initial sale extremely difficult:

a) Current regulations for sales of high tech commodities to Libya to augment the so called "installed base" require verification of the origin of the base. Given the comprehensive trade restrictions in place for decades barring U.S. trade and investment in Libya, exporters must invest an enormous amount of time and resources in an effort to comply when in many cases the origin of the technology is essentially unknowable. In the meantime, transactions with foreign suppliers become increasingly easier and thus more attractive;

b) In some cases, companies can obtain licensing for the initial sale of product but face significant delays or denial in obtaining licenses to export replacement parts needed for upkeep and maintenance. This damages the reputation of U.S. exporters as reliable suppliers throughout the life of an investment and ultimately damages their chances of obtaining future contracts.

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trade negotiating authority (Trade Promotion Authority); 2) a five-year congressional review and potential vote on U.S. continued support and participation in the WTO. CAFTA is by far shaping up to be the most controversial vote in light of the strong opposition by organized labor and a large number of Democrats. Symbolically the vote on CAFTA will be a referendum on the Administration's trade policy and will need active business community support to ensure its approval by a majority in Congress. On the WTO and TPA, the NFTC has already launched a congressional educational effort on the WTO through its new WTO e-gram series, the latest one which is in a separate section of the highlights.

The NFTC also plans to be very engaged in a range of other important policy issues, such as its ongoing work on sanctions and visa policy (see separate articles). The growth in regulatory barriers as non-tariff trade barriers and ensuring U.S. free trade agreements are comprehensive, of high quality and on the NFTC agenda as critical issues to address in 2005.



WTO Dispute Settlement: Boon or Bust for the United States?

The United States is not only the chief architect of the WTO dispute settlement system, it is its most active user. The U.S. Congress had urged successive Administrations to negotiate this system pursuant to the 1988 Omnibus Trade and Competitiveness Act in order to address the limits of the predecessor GATT system, which allowed losing parties to block panel reports. **Has the development of binding dispute settlement – an innovation in the Uruguay Round Agreements – been a benefit to the United States? We certainly think so. And here’s why:**

The United States has brought more WTO cases than any other WTO member, including the European Union. While representing approximately 16% of world trade, the United States has brought nearly 24% of the WTO disputes (74 complaints involving 74 disputes) between January 1, 1995 and October 12, 2004.

And . . .the United States has won the vast majority of the cases that it brought.

Wins (on core issues)	Losses (on core issues)	Pending	Monitoring or Inactive
44 (22 with full litigation; 22 mutually resolved)	4	13	12

U.S. victories have helped open markets for all sectors of the U.S. economy.

Agriculture	Manufacturing	Services	Intellectual-Property Based Industries
Including beef, corn syrup, dairy, distilled spirits, fishery, fruit, leather, grains, pork, poultry, rice	Including automobiles, chemicals, consumer goods, semiconductors and textiles	Including magazines, motion pictures, and telecommunications	Including creative arts, high technology, and pharmaceutical sectors.

The United States is also the WTO member against which the most complaints have been brought – 83 complaints involving 73 separate disputes through October 16, 2004. Of these, the United States:

- resolved 14 without completing litigation and won 10 cases on the core issue (including softwood lumber, section 301, and U.S. compliance in the shrimp-turtle dispute); and
- lost 23 cases, while 17 remain in progress and 9 are inactive.

While the United States (like other countries) has faced some very difficult cases, overall, the WTO dispute settlement system has proven itself to be an effective means for enforcing America’s WTO rights, while also respecting U.S. sovereignty and promoting the rule of law. The United States is continuing to seek to improve the system through the Doha Development Agenda negotiations – an important opportunity to make a good system work even better.

WTO & Doha Agenda: Opening Markets, Strengthening America

The National Foreign Trade Council (NFTC) and Emergency Committee for American Trade (ECAT) are broad-based business organizations and founding members of USTRade, an organization created to support the WTO. For further information, contact the NFTC at mirace@nftc.org or ECAT at lmenghetti@ecattrade.org.



U.S.-South Africa Business Council



Dan O'Flaherty with South Africa Trade and Industry Minister Mandisi Mphahlela

U.S.-South Africa Business Council Staff Meets with New Trade Minister, Business Leaders in South Africa to Discuss FTA Negotiations and Black Empowerment Requirements

During a ten-day visit to South Africa November 8-18, U.S.-South Africa Business Council staff met with Mandisi Mphahlela, the new minister of Trade and Industry, managing directors of U.S. companies, senior South African business leaders and organizations. Discussions centered on the stalled free trade negotiations between the U.S. and the five countries of the Southern African Customs Union and on South Africa's evolving black economic empowerment (BEE) requirements. During the visit, Business Council staff were interviewed by the South African press about the FTA talks. On November 23, the Business Council debriefed the U.S. negotiating team to urge USTR Zoellick to visit the region to energize the negotiations. Another Business Council meeting on December 1 discussed important new developments in BEE. The trip yielded many important new developments in the BEE program and the FTA negotiations. The Business Council subsequently met with South African ambassador Masekela and wrote Ambassador Zoellick and South African trade minister Mphahlela expressing continued business support for the FTA. Contact Dan O'Flaherty at 202-464-2026 or doflaherty@nftc.org about these issues.

The U.S.-South Africa Business Council and USA*Engage Hail Dismissal of Apartheid-era Lawsuits

The U.S.-South Africa Business Council and the USA*Engage coalition hailed the November 29 decision by Federal District Court Judge John Sprizzo to dismiss the consolidated lawsuits filed against dozens of U.S. and other multinationals. These suits have been a top priority for the

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New Members

UnitedHealth Group is a diversified Fortune 100 company that provides a full spectrum of resources and services to help people achieve improved health and well-being through all stages of life. UnitedHealth Group offers products and services through six operating businesses: UnitedHealthcare, AmeriChoice, Ovations, Uniprise, Specialized Care Services and Ingenix. Through its family of businesses, UnitedHealth Group serves approximately 55 million people. Greg Arms, Senior Vice President, sits on the NFTC Board of Directors and represents United Health Group in its General Membership in the NFTC. www.unitedhealthgroup.com

Goodwin Procter LLP is one of the nation's leading law firms, with 600 attorneys. The firm's core areas of practice are corporate, litigation and real estate, with specialized areas of focus that include financial services, private equity, real estate capital markets, intellectual property and products liability. Goodwin Procter is headquartered in Boston, with offices in New York, New Jersey and Washington, DC. John Rich represents the firm in its NFTC General membership. www.goodwinprocter.com

Polak International Consultants, Incorporated helps its clients sort through the complications of management, human resources, and international business. Its expertise aids organizations in all aspects of business, from general strategy to specific implementation. Over the past nine years Polak International Consultants has assisted over 200 of the world's most progressive multinational companies in 90 countries. Their offices are located in Chicago, Los Angeles, Philadelphia, San Jose, St. Louis, Washington, D.C. and London, England. Richard Polak, President & CEO represents the firm in its NFTC International Human Resources membership. www.polak.net



Human Resources



Global Mobility Management: Review of Trends and Issues for the Period 1993-2004

In 2004 the NFTC released the findings of its tenth annual global relocation trends survey, co-sponsored by GMAC Global Relocation Services and the Society for Human Resource Management (SHRM) Global Forum. For a copy of the latest annual survey, contact Denise Schulman at 212-399-7128 or dschulman@nftc.org.

A new report has just been released which reviews the global relocation trends of the last ten years. Key highlights include:

- The UK and the United States are the two most active destinations
- China is the top "emerging market" destination
- The percentage of female expatriates has gradually risen from 10% (1993) to 18% (2003/2004)
- There is still no clear trend on how employers measure the success or ROI of expatriate assignments
- The percentage of short-term (less than twelve months) assignments has increased dramatically during the ten year period, in part as a response to a "down" global economy, in part as a response to the dual career challenge, and in part due to the increased number of project type assignments.

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pate on panels joined by representatives from business, the IRS, and the U.S. Treasury.

Barbara Angus, International Tax Counsel, U.S. Treasury, will deliver the keynote lunch address on the topic of the U.S. participation with the OECD. A panel of staff from the Senate Finance Committee, Ways and Means Committee, and Senate Foreign Relations Committee will focus their remarks on the Congressional view of international tax. The draft agenda and registration form can be found on the NFTC website at www.nftc.org.

International Assignment Management Committee - Meeting in New York City, November 3-5, 2004

The NFTC's International Assignment Management Committee (IAMC) held its inaugural meeting in New York City. The committee chair is Tracy Russell of Tyco.

Participants included representatives from ABN-Amro Bank, Accenture, Arrow Electronics, Baker-Hughes, Barclays Capital, Capgemini, Dell, Dow Chemical, EDS, General Dynamics, Honeywell, Mars Inc., Medtronic, Merrill Lynch, Morgan Stanley, Nokia, Reuters, and Tyco.

As with the long-established Expatriate Management Committee, the focus of the IAMC is the effective management of global mobility programs. Topics covered included development of a regional mobility program for assignees from and within Asia, the establishment of a pension plan for career expatriates, protecting expatriates in the Middle East, and implementation of a web-based mobility management system. For further information, please see the summary minutes available at www.nftc.org.

The IAMC will convene again in March 2005. For further information, please contact Grace O'Rourke, Director - IHR Services, at 212-399-7128 or gorourke@nftc.org.

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U.S.-South Africa Business Council and USA*Engage since they were filed in June, 2002. Viewing them as a major disincentive to foreign investment in South Africa, the Business Council mobilized opposition to the suits in the U.S. and in South Africa. The South African government publicly opposed them in a letter to Judge Sprizzo, as did the U.S. Department of State. Business Council Executive Director Dan O'Flaherty told the press, "American business is proud of its conduct during the struggle to end apartheid and made a major contribution to undermining the system and laying the foundation for today's multi-racial South Africa."

USA*Engage pointed to the precedent set by Judge Sprizzo, following the June, 2004 Supreme Court *Sosa v. Alvarez-Machain* decision limiting the scope of the 1789 Alien Tort Provision. USA*Engage co-chairman and NFTC president Bill Reinsch said "this was the first significant test of how the lower courts will interpret the Supreme Court's *Sosa* decision. The decision should set the tone for similar lawsuits targeting U.S. companies doing business abroad." A number of lawsuits have been filed against U.S. companies for alleged complicity in human rights abuses in countries where they were doing business. The plaintiffs in the South Africa cases have 30 days to appeal Judge Sprizzo's decision



Calendar of Events



<u>Date</u>	<u>Topic</u>	<u>Location</u>
January 12	Tax Lunch Forum	Washington, DC
January 12	Tax Steering Committee Meeting	Washington, DC
January 13	U.S.-SACU Coalition Meeting	Washington, DC
January 14	International Trade and Investment Committee Meeting	Washington, DC
February 8	Annual International Human Resources Management Conference	Houston, TX
February 16	Tax Lunch Forum	Washington, DC
February 16	Tax Steering Committee Meeting	Washington, DC
March 8	Board of Directors Meeting	Washington, DC
March 23	Tax Lunch Forum	Washington, DC
March 23	Tax Steering Committee Meeting	Washington, DC
April 28-30	Spring Tax Committee Meeting	Charlotte, NC
June 14	Tax Lunch Forum	Washington, DC
June 14	Tax Steering Committee Meeting	Washington, DC
September 20	Tax Lunch Forum	Washington, DC
September 20	Tax Steering Committee Meeting	Washington, DC
November 8-9	Fall Tax Committee Meeting	Washington, DC

**The Tax Steering Committee Meetings, SACU FTA Chapter Briefings, Expatriate Management, Global Compensation and International Benefits Committees are by invitation only. For information about them contact Chuck Dittrich, 202/887-0278, e-mail cdittrich@nftc.org*



National Foreign Trade Council



Current Member?

Update your contact information or add a colleague from your company who doesn't currently participate in NFTC activities.

Join us in securing an Open Global Trading System for U.S. Business!

If you know of a company that we may contact to join the NFTC or if you are not a member and would like information on how to become involved, let us know:

Company: _____
 Contact Name: _____
 Address: _____
 Phone: _____
 Fax: _____
 Email: _____

NFTC Area of Interest (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> International Trade & Investment | <input type="checkbox"/> Export & Project Finance |
| <input type="checkbox"/> International Human Resources | <input type="checkbox"/> International Taxation |
| <input type="checkbox"/> USA*Engage | <input type="checkbox"/> U.S.-South Africa Business Council |

Please mail or fax to:

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