WASHINGTON UPDATE

September 2002

FSC/ETI: The long-awaited WTO sanctions report in the foreign sales corporations/extraterritorial income (FSC/ETI) case was released on 8/30. The report was a complete victory for the EU. It authorized the full amount of trade sanctions they had requested (about $4 billion) rather than the smaller $1 billion argued for by the U.S. While, as a practical matter, the EU cannot impose anywhere near that amount without incurring severe economic consequences of their own, they could still cause serious damage to the U.S. economy with lesser amounts if targeted strategically. The NAM and the German Industry Association (BDI) on 8/30 urged the EU to hold off given the interdependence of the EU and U.S. economies.

Pension Reform: With the Senate still reportedly on track to debate pension reform after completing work on a Department of Homeland Security bill, the type of pension reform legislation that the Senate will debate is still under negotiation. Majority Leader Daschle (D-SD) continues to insist that the Senate will take up a pension reform bill that is a combination of the two committee-passed bills. Sen. Kennedy’s (D-MA) pension bill, S. 1992, has diversification, liability, employer-employee joint plan trusteeship and other provisions that most businesses find unacceptable. It has failed to attract bipartisan support. The Baucus (D-MT) pension bill, S. 1971, has the attraction of bipartisan support. Sen. Daschle said 9/5 that negotiations are continuing on the two bills and that he still expects a “common vehicle” to be ready when the Senate turns to the issue.

Off-Road Machinery Tax: A proposed IRS rule, if finalized, could result in a tax increase for businesses that use mobile machinery equipment. These industries include: oil drilling, water drilling, utilities, commercial construction, timber, tower erectors, equipment leasing and mining. Currently, mobile equipment that is not a highway vehicle is exempt from the highway excise taxes—the fuel tax on gasoline (18.4/gallon) and diesel fuel (24.4/gallon), the tire tax, the retail tax on heavy vehicles (trucks and trailers; 12 percent tax on the purchase price), and the annual heavy vehicle use tax (based on weight capped at $550/year). On 6/6, the IRS proposed a rule that would end the mobile machinery vehicles exemption for any non-farm equipment that can be used on the roads. Thus, equipment like mobile drilling units, digger derricks, concrete pumpers, mobile cranes, and aerial lift trucks would be taxed at purchase, at the fuel pump, at the tire dealer and annually on weight. Under the proposed rule, non-licensed equipment will not be subject to these taxes under the proposed rule change. The deadline for comments to the IRS is 12/4/02.

Ergonomics: Despite best efforts by lawyers representing the Association of Washington Business, the NAM and other groups, a trial judge in Washington State on 7/12 ruled against our suit challenging that state’s new ergonomics regulation. The suit
challenged the state regulations based on flawed cost/benefit analysis, timeliness, 
statutory authority, the validity of the evidence supporting the rule, and the sufficiency of 
the implementation plan. The ruling is being appealed. For more information on the 
Washington Employers Concerned About Regulating Ergonomics (WE CARE) v. 
Washington Dept. of Labor and Industries suit, visit www.nam.org/Washington

Corporate Inversions: The Senate 9/5 approved an amendment to Homeland Security 
bill H.R. 5005 that would deny federal contracts issued by the future Cabinet-level 
Homeland Security Dept. to companies that have undergone a corporate inversion 
overseas. The amendment, offered by Sen. Paul Wellstone (D-MN), was approved by 
unanimous voice vote. Sen. Phil Gramm (R-TX) suggested that the amendment could be 
stripped out during a House-Senate conference committee on the legislation. A similar 
amendment is included in the version the House passed in late July.

Energy: Rep. Billy Tauzin (R-LA), chair of the House-Senate conference on energy 
legislation, says he wants to wrap up work on the conference report to H.R. 4 before the 
October adjournment. All major and many minor issues remain unresolved, including 
onerous Senate titles on climate change and renewable portfolio standards. Meanwhile, 
key senators have promised to torpedo the legislation if it includes House-passed 
provisions permitting limited, environmentally sound oil/gas exploration in ANWR.

Baby UI Regulation: A federal district court has dismissed a business lawsuit 
challenging DOL’s “baby UI” regulation—so-called because the regulation permits states 
to vastly expand their unemployment eligibility requirements to include parents on leave 
for the birth or adoption of a child. The court determined that business had failed to show 
that it was injured by the rule because no state has implemented the scheme. Should one 
do so, the suit could be filed again. UI funds need to be reserved for their original 
purpose: assisting the unemployed.

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