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TRADE ACRONYMS GALORE

It is difficult to assess the pluses and minuses of trade policy for small business from a generic view point. I suppose any export sale is a good sale and anything that can be done to help small business export more is a good thing. Beyond that, international trade policy winners and losers are measured by different yardsticks than small business value. Congress is in the midst of a trade policy flurry so this is what is going on for those of us not watching it closely.

The U.S. Generalized System of Preferences (GSP) is a program initially designed to promote economic growth in the developing world by providing preferential duty-free entry to certain products from designated beneficiary countries and territories. The program was created by a 1974 law.

As a practical matter, industries and sometimes an individual business within an industry love or hate the program. Some businesses find themselves competing against the imported products. There are businesses that depend on the imported products for their own efforts to compete. For many years, it was mostly businesses

complaining about the cheaper imported goods, now it is more of a mixed chorus. There are business coalitions for and against the GSP.

There is a whole process for determining which countries and products from that country are eligible for the favored tariffs and a process for losing those benefits. Too long to explain here. The bottom line is that it provides preferential duty-free entry for up to 4,800 products from 129 designated beneficiary countries and territories. Nearly \$577 million in duties were waived in 2009.

The relevance to the moment is that the GSP program expires regularly and Congress has to go through the drama of renewing it – which it ultimately does. The program expired at the end of 2010 and a retroactive renewal is on the table now. It has become the vehicle for resolving the stalemate for approval of three Free Trade Agreements (FTAs) using the Trade Promotion Authority (TPA) and renewal of the Trade Adjustment Assistance (TAA) law which has also expired.

The Democrats made a deal with Republicans to approve the FTAs if the Republicans went along with a renewal of the TAA, with some

modifications as concessions to the Republicans. That is what was put into play by the House last week and will progress in the Senate this week. The GSP renewal happens to be in the right place at the right time as the TAA renewal has been attached to it.

The TAA program provides aid to workers who lose their jobs or whose hours of work and wages are reduced as a result of increased imports. The workers petition the federal government and if the petition is granted, workers receive assistance: training for employment in another job or career with up to 104 weeks of approved training in occupational skills, basic or remedial education, or training in literacy or English as a second language; income support known as trade readjustment allowances (TRA) which are weekly cash payment available after a worker's unemployment compensation (UC) benefit is exhausted and during the period in which a worker is participating in an approved full-time training program; a job search allowance payable to cover expenses incurred in seeking employment; and relocation reimbursement for approved expenses if the worker is successful in obtaining employment elsewhere.

The TPA allows for an expedited up or down vote on free trade agreements. The deal is once Congress passes the GSP-TAA package, the President will formally send three FTAs for consideration by Congress – Columbia, South Korea, and Panama. Ironically, the TPA law expired some time ago but these three FTAs were negotiated and signed in time to be eligible for the TPA expedited process.

CLEANING UP A LOOSE END

You may recall that due to an anomaly under the tax code, employees and employers had to meet a higher threshold of proof in order for a cellphone (and similar telecommunication devices e.g. your blackberry or smart phone) not to be considered a taxable fringe benefit to the employee and for the cost to be depreciated or otherwise deducted by the business.

The Small Business Jobs Act of 2010 removed those telecommunication devices from the substantiation list. The Internal Revenue Service (IRS) has issued a notice, Notice 2011-72, to clean up the details.

The notice says the value will not be taxable income to the employee and any personal use will be considered a nontaxable de minimis fringe benefit.

While there is no requirement for substantiation, employers would be well served to remember that there still must be a business purpose for the phone. It might be good to have that in your files. Said the IRS: “An employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons

relating to the employer’s business, other than providing compensation to the employee, for providing the employee with a cell phone. For example, the employer’s need to contact the employee at all times for work-related emergencies, the employer’s requirement that the employee be available to speak with clients at times when the employee is away from the office, and the employee’s need to speak with clients located in other time zones at times outside of the employee’s normal work day are possible substantial noncompensatory business reasons. A cell phone provided to promote the morale or good will of an employee, to attract a prospective employee or as a means of furnishing additional compensation to an employee is not provided primarily for noncompensatory business purposes.”

The IRS also issued a memorandum addressing a less common situation – when an employer reimburses an employee for the business use of a personal telecommunication device. Too long to describe here but the bottom line is that the reimbursement will be considered nontaxable too.

EPA REGULATORY ANALYSIS

This week the House will consider H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011 (TRAIN Act). The purpose of the bill is to slow down the Environment Protection Agency (EPA) train. The TRAIN Act would establish an interagency committee to analyze and report on the cumulative and incremental effects of certain rules and actions of the EPA, which are set forth in the bill. Some of the rules are already final rules; some

are still proposed rules. Most of the major agencies are included in the interagency committee, as is the Chief Counsel for Advocacy for Small Business, and it is chaired by the Commerce Department. The interagency committee’s analyses would include the effects of the covered rules and actions with regard to: U.S. competitiveness, including energy intensive and trade sensitive industries; other cumulative cost and cumulative benefit implications; changes in electricity and fuel prices; impact on national, State, and regional employment both in short- and long-term; and, reliability and adequacy of bulk power supply. The analyses would also include a discussion of the key uncertainties and assumptions associated with each estimate, a sensitivity analysis, and a discussion of the cumulative impact of the covered rules and actions on consumers; small businesses; regional economies; state, local, and tribal governments; local and industry-specific labor markets; and agriculture.

The interagency committee would be required to wrap up its work and issue a report by August, 2012. The bottom line is that proposed rules covered by the bill would be put on hold and implementation of rules that have already been finalized would also be put on hold. The hold would extend until six months after the interagency committee issues its report. There is no requirement for the interagency committee to make any recommendations with respect the covered rules and actions, and no requirement that the EPA do anything with the interagency committee’s report.