

FOR INTERNAL USE ONLY

JULY 9, 1993

CORPORATE

House To Name Budget Conferees After July Recess As Difficult Conference Looms

On June 29, House Speaker Tom Foley (D-WA), announced that the House's conferees for the budget reconciliation bill will not be appointed until Congress returns from its recess on July 12. The Senate's conferees were named on June 25. The conference is expected to begin next week in an effort to work out the differences between the respective chamber's reconciliation bills. The Congressional Democratic Leadership hopes to have a conference report ready to take to the House and Senate floors for a final vote in early August.

While lawmakers were reviewing the details of the Senate's version of the reconciliation bill last week, a number of key groups of House Democrats who voted for the House reconciliation package have indicated that their

2047992759

votes for the final conference report are far from assured unless major changes are made. During a meeting of all House Democrats on June 30, Rep. Charlie Stenholm (D-TX) and 32 other conservatives and moderates told their colleagues that the House-passed Btu tax should be jettisoned and replaced with higher individual tax rates and a 36% corporate tax rate. Other members, including a leading House liberal, Rep. David Obey (D-WI), also indicated that the Senate's smaller transportation fuels tax should be dropped and replaced with higher individual and corporate rates. In addition, the 39 members of the Congressional Black Caucus have indicated that they will not vote for the final conference report unless provisions significantly increasing the earned income tax credit and the size of the food stamp program are included. Due to the narrow margins by which the House and Senate passed their differing versions of a reconciliation bill - 6 votes and 1 vote, respectively - these potential defections have created serious concerns with regard to whether a quick resolution can be reached in conference.

Federal Court Ruling Threatens To Delay Action On NAFTA

On June 30, a federal district court issued a ruling that prevents the Clinton Administration from putting the North American Free Trade Agreement (NAFTA) into effect until a formal environmental impact statement has been completed. The court agreed with NAFTA opponents - such as Ralph Nader's Public Citizen and the Sierra Club - that the trade pact violated current law due to the lack of the environmental impact study. Since such studies typically take many months, if not years to complete, the ruling has

2047992760

the potential to sidetrack the entire NAFTA process and delay the expected vote on the trade pact late this fall.

The Clinton Administration immediately stated that it will seek an expedited appeal of the ruling, arguing that, among other things, the lower court decision unconstitutionally interferes with the President's plenary authority to conduct foreign affairs. In addition, the Administration indicated that it intends to continue the negotiation of "side" agreements on labor and the environment with Mexico and Canada, and submit the pact to Congress for its approval upon the completion of those side agreements.

Congress Approves Uruguay Round Fast-Track Extension As Administration Announces "Breakthrough" In Trade Talks

On June 30, the Senate gave its overwhelming approval to legislation previously passed by the House that would extend the Administration's fast-track authority to complete the Uruguay Round of trade negotiations. The bill would extend fast-track procedures so that Congress has until April 15, 1994 to approve the outcome of the negotiations. The bill also sets December 15 as the deadline by which the Administration must conclude the Uruguay Round negotiations. President Clinton supported the measure and is expected to sign it this week.

In a related development, the Administration on July 7 announced at the G-7 summit in Tokyo that a "major breakthrough" had been achieved by virtue of a new agreement between the U.S., Japan, the European Community and Canada that would open these countries' respective markets to a variety of

2047992761

imports. Under the agreement, tariffs would be removed on items such as beer, distilled spirits and pharmaceuticals, while tariffs would be reduced on a number of other products. President Clinton hailed the agreement, stating that it "breaks the logjam in the Uruguay Round" trade talks.

Senate Commerce Committee Holds Hearing On FTC Reauthorization Bill

The Senate Commerce Committee held a hearing June 29 on the Senate's version of an FTC reauthorization bill. In contrast to the bill passed by the House on June 21, the Senate measure would permanently ban the use of the FTC's unfairness rulemaking authority and codify a definition of "unfairness" that would apply to unfairness proceedings the FTC brings under its case-by-case authority. FTC Chairman Janet Steiger testified at the hearing, and indicated that the FTC preferred the passage of a "clean" reauthorization bill that, like the House's, contains no restrictions on the FTC's authority.

The Commerce Committee is expected to mark up its bill sometime toward the end of July and move the bill to the Senate floor shortly thereafter in an effort to reach conference with the House on the measure. Efforts will be made in conference by both Energy and Commerce Committee Chairman John Dingell (D-MI) and Commerce Committee Chairman Ernest Hollings (D-SC) to reach a compromise on whether and under what circumstances the FTC would be permitted to use its unfairness rulemaking authority against commercial advertising.

2047992762

Supreme Court Renders Commercial Speech Decision That Could Embolden Tobacco and Alcohol Advertising Critics

On June 25, the Supreme Court rendered a decision in U. S. v. Edge Broadcasting, which rejected a First Amendment challenge to a federal statute that prohibited broadcast advertisements for state-run lotteries on stations located in states that do not permit such lotteries. The statute was challenged by a North Carolina station (North Carolina prohibits state-run lotteries) located near the Virginia border that sought to run Virginia lottery advertisements for its listening audience, of which Virginia residents comprised 92%.

Although the Court applied no new legal test to the case before it, the result appeared to cut back on the strong protection afforded to commercial speech by the Court in two previous cases this term. In addition, the Court's decision contained some potentially troubling language with respect to tobacco and alcohol advertising. First, the Court several times cited with approval its 1985 commercial speech decision in Posadas, wherein the majority indicated in dicta that Congress and the states could take the "lesser" step of banning tobacco and alcohol advertising since they had the "greater" power to ban the products themselves. Second, the Edge Court accepted the government's argument that restricting advertising necessarily limits the "demand" for a product or service, even though the government had submitted no evidence to that effect in the case. Finally, the Edge Court made direct reference to current tobacco and alcohol advertising restrictions to support its contention that Congress could constitutionally limit lottery advertisements.

2047992763

Critics of tobacco and alcohol advertising are likely to point to these aspects of the Edge case to support their efforts to curb such advertising in the legislative arena. Nonetheless, it is important to note that despite the above-described language in the Edge case, the precise issue of alcohol and tobacco advertising restrictions was not under review by the Court. In addition, the Edge case dealt with government regulation of the airwaves with respect to an activity that is currently illegal in many states, factors that are not present when tobacco or alcohol advertising is at issue.

Senate Environment Committee Holds Hearing On Clean Water Authorization, Focusing On Role Of Industry In Pollution Prevention

The Senate Environment and Public Works Committee continued hearings last week on the reauthorization of the Clean Water Act. The latest hearing focused on toxic pollution issues and the role of industry in pollution prevention. The proposed Senate legislation, introduced by Committee Chairman Max Baucus (D-MT) and Ranking Republican John Chafee (R-RI), would grant EPA broad authority to mandate in-plant process changes and material substitution as one means of controlling discharges of toxic materials. This proposal promises to be controversial within the manufacturing community. Testimony on this and related issues was received from EPA officials, environmentalists, and industry representatives.

Senate hearings on other aspects of the Clean Water Act are expected to continue before the Committee through the month of July. Major

2047992764

reauthorization legislation has not yet been introduced in the House of Representatives.

TOBACCO

Other Cigarette Manufacturers Appeal To Growers To Weaken Domestic Content Requirements Endorsed By Philip Morris

Representatives of RJR, Lorillard, Liggett, B&W, and American Tobacco met this week with the burley and flue-cured tobacco leadership to attempt to persuade them to adopt lower domestic content requirements in anticipation of the House-Senate reconciliation conference. The Senate budget bill includes language sponsored by Senator Wendell Ford (D-KY) that would require domestic manufacturers of cigarettes to certify annually to the Secretary of Agriculture that not less than 75% of the total volume of tobacco they use to manufacture cigarettes, including exports, is U.S. tobacco. In the House, Rep. Charlie Rose (D-NC) has proposed a 70% domestic content requirement for all cigarettes manufactured in the U.S., including cigarettes for export, which Philip Morris has endorsed.

The other domestic cigarette manufacturers support, in varying degrees, a proposal advocated by RJR that would require, for calendar years 1994 through 1996, that 85% of the total flue-cured and burley tobacco (excluding Oriental) used in cigarettes manufactured for domestic consumption be domestically produced. In addition, Liggett is insisting on a provision that would have the effect of exempting them from any domestic

2047992765

content requirements due to their small market position. The companies maintain that, unless the domestic content of cigarettes manufactured for export is reduced, production will move off-shore. They also argue that the potential exists for trade retaliation if imported tobacco is severely limited. Philip Morris supports a 70% domestic content requirement for all cigarettes manufactured in the U.S. because of the critical need to stabilize domestic tobacco quotas and restore confidence in the tobacco program.

The House-Senate conference on the reconciliation bill begins next week and is expected to complete its negotiations in time for final passage prior to the August recess. The conferees will have great latitude in determining the final language of the imported tobacco provision.

President's Health Care Task Force Director States That Tobacco Taxes Will Be Used To Finance Administration Health Care Package

In a speech before the Democratic Leadership Council last week, Ira Magaziner, the Director of President Clinton's Health Care Task Force, spoke about the still evolving Administration health care package. Magaziner indicated that the President's plan would likely be unveiled after the passage of the President's budget. "In all likelihood," according to Magaziner, "that means early September right after recess."

In addition, Magaziner said that only two "new taxes" were likely to be necessary to fund the President's plan: 1) an increase in the federal unemployment insurance tax that employers currently pay; and 2) a "tobacco tax" and perhaps "other sin taxes." He then went on to say that

2047992766

the tobacco tax would be the "main piece" of this so-called financing package, and declined to identify what he meant when he said "other sin taxes" were also under consideration. Magaziner did not specify the amount of new revenues that the Administration would need to raise from these "new taxes," but indicated that "if" the new revenues needed reached into the "double digits," it would be in the "low double digits" area.

Magaziner's focus on tobacco taxes is part of a broader effort by the Administration to play down the much larger tax increases that are also included in the Clinton plan at this stage. Specifically, the Administration does not characterize the payments based on payroll that employers and employees will have to make to regional health alliances as "new taxes" since they technically will not be paid directly to the government. These payments will amount to scores of billions of dollars per year. Nor does the Administration apparently count as "new taxes" the billions of dollars it hopes to raise by limiting the deductibility of health care costs and by imposing surcharges on self-insured plans that opt out of the regional health alliances.

Legislation Introduced In House To Deny Tax Deductibility Of Advertising And Promotion Expenses For Tobacco Products

On June 28, Rep. Michael Huffington (R-CA) introduced a bill that would deny the tax deductibility of advertising and promotion expenses for tobacco products. Reps. Dick Durbin (D-IL), Mike Andrews (D-TX), Barney Frank (D-MA), Pete Stark (D-CA), John Conyers (D-MI), Jim Traficant (D-OH), Ron Wyden (D-OR) and Jim Hansen (R-UT) are co-sponsors on the bill, which is

2047992767

expected to be referred to the Ways and Means Committee. The legislation would take away the deductions currently permitted for tobacco advertising expenses, along with expenses incurred as a result of travel, entertainment, gifts, and promotions that are related to tobacco advertising. The revenue generated by the bill would be used for "deficit reduction purposes."

FOOD

FEDERAL GOVERNMENT AFFAIRS

Senate Agriculture Committee Holds Hearing On NAS Study And Food Safety Reform Legislation

On June 29, the Senate Agriculture Committee held a hearing on the long-awaited National Academy of Sciences (NAS) report entitled "Pesticides in the Diets of Infants and Children." This study, funded primarily by the EPA and released on June 27, was designed to examine current scientific methods of assessing the risk of pesticide residues to infants and children. While the NAS panel stressed that children need a diet of fresh fruits and vegetables, it noted deficiencies in the available data about children's pesticide intake. The panel recommended that further studies take into account the differences between the diets and metabolisms of adults and children, and also examine the cumulative effects of pesticides from a variety of sources, including drinking water and fruit juices.

In addition to members of the NAS panel, Chairman Patrick Leahy (D-VT) received testimony from the sponsors of competing food safety legislative proposals. Senator Edward Kennedy (D-MA) and Rep. Henry Waxman (D-CA)

2047992768

discussed their proposal, which takes a stringent approach to food safety and would eliminate the consideration of economic benefits in determining whether a pesticide is safe for use on food. In addition, Rep. Richard Lehman (D-CA) appeared before the Committee to testify on behalf of legislation he has introduced which includes a flexible negligible risk standard for pesticide use, allows the consideration of both economic and health benefits, and provides uniform national pesticide residue tolerances. The Lehman bill is supported by KGF and other members of the Food Chain Coalition.

In a related development, EPA Administrator Carol Browner appeared before the National Press Club on June 30 to announce immediate actions that the agency would take to carry out the recommendations of the NAS report. Browner underscored the Clinton Administration's commitment to ensuring the safety of the foods children eat by reducing the overall use of pesticides in the United States. Browner embraced the major NAS recommendations, indicating the EPA would begin immediately to: 1) screen pesticides for effects on the nervous, immune and endocrine systems; 2) work with USDA on gathering pesticide residue data; 3) improve food consumption survey methods; 4) consider children's pesticide exposures from food, drinking water and the home; and 5) initiate an incident monitoring system for pesticide adverse effects. Despite the announcement of these actions, Browner strongly emphasized that the nation's food supply is safe, and said that she would not alter her five-year old son's diet in any way as a result of the NAS study.

2047992769

Additional congressional hearings are planned leading up to the August recess that will focus further on food safety issues laid out in the NAS report and raised by EPA's revocation of certain pesticide uses due to a court decision last year requiring it to enforce the letter of the Delaney Clause. These hearings will set the stage for further consideration of the Kennedy/Waxman and Lehman food safety bills.

Agriculture Secretary Sets Sugar Marketing Allotments and Butter/Powder Tilt

On June 30, Secretary of Agriculture Mike Espy announced the establishment of marketing allotments on sugar, which restrict the amount of sugar that may be sold by individual U.S. sugar producers. Because the U.S. sugar price support program is required by law to operate at no cost to the federal government, Congress authorized the USDA in 1990 to use marketing allotments to limit the sale of domestically produced sweeteners as a price maintenance tool if it is determined that anticipated fiscal year imports of sugar for U.S. consumption will be less than 1.25 million tons. This action is intended to reduce the sugar supply enough to prevent costly forfeitures of sugar to the Commodity Credit Corporation. KGF is opposed to the use of sugar marketing allotments and is currently conducting a market analysis to determine future cost implications for raw and processed sugar.

The Secretary of Agriculture also announced on June 30 that the Commodity Credit Corporation will change the USDA's "butter/powder tilt" by increasing the price it pays for nonfat dry milk and reducing the price it

2047992770

pays for butter. KGF supports this new initiative, because it fairly reflects the market value of the fat and non-fat components in milk.

DOT Holds Hearing On Edible Oils Spill Response Plans

On June 28, the Department of Transportation (DOT) held a hearing to discuss a number of issues concerning spill response plans for edible oils in transport. The hearing focused on a July 16 Interim Final Rule published in the Federal Register that declared shipments of edible oils of less than 42,000 gallons to be exempt from the DOT "hazardous materials" designation and the oil spill response requirements applicable to such materials. At the June 28 hearing, DOT indicated that it may be considering other volume thresholds, but did not indicate if the other thresholds under consideration may be lower than 42,000 gallons. KGF is working through a coalition to maintain the 42,000 gallon threshold in the final rule and to ensure that DOT adopts reasonable standards for the shipment and handling of edible oils.

FOOD

STATE GOVERNMENT AFFAIRS

Oregon Senate Unanimously Approves Bill Delaying Enforcement of Plastics "Rates And Dates" Law

The Oregon Senate unanimously approved SB1009, which outlines certification requirements under the state's rigid plastics container "rates and dates" law. SB1009 also includes an amendment which delays

2047992771

enforcement of the rates and dates law until January 1, 1996 and until the Department of Environmental Quality (DEQ) publishes the 1995 rigid plastic container recycling rate. The House is expected to hear SB1009 late this week or early next week, and is expected to pass the measure as well. Governor Roberts has pledged to sign the bill into law if it reaches her desk.

Industry Thwarts Passage Of New York "Rates And Dates" Packaging Legislation -- Other Anti-Business Initiatives Stall As Legislature Nears Adjournment

As the New York legislature approaches adjournment, industry has thus far successfully prevented the Assembly from considering AB2573, Assemblyman Brodsky's "rates and dates" packaging bill. Action on other anti-business legislative proposals has also been stopped to date. These proposals include: legislation to expand the bottle bill to cover all beverages except milk to fund New York's Environmental Trust Fund; a "downsizing" bill which would require special labeling for products that are reduced in size or volume; and legislation designed to regulate the amount of packaging manufacturers can use for their products.

2047992772