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INTERVIEW

Nasim Deylami*

Interviewed by Dj Wolff**

1. Please describe your professional background and experience in international trade law. What brought you into the international trade practice?

I have always been interested in international affairs and international law, but I have to give full credit for my interest in international trade law to two professors I had at the University of Baltimore School of Law: Professor Mortimer Sellers and Professor Morad Eghbal. Professor Sellers gave me the opportunity to study international trade law as an exchange student at Ghent University during my third year of law school, an opportunity I did not take due to my prior commitment to a job. I attempted to make up for this by studying international business transactions and international finance with Professor Eghbal in Baltimore. This was the first link in a chain of events that has led me to work in trade. These two courses sparked my interest in learning more about international trade, and with Professor Eghbal's encouragement, I chose to pursue a Master of Laws in International and Comparative Law at The George Washington University Law School, with a focus on international trade and investment. While studying at GW Law, I clerked in the Office of Chief Counsel for Import Administration at the US Department of Commerce, where I did trade remedy law with a focus on non-market economies. I really enjoyed both the legal and policy-oriented aspects of my time at Commerce, and upon completion of my LL.M., I chose to pursue a career in international trade policy.

2. What is your current position? What responsibilities does that entail?

I am the Manager for Customs and Trade Facilitation in the Washington, DC office of the US Council for International Business (USCIB), and I provide support to the USCIB Trade and Investment Committee. In my role as Manager of the Customs and Trade Facilitation Committee, I coordinate with

USCIB members to advocate consensus views of the US business community on customs and trade facilitation issues. I advocate these views to the US Government, foreign governments, and international organizations. Beyond tracking and advocating core policy issues, my position also entails committee administration; representation to our affiliate organizations, intergovernmental organizations, other US trade associations, media, and the US Government; and marketing and membership development.

3. What is the US Council for International Business (USCIB) and what role does it play in trade and trade policy?

USCIB is an internationally recognized business organization with over 300 members comprised of multinational corporations, law firms and business associations. As espoused by our mission statement, USCIB 'advances the global interests of American businesses both at home and abroad'. USCIB is the US affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the Organization for Economic Cooperation and Development (OECD), and the International Organization for Employers (IOE). As the US affiliate to these international organizations, USCIB officially represents US business positions directly to intergovernmental bodies and to national governments via their national affiliates to these organizations. USCIB's global connections allow it to play a large role in influencing global and domestic trade policy. We address a broad range of policy issues, with the objective to promote free trade, finance and investment in which US business can thrive and contribute to economic growth, and we help facilitate international trade by promoting the harmonization of commercial practices in the ICC. USCIB also facilitates world trade by serving as the US issuer and guarantor of ATA Carnets, documents under which merchandise can be imported duty free

Notes

- * Manager, Customs and Trade Facilitation, US Council for International Business (USCIB), Washington, DC. The views expressed in this interview are the author's alone and do not necessarily represent the views of the USCIB or its members.
- ** Associate, Crowell & Moring LLP, Washington, DC.

into the US and other countries. By helping to shape the international regulatory environment and expand market access for US products and services, USCIB helps its members lower the cost of doing business abroad and enhance long-term growth.

4. What role does USCIB play in international organizations such as the International Chamber of Commerce (ICC), World Trade Organization (WTO), OECD, IOE and the World Customs Organization (WCO)?

USCIB is the US affiliate of the ICC, the Business and Industry Advisory Committee (BIAC) to the OECD, and the IOE. These affiliations are key to USCIB's role in international trade. USCIB creates its positions on particular issues within its numerous committees and advocates these positions to the US government and to intergovernmental organizations such as the OECD, the WTO, the International Labor Organization (ILO), and other bodies of the United Nations system with which our international affiliates have official consultative status on behalf of world business, such as the World Customs Organization (WCO).

5. How do you work with your membership to keep abreast of their current concerns and ensure you are representing their collective interests?

USCIB has specialized policy committees and working groups that are managed by a policy staff with expertise in matters such as trade and investment, customs and trade facilitation, finance, biotechnology, competition, food and agriculture, corporate responsibility, environment, healthcare, intellectual property, marketing and advertising, labor and employment, and other important policy issues that impact the free flow of trade. Each member of the policy staff works closely with his or her committee by hosting committee meetings and working groups to keep abreast of USCIB member concerns in order to ensure effective representation of members' interests.

6. At the 2011 Customs and Border Protection (CBP) Trade Symposium, Commissioner Alan Bersin called for the quadrupling of membership in CBP's trusted trade programme, the Customs-Trade Partnership against Terrorism (C-TPAT), over the next five to seven years. What would it take for your members to begin helping to meet that goal?

USCIB has been very positively engaged with CBP and Commissioner Bersin in 2011 and will continue this engagement in the spirit of cooperation to increase C-TPAT membership. In March, USCIB and members from Hanesbrands, Cisco, DHL Express, FedEx, Pfizer, the law firm of Sandler, Travis & Rosenberg, and the US Chamber of Commerce met

with Commissioner Bersin and his senior staff to share USCIB's priority recommendations for CBP. Among its key priorities, USCIB encouraged CBP to strengthen C-TPAT, to focus its core benefits on the pre-trade and post-trade events of the supply chain, and to develop substantial commercial benefits for Tier 2 and Tier 3 C-TPAT participants. These are the primary concerns of existing C-TPAT members, and I believe CBP must address them before it can expect to quadruple programme membership in the coming years. The business community must be able to see and feel the tangible benefits of this programme before membership will increase as much as Commissioner Bersin seeks. However, this is entirely possible and something that Commissioner Bersin has promised to address. USCIB will continue to work with CBP to provide the valuable insight and feedback our membership provides to the government. In April, immediately after the Trade Symposium, the USCIB and ICC Customs Committees met with CBP Deputy Commissioner Aguilar and senior members of his staff to deliver the same message. The Deputy Commissioner stressed that we must focus on opportunities to work together to promote C-TPAT and to make it a priority for more companies.

7. What is the position of your members on the three free trade agreements – Colombia, Panama and South Korea – currently pending in Congress? Have recent developments substantively changed the likelihood they will be enacted?

In written testimony recently submitted to the House Ways and Means Committee, USCIB commended the administration for finalizing the US-Korea free trade agreement (FTA), emphasized that ratifying the FTAs with Korea, Panama and Colombia are essential elements of a trade and investment agenda and urged that the Colombia and Panama agreements be quickly finalized so that all three agreements can be considered by Congress at the same time. Early this year, that appeared unlikely, but recent events with regard to the Panama and Colombia agreements are increasing the chances. On April 6, the White House announced the creation of the Action Plan Related to Labor Rights between the US and Colombia intended to address serious and immediate labor concerns in Colombia, which paves the way for taking the Colombia FTA to Congress for consideration. On April 18, a Tax Information Agreement went into effect between the US and Panama that will improve tax information exchange networks globally, and Panama has taken steps to strengthen its labor laws and enforcement. These actions have opened the door for discussions between the administration and Congress on the draft implementing bill for the Panama FTA. Our members would prefer that the agreements be passed together but will work with Congress and the

Administration on any plan they create for moving the key trade bills along with the FTAs.

8. What role has USCIB played in the Trans-Pacific Partnership (TPP) negotiations and where do those negotiations currently stand?

USCIB is a member of the US business coalition for TPP, which is a broad-based, cross-sectoral group of companies and business groups representing the principal sectors of the US economy, including agriculture, manufacturing, and services enterprises of all sizes throughout the country. We have been meeting with the various task forces within the coalition and actively engaged in the supply chain task force, the investment task force, the small and medium enterprises (SME) task force, and the regulatory issues task force, among others. USCIB and the coalition have met regularly with the negotiating team from the US Trade Representative (USTR) to provide business input and feedback on the negotiations. The last round of negotiations in Vietnam were completed in June, November 2011 is USTR's current target for finalizing the TPP negotiations.

9. The President's goal of doubling exports by 2015 is heavily reliant upon expanded production by your members. What steps would help the business community meet those goals?

In February, USCIB submitted written testimony to the House Ways and Means Committee outlining the trade actions the Administration should take in 2011 that would be critical to doubling exports. These included completing the FTAs with Korea, Colombia, and Panama; concluding an ambitious Doha Agreement in the WTO; moving forward with the TPP negotiations to reach a high-standard trade framework; identifying new bilateral and multilateral trade initiatives with significant economic partners; addressing ongoing US-Chinese trade and investment issues; accelerating work on investment treaties that will ensure protection of US business investments in other countries; and aggressively promoting US exports of clean technologies and environmentally friendly goods and services.

10. What is the most challenging aspect in advocating for the business community within trade bureaucracies both here and internationally?

Achieving consensus on difficult and divisive issues. USCIB, in particular, is a consensus-based organization and will not move forward on a position until the committee handling a specific issue has approved it. However, as with any large group, USCIB consists of more and less active members, and irrespective of the category in which any member falls, we must represent a consensus view on our official positions. Achieving any such position on contentious issues can take a long time and involves much more than

agreement within the committee itself. The position must not only then be vetted by the broader organization but must be targeted for the organization or person to whom it will be addressed; these multiple required approvals often make it difficult to achieve a consensus within USCIB. As the US affiliate to the international organizations addressed above, we often prepare positions to present to other bodies of the United Nations system with which our international affiliates have official consultative status on behalf of world business, such as the WCO, or to national governments via our international affiliates. In such cases, our position must be vetted and approved by USCIB, presented to the international organization where it must again be vetted and approved once more before reaching its final destination. This is just a reality of the policy process, but it can often be the most challenging aspect of working within a bureaucracy.

11. What has been the most significant change in customs policy over the last five years?

I believe that the most significant change in customs policy over the last five years has been a greater understanding and promotion of trade facilitation on the part of governments, particularly the US government. Understandably, since 2001 there has been a great emphasis on security, but this significantly hampered free and open trade. As borders contracted, so did the flow of goods. In the last five years, this singular emphasis on security has softened slightly into a greater emphasis on security and trade facilitation. While the focus was on security, the US implemented its trusted trader programme, C-TPAT. But as the focus shifts toward security plus trade facilitation, the US government is entering into mutual recognition agreements (MRA) with other trusted governments. There is certainly still progress to be made to ensure greater trade facilitation without compromising security. For example, the US should implement an MRA with Canada, our largest trading partner, who also happens to be a trusted trading partner. Taking this step in the immediate future could provide the example that is greatly needed for facilitating trade between our other large trading partners.

12. What has been your most satisfying accomplishment thus far while at USCIB?

The organization of our March Trade Day meeting with Commissioner Bersin. I was expecting just a couple of his senior staff members to attend the meeting with him but was pleasantly surprised to see ten senior members of his staff in the room, including Assistant Commissioners Thomas S. Winkowski and Allen Gina, ready to address the priority recommendations we had provided to CBP in advance of the meeting. Notably, USCIB provided

Commissioner Bersin a provisional list of eighteen benefits envisioned for C-TPAT participants, which Commissioner Bersin welcomed, thanking USCIB for providing concrete goals for CBP to achieve. The following month, Deputy Commissioner Aguilar thanked USCIB for providing CBP with specific goals to achieve in Commissioner Bersin's quest to increase C-TPAT membership.

13. What will be the next 'hot topics' in customs policy over the next twelve to eighteen months?

Mutual recognition and air cargo security. Establishing MRAs with our trusted trading partners is crucial to trade facilitation. While governments are, to a large extent, cognizant of this reality, security concerns still stand in the way of achieving meaningful MRAs. For example, we have an MRA with New Zealand, but the consistent feedback from US business is that it operates strictly customs to customs, without bestowing any practical benefits on business. Compliant C-TPAT members expect that they will be considered compliant and risk-free by the customs authority of any country with which we have signed an MRA. Air cargo security is another hot issue being followed closely by our members. After the October 2010 discovery of a plot originating in Yemen to ship explosives in cargo headed for the United States, measures have been taken by CBP and the Transportation Security Administration (TSA) to strengthen air cargo security. CBP, TSA and the air cargo carriers have engaged in a pilot air cargo security programme that requires air carriers to provide pre-departure data in a manner consistent with existing air cargo business models. Prior to the Yemen incident, CBP received air cargo manifest information shortly before the cargo arrived in the

US, but now the air carriers are required to provide this information 30-70 hours prior to the cargo arriving in the US; this is often impractical, and it slows down an active supply chain and hampers trade facilitation. In the coming months, we will learn more about the effectiveness and functionality of the pilot programme, and we may see the passage of a bill introduced on April 14 by Senator Susan Collins (R-ME) and Patty Murray (D-WA) that would allow the Department of Homeland Security (DHS) to waive the requirement to scan all United States-bound cargo containers at a foreign port if DHS certifies to Congress that certain conditions have been met. USCIB members have also expressed concern over the need for any air cargo security programme that is ultimately implemented to be streamlined within the interagency process and to be harmonized with air cargo security programmes implemented by other trusted countries.

14. Do Brady Hoke and his Michigan Wolverines have a prayer of beating the Ohio State Buckeyes more times in Hoke's first season as Michigan's head coach than Rich Rod did during his entire tenure?

Please? Yes, I have answered the question with a question, but as those who have followed Michigan football over the last several years already know, there is no way of telling! I do know that we can only go up from here, and I am really looking forward to the 2011 season, in which we will hopefully beat Ohio State for the first time since 2003. I want this as a fan, but I would also like to avoid the potentially painful Monday after the game, when my boss of Ohio State descent will surely spend the entire day bragging.

GUIDE TO AUTHORS

The following is a brief guide concerning the provision of articles which may be of assistance to authors.

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2. Special attention should be given to quotations, footnotes and references which should be accurate and complete. In the case of book references please provide the name of author, publisher, place and year of publication.
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