



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

## USCIB Washington Update

### Highlighting Key Activities, February – March, 2013

During the months of February and March, USCIB's Washington, D.C. office hosted a meeting with Angela Ellard from the House Ways and Means staff on trade issues and customs reauthorization, presented at an OECD conference on trade barriers, arranged a briefing by Deputy USTR Punke on negotiations in Geneva, organized a discussion with State and Commerce officials on the WSIS+10 Review Event, met with Acting Commissioner of CBP Aguilar and his senior staff on trusted trader issues, prepared a coalition letter to Congress urging action on customs reauthorization legislation, filed a submission with USTR on the International Services Agreement negotiations, pulled together a meeting of over 50 member company tax experts with the head of the OECD Tax Directorate, Pascal Saint-Amans, and much more. Below are brief summaries of these and other highlights from the activities of USCIB in Washington, D.C. over the last two months. If you have any questions or comments, or want more information on a specific topic, please contact any of the staff members listed at the end of this brief.

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International Organization of Employers (IOE)  
Business and Industry Advisory Committee (BIAC) to the OECD  
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## **Trade and Investment – Opening Global Markets for Trade and Investment**

- ***Deputy USTR Punke Briefs USCIB Trade Committee on Progress in Geneva:***  
During the USCIB Trade and Investment Committee meeting on March 13, 2012, Michael Punke, Deputy USTR, called in to brief members on the latest developments with several negotiations in Geneva. He noted that the International Services Negotiations would hold meetings in March, April and June with the hope that countries would submit offers before the end of the summer. The discussions on expansion of the Information Technology Agreement are progressing with another meeting in March and countries refining a list of products that could be covered under the agreement. The tempo has picked up on concluding a possible trade facilitation package by the Bali Ministerial in December but continuing tactical maneuvering could leave insufficient time to reach agreement.

At the meeting members also heard from Michael Tracton, State, and Jennifer Thornton, USTR, on the status of U.S. Bilateral Investment Treaty (BIT) negotiations. There have been good discussions with China on basic investor protections but differences over market access issues. India negotiations have been on hold pending an internal review by India of its BITs. Other active BIT negotiations include Mauritius and Pakistan, while exploratory discussions are under way with Russia, Gabon, Ghana and the East African Community. A summary of the Trade and Investment Committee meeting is available to USCIB members at this [link](#).

- ***Angela Ellard, Ways and Means Trade Counsel, Discusses Congress Trade and Customs Agenda with USCIB Members:*** On March 27, 2013, USCIB members from both the Trade and Investment and Customs Committees met with Angela Ellard to learn more about the plans for action in Congress on trade and customs issues for 2013. She welcomed the comments by Acting USTR Marantis concerning the

Administration's readiness to engage on Trade Promotion Authority (TPA) since this will be critical to moving forward with and completing TPP and other negotiations in process. There is strong bipartisan support for the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), the International Services Agreement (ISA), the Information Technology Agreement (ITA), and the trade facilitation negotiations. On customs reauthorization, she appreciated the letter from USCIB providing specific recommendations as well as the coalition letter urging action but stressed that her members will want Title III included in a final bill. Her members oppose key elements in the Democrat version of Title III.

- ***Rob Mulligan Speaks on Trade Barriers at OECD Business Dialogue Conference:*** The OECD held a conference on 21<sup>st</sup> Century Trade Barriers from March 4-5, 2013 in Paris. Rob Mulligan, USCIB Senior Vice President for Policy and Government Affairs, took part in the program on the opening panel and outlined some of the key concerns raised by USCIB members which included: increasing use by countries of forced localization requirements, restrictions on the cross border flow of data, unfair competition from state-owned enterprises, and customs practices that disrupt global supply networks. Other member companies that spoke at the conference included Charlie Heeter (Deloitte and Chair of BIAC), Laura Lane (UPS), Brian Bieron (eBay), and Ted Posner (Weil, Gotshal & Manges). The International Chamber of Commerce also participated with its Chair, Gerard Worms, and Secretary General, Jean-Guy Carrier, speaking on panels. The OECD Trade Directorate will use the input from this business dialogue in developing its future work plans and determining areas for further research.
- ***USCIB Submission Highlights Priorities for International Services Negotiations:*** In response to a Federal Register notice, USCIB filed a [submission](#) with USTR on February 26, 2013 outlining key issue areas it would like to see addressed in the International Services Agreement (ISA) negotiations. In addition to seeking a comprehensive and ambitious agreement that creates significant new market-opening and commercial opportunities for U.S. services sectors and investors, USCIB urged inclusion of provisions that will address growing concerns related to forced localization requirements, restrictions on cross-border data flows, and unfair competition from state-owned enterprises.
- ***USCIB Testifies on GSP Product Petitions:*** On February 28, 2013, USCIB Vice President for Investment and Financial Services, Shaun Donnelly, testified to the USTR-chaired interagency Generalized System of Preferences (GSP) annual product petition process. The testimony focused on the policy issue of Ecuador's request to add products to the GSP list with the looming expiry of the separate Andean Trade Preferences program. USCIB had earlier submitted written comments on the issue.
- ***Pushing Investment Liberalization at the BIAC and OECD Investment Committees:*** Shaun Donnelly represented USCIB at the March 18, 2013 meetings in Paris of the BIAC and OECD Investment Committees. He and his BIAC colleagues pushed the member governments in the OECD Committee formally and informally to step up work on investment liberalization and State-Owned Enterprises (SOEs) issues. BIAC also co-

hosted with the OECD an informal brainstorming session on the important role Bilateral Investment Treaties (BITs) play in promoting international investment.

- **Shaun Donnelly Articles/Interview on China BIT and International Standards:** Shaun Donnelly authored an [opinion piece](#) on the U.S.-China BIT in the journal Columbia FDI Perspectives, an [interview](#) in ASTM International's Standardization News on product standards issues in international trade and investment, a TV and magazine interview on US-China investment issues with a leading Chinese media service.
- **Meeting with USTR and Treasury on TPP Investment and Financial Services:** On February 19, 2013, USCIB co-chaired the debrief session for member companies with the lead USTR and Treasury negotiators in the TPP Investment and Financial Services Chapters. Progress is slow on some key issues in these key TPP chapters but the periodic frank exchanges are very valuable for member companies.

### **ICT Policy – Promoting Sound Policies for New Technologies**

- **USCIB ICT Policy Committee Chair Testifies Before Congress on the Internet Governance Forum:** On February 5, 2013, Ambassador David Gross, ICT Policy Committee Chair and Partner, Wiley Rein, testified before a joint hearing of the House Committee on Foreign Affairs and the House Energy and Commerce Committee on “Fighting for Internet Freedom: Dubai and Beyond.” The hearing featured extensive discussion about the issues that influenced Washington’s decision not to sign the Final Acts at the World Conference on International Telecommunications (WCIT) in Dubai last December. Ambassador Gross underscored that U.S. engagement at the upcoming World Telecommunications Policy Forum (WTPF) and World Summit on the Information Society (WSIS) Forum, both in May 2013, as well as the Internet Governance Forum in Bali, Indonesia in October 2013 can be particularly important in the interim as the interpretations and implementation of that treaty and the issues discussed at the conference continue to develop. Testimony is available at this [link](#).
- **USCIB Hosts Multistakeholder Meeting with State and Commerce Department Officials Focused on WSIS+10 Review Event:** On February 15, 2013, USCIB hosted an event to enable members and other stakeholders in business, civil society, and the technical community to engage in discussions with officials from the Departments of State and Commerce about strategies aimed at maximizing the educational and advocacy opportunities provided by the WSIS+10 Review Event, which was hosted by UNESCO in Paris on February 25-27. State Department officials Liesyl Franz, Manu Bhardwaj, Seth Bouvier, and Aaron Mitchell participated. They were joined by Fiona Alexander and Chris Hemmerlein, both from the National Telecommunications & Information Administration (NTIA).
- **Members Play Leading Roles at the World Summit on the Information Society (WSIS) +10 Review Event:** Barbara Wanner, USCIB Vice President, ICT Policy, and members of USCIB’s ICT Policy Committee participated in the WSIS+10 Review Event, IGF Open Consultations, and open meeting of the Multistakeholder Advisory Group

(MAG), February 25-March 1, hosted by UNESCO in Paris. Representatives from AT&T, Disney, Google, Microsoft, Verisign, and Verizon, participated in workshop discussions and plenary sessions on Internet governance topics as wide-ranging as Multistakeholder Principles, Promoting Freedom of Expression and Privacy on the Internet, Enhanced Cooperation, and Towards Knowledge Societies for Sustainable Development. The complete program, participants list, and Final Recommendations are available at this [link](#).

- ***ICT Policy Committee Delves into APEC Privacy Initiative with Joshua Harris, Department of Commerce:*** On March 28, 2013, Joshua Harris, U.S. Department of Commerce, debriefed the ICT Policy Committee on the January 30-February 2 meeting of the APEC Data Privacy Subgroup. He also elaborated on the recent meeting of EU data protection authorities with APEC participants aimed at developing a set of tools to facilitate transfers of data for multinational companies that operate in Europe and the Asia-Pacific region. In addition, members used this meeting to discuss: (1) latest developments in the EU draft General Data Privacy Regulation; (2) OECD work on privacy guidelines and Internet intermediaries; (3) pending work on the OECD's 2002 Security Guidelines by an Experts Group that includes seven USCIB members; (4) efforts to influence Internet governance at the May 14-16 meeting of the World Telecommunications Policy Forum; (5) the EU's Proposed Directive on Network and Information Security (NIS) APEC Data Privacy Subgroup; and (6) opportunities for engagement on cybersecurity issues in the APEC-Tel.

### ***Customs – Reducing Barriers and Costs from Customs and Border Control Practices***

- ***USCIB leads Coalition Letter to Congressional Leadership on Customs Reauthorization:*** USCIB led fourteen associations in a coalition [letter](#) to Ways and Means and Senate Finance Leadership on March 22, 2013 calling for action on the Customs reauthorization bill. In particular, the letter emphasized the organizations' concerns over any potential delays in progress over the differences on antidumping and countervailing duty enforcement provisions in the House versions of the bills, and called on Congress to reach a compromise or remove these provisions from the Customs reauthorization bill.
- ***USCIB Meets with Ways & Means Trade Staff on Customs Reauthorization:*** On February 11, 2013, Nasim Deylami and a group of USCIB members met with Ways and Means trade staffers to share [USCIB's comments](#) on the draft bills released by each party, the *Customs Trade Facilitation and Enforcement Act* (H.R. 6642) and the *Customs Enhanced Enforcement and Trade Facilitation Act* (H.R. 6656). From the Republican staff, USCIB met with Angela Ellard, Stephen Claeys, and Welby Leaman. From the Democratic staff, USCIB met with new customs staffer Beth Baltzan. Member companies participating in these meetings included Hanesbrands, DHL, UPS, eBay, Sandler, Travis & Rosenberg, P.A., Barnes, Richardson, and Colburn, 3M, TechAmerica, and Oracle.

- ***USCIB Meets with Senate Finance Staff on Customs Reauthorization:*** On March 12 and March 21, Nasim Deylami and USCIB members also met with Senate Finance Committee staffers for Senator Burr (NC), Senator Wyden (D-OR), Senator Portman (R-OH), Senator Brown (D-OH), and Senator Casey (D-PA) to discuss the Customs Reauthorization Bill. USCIB members in the meetings included Hanesbrands, DHL, eBay, Sandler, Travis & Rosenberg, P.A., Barnes, Richardson, and Colburn, FiftyOne, and Oracle.
- ***CBP Trade Day with Departing Commissioner Aguilar :*** At the CBP Trade Day held on March 22, 2013, Rob Mulligan, Cindy Duncan, Nasim Deylami, and USCIB members from Crowell and Moring, Sandler, Travis & Rosenberg, eBay, Phillip Morris International, DHL Express, Mayer Brown, Baker & McKenzie, UPS and FedEx met with CBP Senior Leadership to discuss USCIB's [January 24 Trusted Trader letter](#) to Acting Commissioner Aguilar, as well as to strategize a plan for international engagement and cooperation with CBP. This was USCIB's last Trade Day with Acting Commissioner Aguilar before his retirement, and he informed USCIB that he will be handing the torch to Acting Deputy Commissioner Tom Winkowski upon his retirement at the end of March.
- ***USCIB Joins Coalition Meeting on Senate De Minimis Bill:*** On March 5, 2013, Nasim Deylami attended a meeting hosted by Jayme White, Staff Director for Senator Ron Wyden (D-OR) and Paul Poteet, Senior Policy Advisory and Tax and Trade Counsel for Senator John Thune (R-SD) on the new *de minimis* bill (S. 489) co-sponsored by the Senators. The Senate bill was introduced on March 7; just one day after an identical bill was introduced in the House (H.R. 1020) by Representative Schock (R-IL), Representative Crowley (D-NY), and Representative Owens (D-NY).

#### **Tax – Advancing Tax Policies that Promote U.S. Competitiveness**

- ***USCIB Engages on VAT and Tax and Development at OECD Meetings:*** Carol Doran Klein, Vice President and International Tax Counsel for USCIB, attended OECD meetings on VAT and Tax and Development in early March. The VAT meeting established a process for dealing with public comments on the Business-to-Business guidelines and finalizing that stage of the VAT work. The meeting also set up a process for beginning work on Business-to-Consumer transactions. These guidelines will significantly affect the digital commerce and telecommunications companies. Companies interested in participating should contact Carol, if they have not already done so.

On Tax and Development, two important topics were discussed, information reporting and transfer pricing. On information reporting, the issue of public access to statutory accounts and information reporting to tax authorities were discussed. It seems unlikely that the OECD will recommend that countries publish statutory accounts. There is pressure, however, to make tax return information more useful and a white paper on the topic is due shortly from the OECD. On transfer pricing, most of the meeting reviewed the experience of developing countries that are working with the OECD, World Bank and others to build capacity. Those countries that are receiving assistance are generally

pleased with that help and there is a desire from other countries to get access to capacity building assistance.

- USCIB Shares Views with OECD on Base Erosion and Profit Shifting:** Pascal Saint-Amans and Michael Plowgian of the OECD's CTPA met with USCIB Tax Committee members on March 19, 2013 to discuss the OECD's work on base erosion and profit shifting or BEPS. Pascal focused on the political pressure exerted by the CFA and the G-20 to address this issue in light of the budgetary crisis facing many countries. Inaction is not a possibility and business should prefer a coordinated solution to unilateral action by countries, which would likely result in multiple levels of taxation. He also stated that the OECD continues to support the arm's length standard, but that it needs to be fixed in order to be saved. For a detailed report of the meeting [click here](#).
- BIAC Hosts Business Dialogue with OECD on BEPS:** Carol Doran Klein attended a business dialogue with the OECD on base erosion and profit shifting on March 26, 2013 in Paris. All participants in the meeting, governments, businesses, and the OECD Secretariat, recognized that the current international tax rules work well in most cases. Therefore the challenge of the BEPS project is to preserve the rules that work, while addressing the problem areas. Business acknowledged that governments are having significant pressure to address perceived abuses. Business also called on the OECD to better define the scope of the problem, since the data does not necessarily support large scale base erosion and profit shifting. The OECD and governments are of the view that the elimination of double taxation and double non-taxation are linked. That is, if base erosion and profit shifting results in income being subject to little or no tax, then governments may find it necessary to take unilateral action, which could result in double or multiple taxation, if agreement cannot be reached in a multilateral forum.

The BEPS process was also discussed. The OECD and countries are working in three cluster groups: countering base erosion, jurisdiction to tax, and transfer pricing. The cluster groups are developing an action plan which will be sent to the CFA in June for their approval. Once approved the action plan will be released for public comment. All parties are hoping that some areas identified in the action plan may be capable of being resolved quickly in order to provide an opportunity for further study of the more difficult areas.

## Membership

- Recruitment:** The D.C. Membership Department and Policy Staff met with prospective member MetLife to discuss how USCIB membership would be of benefit to them.
- Member Meetings:** The D.C. Membership Department and Policy Staff met with representatives from member companies The Dow Chemical Company, Citi, Leo Burnett Worldwide, Target, Google, The Gap, S.C. Johnson, Westinghouse, PMI, UPS, Delphi, DirecTV Latin America, General Electric, Mattel, and Toy Industry Association to better understand their policy priorities for the next year and beyond and to see how USCIB can better serve their policy needs.

- **New Members:** USCIB has recently welcomed the following new members: Deutsche Telekom, DIAGEO, and Nabors Industries.

## Upcoming Events

- **Meeting of the OECD Experts Group reviewing the OECD Security Guidelines** – April 8, 2013, OECD, Paris, France.
- **34<sup>th</sup> Session of the OECD Working Party on Information Security and Privacy (WPISP)** – April 9-10, 2013, OECD, Paris, France.
- **65<sup>th</sup> Session of the OECD Committee for Information, Computer, and Communications Policy (ICC)** – April 11-12, 2013, OECD, Paris, France.
- **ICC Customs and Trade Facilitation Commission meeting** – April 15-16, 2013, ICC Headquarters, Paris, France.
- **Meeting of the OECD Committee on Consumer Policy** – April 22-23, 2013, OECD, Paris, France.
- **Meeting of the 47<sup>th</sup> APEC-Tel** – April 22-27, 2013, Bali, Indonesia
- **World Summit on the Information Society (WSIS) Forum** – May 13-17, 2013, Geneva, Switzerland.
- **BIAC Trade Committee/OECD Trade Committee** – May 14-16, 2013, BIAC and OECD, Paris, France.
- **World Telecommunications Policy Forum (WTPF)** – May 14-16, 2013, Geneva, Switzerland.
- **Internet Governance Forum (IGF) Open Consultations and Multistakeholder Advisory Group (MAG) Meeting** – May 21-23, Geneva, Switzerland.
- **USCIB/BIAC/OECD International Tax Conference – June 3-4, Washington, DC**

Again, please feel free to contact any of our Washington staff (below) if you would like more information on a specific issue mentioned in this brief. Thank you for your continued support of USCIB.

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