



## USCIB Washington Update

### Highlighting Key Activities, December 2012 – January 2013

During the months of December and January, USCIB's Washington, D.C. office released a 60-page study by Professor Matthew Slaughter on global supply networks and economic growth, announced the USCIB Trade and Investment Agenda for 2013, met with Senate Finance committee staff on customs reauthorization, participated in the ICC Digital Economy Committee work on EU Data Privacy, advised the OECD Tax Committee on base erosion and profit sharing, organized a meeting for members with State and Commerce on Internet governance strategy, provided feedback to USTR on the WTO trade facilitation negotiations, 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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Global Business Leadership as the U.S. Affiliate of:  
International Chamber of Commerce (ICC)  
International Organization of Employers (IOE)  
Business and Industry Advisory Committee (BIAC) to the OECD  
ATA Carnet System

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### **Trade and Investment – Opening Global Markets for Trade and Investment**

- ***USCIB Trade and Investment Agenda for 2013 Pursues Action on Several Fronts:*** During the USCIB Trade and Investment Committee meeting on December 19, 2012 members discussed and approved the [Agenda for 2013](#) which identifies six key trade and investment priorities that will guide committee action for the year:
  - Pressing for an ambitious U.S. trade agenda
  - Promoting investment policies that open markets
  - Rebuilding WTO confidence and credibility
  - Leveraging USCIB international platforms
  - Increased coordination among USCIB policy committees on trade
  - Providing thought leadership on trade and investment policy

Under each of these broad goals the Agenda identifies several specific objectives such as completing the TPP, moving forward with a U.S.-EU negotiation, supporting BIT negotiations with China and India, concluding a WTO trade facilitation agreement, raising forced localization concerns in the international venues, and briefing policymakers on the Slaughter study.
- ***USCIB Sponsors Study on Global Supply Networks by Dartmouth Economist:*** On December 4, 2012, USCIB, the U.S. Council Foundation and the Business Roundtable released a new economic study detailing how U.S. economic growth and job creation increasingly hinge on the success of American companies in the global economy. Authored by Dr. Matthew Slaughter of the Tuck School of Business at Dartmouth College, the paper, [American Companies and Global Supply Networks: Driving U.S. Economic Growth and Jobs by Connecting with the World](#), highlights the critical links between globally engaged U.S. companies, their international operations and supply networks, and U.S. economic growth and jobs.

The release event, which was held at the Washington offices of Bloomberg Government, featured a panel discussion with Peter Robinson, President and CEO, USCIB; Michael L. Ducker, Chief Operating Officer and President, International, FedEx

Express; Dr. Slaughter; and John Engler, President, Business Roundtable. The event was widely attended by nearly 100 representatives of USCIB and BRT member companies, U.S. business association and think tank leaders, and the media.

- ***Matt Slaughter Briefings Arranged for Hill and Administration:*** Rob Mulligan, USCIB Senior Vice President, Washington, joined with Dr. Slaughter and BRT for several briefings on January 17, 2013 with policymakers in Washington, D.C. BRT organized the briefing held in the Capitol Visitors Center for 20-25 members of Senate and House staff including Angela Ellard from the House Ways and Means Committee (Majority) and Mary Irace from the Congressional Research Service. USCIB arranged meetings with Under Secretary for State, Bob Hormats, Deputy USTR, Demetrios Marantis, and National Security Council Director for Trade and Investment, Janis Lazda. As this effort to promote the study to policymakers is a key objective of our Trade and Investment Agenda for 2013, USCIB also organized a series of briefings for members, press and the policy community in New York on January 30, 2013.
- ***BIAC Trade Committee Assists OECD with 21<sup>st</sup> Century Trade Issues Program:*** On January 9, 2013, Rob Mulligan participated as a Vice Chair of the BIAC Trade Committee in call with several staff from the OECD to discuss a business dialogue program the OECD is holding in Paris on March 4-5. BIAC agreed to provide input on issues to be discussed during the program and speakers for the panels. USCIB used this opportunity to suggest several of our key issues be addressed including forced localization, cross border data flows, state-owned enterprises, global value chains, and regulatory barriers. Several USCIB member companies will also serve as speakers on panels.
- ***USCIB Continues Pressing on TPP Investment Chapter Negotiations:*** USCIB's Vice President for Investment Policy, Shaun Donnelly, has continued to work closely with USTR's Investment negotiating team on the TPP Investment Chapter, leading up to and following the December 3-12, 2012 Negotiating Round in Auckland, New Zealand. With our strong support, USTR continued to push for comprehensive and ambitious investment commitments, including strong Investor-State Dispute Settlement (ISDS) provisions. Australia continued to resist ISDS provisions, making progress quite challenging. We are working to support USTR's investment negotiators in advance of the key 16<sup>th</sup> Negotiating Round in Singapore March 4-13.
- ***USCIB Working to Expand SOE Chapter in TPP:*** Shaun Donnelly also continued to work closely with USTR on the State Owned Enterprises (SOE) chapter in the TPP. The U.S. is still the driving force in these negotiations where several negotiating partners have quite large and powerful SOE sectors. We are pushing hard in support of USTR's efforts to expand and strengthen the very modest SOE chapter in the U.S. Singapore FTA from 2003. Some key TPP partners, including Australia and Singapore, have been disappointing thus far in their approach to these SOE issues. As with the Investment Chapter, the upcoming Singapore Round could prove critical in shaping the level of ambition we will see in this key chapter.

- ***Pushing for Strong BITs at the OECD:*** Shaun Donnelly is working through the Investment Committee of the Business and Industry Advisory Committee (BIAC) for a joint BIAC/OECD roundtable on Bilateral Investment Treaties (BITs) on the margins of the next OECD Investment committee in March. We want to engage leading government investment experts from both OECD members and important non-members in a wide-ranging discussion of the importance strong BITs can play in facilitating flows of foreign direct investment (FDI) in all directions and to debunk some of the outrageous anti-investment/anti-BIT/anti-business rhetoric being flogged by critics.
- ***Pushing USG to Focus on Strong BITs with China and India:*** Shaun Donnelly participated actively in a January 11, 2013 meeting with State Department and USTR BIT negotiators under the auspices of the Investment subcommittee of State's Advisory Committee on International Economic Policy (ACIEP). He strongly endorsed the top priority the USG is according to negotiation of gold standard BITs with China and India. Shaun also highlighted the growing "Forced Localization" issues U.S. investors are facing around the world, especially restrictions on cross-border data flows and urged the Administration to fold language on those new issues into key BIT negotiations.

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

- ***USCIB Members Advocate Business Interests at World Conference on International Telecommunications (WCIT):*** Ambassador David Gross, Chair of the USCIB's ICT Policy Committee and Partner, Wiley Rein, and members of the ICT Policy Committee participated in the US delegation to the World Conference on International Telecommunications (WCIT), a treaty conference held by the UN's International Telecommunications Union, December 3-14, 2012, in Dubai, United Arab Emirates. Ambassador Gross and USCIB members actively supported U.S. government efforts to oppose proposals by some countries aimed at bringing the Internet under government regulation. USCIB members also backed Washington's ultimate decision not to sign the treaty owing to elements aimed at broadening the scope of the International Telecommunications Regulations (ITRs), regulating spam, addressing network security, and potentially opening the door to ITU regulation of the Internet. Ambassador Gross anticipates that 2013 will see continued efforts by proponents of Internet regulation to press their case in various UN Internet- and telephony-related forums.
- ***USCIB Submits Section 1377 Comments:*** On December 17, 2012, USCIB submitted [comments](#) on the operation and effectiveness of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1998. Specifically, they examined how countries such as China, Germany, and Indonesia continue to be challenging markets, while other countries, such as India and Canada, have made some pro-competitive progress. Several other problematic countries also are profiled. In terms of broader regional agreements, USCIB commended the efforts of partners in the Trans-Pacific Partnership to realize a "21<sup>st</sup> century trade agreement" that would enable new and meaningful market access and establish a mechanism to ensure enforcement of such commitments.

- ***ICT Policy Committee Delves into U.S. Cybersecurity Strategy post-WCIT with Liesyl Franz, State Department:*** On December 19, 2012, Liesyl Franz, Senior Policy Advisor, Office of the Coordinator for Cyber Issues, Department of State, briefed the ICT Policy Committee on the outlook in 2013 for U.S. cybersecurity strategy in view of developments at the OECD and at the WCIT. In particular, Liesyl discussed the opportunity for USCIB member input into the OECD's year-long review of its 2002 Guidelines for the Security of Information Systems and Networks via a special Experts Group to be convened in early 2013. Members also used this meeting to discuss advocacy priorities for 2013, which include: (1) the EU draft General Data Privacy Regulation; (2) post-WCIT efforts to influence Internet governance; (3) OECD work on privacy guidelines; (4) the APEC Data Privacy Subgroup; and (5) the TPP, International Services Agreement, expansion of the Information Technology Agreement, and other instances where ICT policy and trade policy intersect.
- ***USCIB Co-Signs Multi-Association Letter on proposed ICANN 'Strawman Solution':*** On January 15, 2013, USCIB joined the National Association of Manufacturers, the National Foreign Trade Council, the US Chamber of Commerce, and US Telecom in signing [comments](#) in response to ICANN's request for public comment surrounding the so-called "strawman solution." ICANN developed this proposal ostensibly to help ensure rights and protections for stakeholders and combat domain fraud and abuse. The multi-association letter urged various modifications to the strawman solution aimed at improving consumer protection and minimizing confusion and potential fraud. The five associations also endorsed a Limited Preventative Mechanism to enable trademark owners to prevent second-level registration of their marks.
- ***USCIB Members Help Set 2013 Agenda for ICC Digital Economy Commission:*** Barbara Wanner, USCIB Vice President, ICT Policy, and members of USCIB'S ICT Policy Committee, participated in the ICC Digital Economy Commission meeting, January 15-16, 2013, in Paris. USCIB members from AT&T, BT Americas Inc., Fenwick & West LLP, Intel, News Corporation, Oracle, The Walt Disney Company, Verizon, and Wiley Rein influenced key Commission decisions concerning: (1) second-stage work pertaining to the draft EU privacy regulations; (2) post-WCIT strategies on Internet governance in UN forums such as World Telecommunications Policy Forum and Internet Governance Forum; (3) and a comprehensive 2013 digital economy work plan, among other issues.
- ***USCIB Shares Views on Upcoming Internet Governance Events with State and Commerce Department Officials:*** On January 30, 2013, USCIB held a special meeting at the Washington office. The purpose was to enable ICT Policy Committee members to confer with key officials from the Departments of Commerce and State about strategies aimed at maximizing the educational opportunities provided by upcoming events under UN auspices to address Internet governance issues in 2013. Fiona Alexander and Chris Hemmerlein, both from the National Telecommunications & Information Administration (NTIA), and State Department officials Manu Bhardwaj, Robyn Disselkoen, and Andy Reynolds participated. Members discussed plans for the WSIS+10 Review Event, February 25-26, at UNESCO in Paris, their views on the importance of business

participation in the UN Commission on Science and Technology for Development's (CSTD) working group on enhanced cooperation, the importance of adequate funding to support the Internet Governance Forum (IGF), and preparations for the 2013 IGF, which will be held in Bali, Indonesia in October 2013.

- ***USCIB Members Play Leading Roles in APEC Data Privacy Subgroup Meeting:*** On January 30-February 2, 2013, ICT Policy Committee Vice Chair Joe Alhadeff, Oracle, joined by USCIB members from HP, Reed Elsevier, and Yahoo, made important contributions to the APEC Data Privacy Subgroup's consideration of Cross-Border Privacy Rules (CBPR) certification for data processors. They also contributed their expertise to discussions pertaining to, US participation in the CBPR system, a new CBPR website, capacity building initiatives, and other matters.

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

- ***USCIB Meets with Senate Finance Staff on Customs Reauthorization:*** On Friday, November 30, 2012 Nasim Deylami, USCIB Manager for Customs and Trade Facilitation, was joined by USCIB members from FedEx, FiftyOne, and Sandler Travis & Rosenberg for a meeting with Senate Finance trade staffers from both sides of the aisle to follow up on our previously proposed updates to Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS) regarding returns. Earlier this year, USCIB had proposed new language for the Customs Reauthorization Bill to the House and Senate to address a problem faced by e-commerce companies attempting to comply with CBP's foreign-made returned goods form (9801.00.26), particularly, proving that the good was exported within 3 years after the date of importation. After broadening the scope of the issue to address returns generally, USCIB went back to the Hill with additional members, like Boeing, seeking a legislative fix to facilitate returns. In particular, USCIB offered H.R. 5820, a bill introduced in the House by Representative McDermott (D-WA) in May 2012 to amend subheading 9801.00.10, HTSUS, which would resolve the issues with international returns faced by manufacturers and e-commerce companies. At this meeting, USCIB proposed an additional provision to H.R. 5820, which would allow the language to apply retroactively to entries made before the effective date of the bill. Since this meeting, the House Democrats and Republicans both released draft customs bills (H.R. 6656 and 6642, respectively), which contained the language from H.R. 5820 on returns. USCIB will be meeting with House staff in early February to provide our feedback on the bills and will continue engagement with Senate Finance staff as well.
- ***Dawn Shackelford, USTR, Briefs USCIB on Trade Facilitation Talks:*** On Tuesday, December 18, 2012 Dawn Shackelford, Deputy U.S. Trade Representative for WTO & Multilateral Affairs, joined us at USCIB, on the heels of two negotiating group meetings in Geneva in October and December, to provide a briefing for members on the latest in the ongoing Trade Facilitation Agreement Negotiations. She urged members to reach out to private sector counterparts in WTO member countries to vocally show their governments industry support for the conclusion of a strong agreement. She also provided an [overview](#) of the latest [draft text](#) of the agreement for the trade intended to highlight some of the possible outcomes of the Trade Facilitation Agreement. She hopes

that this will be a useful tool for USCIB members in your discussions with counterpart stakeholders in other WTO-member countries.

- ***Trusted Trader and Customs Bill Lead USCIB 2013 Customs Priorities:*** The USCIB Customs and Trade Facilitation Committee held its first meeting of 2013 on January 10 at the USCIB Washington office. This meeting was dedicated to a final discussion on the revamping of our 2011 letter to CBP on proposed C-TPAT benefits, as well as our reactions to the draft customs bills, H.R. 6656 and 6642, released by the House Democrats and Republicans, respectively, in December 2012. After integrating member comments from the discussion at the meeting, the [letter to CBP](#) was finalized and sent Commissioner Aguilar on January 24. Members will be informed of CBP's response to our proposed benefits and questions on our trusted trader program. USCIB comments on the draft customs bills are currently being compiled and we will be meeting with Ways & Means trade staff in early February. An invitation will be circulated shortly.

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

- ***USCIB Works with BIAC on Additional Comments on Beneficial Ownership, Emissions Trading and Permanent Establishments:*** The OECD recently released new discussion drafts on these topics. USCIB had provided comments (either separately or in conjunction with BIAC) on all of the earlier discussion drafts. BIAC, with substantial input from USCIB, has submitted comments on [beneficial ownership](#) and [emissions trading](#) and comments on permanent establishments will be submitted by January 31, 2013.
- ***USCIB Share Views with OECD on Base Erosion and Profit Shifting:*** Will Morris, Chair of the BIAC Tax Committee, led a delegation of business representatives including Bill Sample, Chair of the USCIB Tax Committee and a Vice Chair of the BIAC Tax Committee, and Carol Doran Klein, a Vice Chair of the BIAC Tax Committee, to discuss the OECD's upcoming work on base erosion and profit shifting. The OECD said that avoiding double taxation remains a core concern, but they also expressed concern over the problem of "double non-taxation" and stated they need to address both these issues. They mentioned the pressure points that were addressed in the [short paper](#) that was released in November of last year:
  - International mismatches in entity and instrument characterization including hybrid mismatch arrangements and arbitrage;
  - application of treaty concepts to profits derived from the delivery of digital goods and services;
  - the tax treatment of related party debt-financing, captive insurance and other inter-group financial transactions;
  - transfer pricing, in particular in relation to the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities within a group, and transactions between such entities that would rarely take place between independents;
  - the effectiveness of anti-avoidance measures, in particular GAARs, CFC regimes and thin capitalization rules; and
  - the availability of preferential regimes for certain activities

Business said that tax is a cost which has to be looked at, analyzed and controlled. Some planning has been very aggressive. Companies completely rationally take advantage of incentives that are offered. Work on BEPS needs to be done multilaterally. Tax is not a question of morality, but a question of law. If the rules need changing, then the rules should change. Tax planning must be responsible, proportionate. Business does not like the spirit of the law because it seems that something is out there that is discernible. We will participate fully. We want to protect growth but deal with issues. We need to be rigorous about the problems. We support information exchange/transparency, meaning being open with revenue authorities. We are completely in favor of exchange of information and automatic exchange. We are supportive of other revenue jurisdictions sharing information.

## Membership

- **Recruitment:** The D.C. Membership Department and D.C. Policy Staff, along with USCIB CEO Peter Robinson, met with prospective members Darden, Diageo, Anheuser-Busch InBev, and SABMiller to discuss how USCIB membership would be of benefit to them.
- **Member Meetings:** The DC Membership Department and D.C. Policy Staff, along with USCIB CEO Peter Robinson, met with representatives from member companies Amazon, GE, Pfizer, Reed Elsevier, and Raytheon 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: Dell, McDonald's, Mozilla, Target, Seyfarth Shaw LLP, and Society for Human Resource Management.

## Upcoming Events

- **OECD FATCA/TRACE Business Advisory Group Meeting** – February 11-12, 2013, OECD, Paris, France
- **Technical Advisory Group on International VAT/GST Guidelines and Business Preparatory Meeting** – February 26-28, 2013, Paris, France
- **WSIS+10 Review Event, IGF Open Consultations, and MAG Meeting** – February 25-March 1, 2013, UNESCO, Paris, France
- **OECD 21<sup>st</sup> Century Trade Issues Program** – March 4-5, 2013, OECD, Paris, France
- **USCIB Trade and Investment Committee Meeting** – March 13, USCIB, Washington, DC

- **OECD/BIAAC Investment Committee Meetings** – March 18-22, 2013, OECD/BIAAC, Paris, France
- **BIAAC Tax Bureau & Tax Committee Meetings** – March 25-26, 2013, BIAAC, Paris, France
- **ICC Customs and Trade Facilitation Committee Meeting** – April 15-16, 2013, ICC, Paris, France
- **ICC Banking Commission Meeting** – April 15-19, 2013, Lisbon, Portugal
- **USCIB/OECD/BIAAC International Tax Conference** – June 3-4, 2013, Four Seasons Hotel, Washington, DC

Again, please feel 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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