



## USCIB Washington Update

### Highlighting Key Activities, June – July 2012

During the months of June and July, USCIB's Washington, D.C. office held its annual Tax Conference with over 250 attendees, met with Christine Bliss and Dawn Shackleford, USTR, to discuss progress on TPP and the WTO Trade Facilitation negotiations, arranged for members to brief Bill Craft, State, on their forced localization concerns, provided comments to the government of India on their draft tax rules, led meetings with Senate Finance and House Ways and Means on fixes to Chapter 98 of the Harmonized Tariff Schedule, co-sponsored a program on the G20 featuring Michael Froman, 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.

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

- ***Christine Bliss, USTR, Briefs USCIB on Movement Toward India and China BITs:*** On June 19, 2012, Assistant USTR for Investment and Services, Christine Bliss, spoke to the USCIB Trade and Investment Committee about the latest developments with regard to negotiation of Bilateral Investment Treaties. While Mauritius is expected to be one of the first to be completed, they are also hoping to move forward with India, China, Russia which would be of value to many of our members. On TPP she noted progress on the Investment chapter but the Investor-State issue will be a political level decision due to the strong resistance from Australia. The hope for the International Services Agreement is to have all 19 countries move forward to the next phase by the fall. As this was the final committee meeting chaired by the retiring Scott Miller, P&G, USCIB presented him with a gift recognizing his many years of support and service as chair.
- ***Ken Ash, OECD, Identifies Trade Committee Work on Key USCIB Issues:*** Calling into the USCIB Trade and Investment Committee from Paris, Ken Ash, Director of the OECD Trade Directorate, briefed members on their work on several issues of direct interest. In May they issued a report on Trade and Jobs reinforcing the link between trade and economic growth and jobs. USCIB will host a program with Ken in Washington, D.C. on September 13, 2012 to discuss the findings of the study in more depth. He also noted their work on global value chains with the WTO which links closely with the work USCIB is doing with Professor Matt Slaughter. The OECD Trade

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Committee is also working on the trade-related issues surrounding state owned enterprises and Shaun Donnelly, USCIB Vice President for Investment and Financial Services, has been providing input on their paper.

- **Peter Robinson Highlights Forced Localization Concerns in Meeting with Mike Froman:** On June 28, 2012, Peter Robinson, USCIB President, joined the heads of several other business organizations for a meeting with Mike Froman, Deputy National Security Adviser for International Economic Affairs. The primary focus of the gathering was to discuss growing industry concern with forced localization requirements that companies are facing around the world. Peter, reflecting the membership of USCIB, emphasized that this is a cross-sectoral concern, not just the tech industry. Froman recognized the expansion of this problem beyond the indigenous innovation issues he had addressed with China and asked for examples of the requirements companies are facing. In a follow up e-mail to Froman after the meeting, Peter attached the USCIB 23-page matrix of examples that members have provided over the last few months.
- **Bill Craft, State, Hears from USCIB Members on Forced Localization:** USCIB arranged a meeting on June 27, 2012 for over 15 member companies at the State Department with Bill Craft, Deputy Assistant Secretary for Trade, to brief him on our growing concern with the number of forced localization requirements U.S. companies are facing around the world. Members discussed specific problems they are confronting and we shared with him the USCIB matrix of examples. Bill was aware of the problems and appreciated the more detailed input from us. His staff is participating in the interagency group on forced localization. He explored with the group the motivation behind these requirements, the implications of U.S. "Buy America" policies, and the range of tools available as part of a multifaceted strategy.
- **Rob Mulligan Named Vice Chair of BIAC Trade Committee:** The Executive Committee of the Business and Industry Advisory Committee to the OECD (BIAC) selected Rob Mulligan, USCIB Senior Vice President Washington, to serve as a Vice Chair to its Trade Committee. Rob joins the current leadership team of Cliff Sosnow, Blakes Law Firm (Canada), who was recently appointed Chair, and Oliver Wieck, BDI (Germany), Vice Chair. In this role he will be able to continue to work through BIAC in providing input to the OECD Trade Committee and press for including USCIB concerns that can be effectively developed through OECD. In addition to the work on trade, SOEs, and global value chains, we hope to engage the OECD on forced localization issues. USCIB wants to recognize the outgoing chair of the BIAC Trade Committee, Geoff Gamble, Dupont, for his many years of support and service to BIAC and USCIB.
- **USCIB Co-Sponsors Conference on G20 Featuring Froman:** In partnership with the International Chamber of Commerce and the Center for Strategic and International Studies, USCIB sponsored a conference on the G20 on June 5, 2012. Speakers at the conference included Michael Froman, the U.S. G20 Sherpa, Terry McGraw III, CEO of McGraw-Hill Companies and Chair of USCIB, and the Secretary General of the ICC, Jean-Guy Carrier. The conference was part of the business community's effort to play an increasingly influential role to support G20 actions to foster economic growth, promote open trade and investment, build a more stable financial system and improve

the environment for doing business. Participants addressed key topics from the G20 policy agenda, including global financial recovery, financial regulation, international financial institution reform and the role of the Financial Stability Board. The G20's broader policy agenda was also addressed, including trade and investment, energy, green growth, anti-corruption and financing for development.

- ***USCIB Dialogue with State on APEC:*** Following up on earlier briefing sessions with Ambassador Hans Klemm , U.S. Senior Official for APEC and Deputy Assistant USTR for APEC and Asia Arrow Augerot, USCIB hosted Steve Newhouse, State Department Acting Office Director for APEC and Asian Economic Policy on June 13, 2012. A good cross-section of member companies had a useful informal exchange with Steve and his staff on issues from APEC and TPP to country discussions on China, Indonesia, Vietnam and Burma.
- ***USCIB Registers Concerns on Ecuador's ATPA Trade Preferences:*** In late June USCIB joined other leading trade associations in registering strong concerns over Ecuador's continued status as a beneficiary of U.S. unilateral trade preferences under the Andean Trade Preferences Act (ATPA) in light of deteriorating respect for rule-of-law, abuse of foreign investors, and Ecuador's continuing flouting of international arbitration cases, including under the U.S.-Ecuador BIT. The Administration's June 29, 2012 report to the Congress on ATPA put Ecuador clearly on notice regarding these concerns. We think that tough approach is appropriate.
- ***Pushing for Strong TPP Provisions on State-Owned Enterprises (SOEs):*** USCIB continues to play a leading role in a small business coalition working with USTR and other in the Administration to push for comprehensive and ambitious provisions in the ongoing Trans-Pacific Partnership (TPP) trade negotiations on State-Owned Enterprises (SOEs.) It is critical, especially in the broad Asia-Pacific region to include disciplines on SOEs to ensure level playing fields when SOEs compete with private companies. This new issue remains one of the most challenging chapters in the TPP negotiations but USCIB will continue to support the USG efforts in multiple ways, including by helping mobilize support from business groups in key trading partners and in pushing parallel SOEs issues in the OECD and elsewhere.
- ***Increasing Private Sector Input and Participation in the UPU:*** USCIB has continued to work quietly but actively behind the scenes with the State Department to increase private sector input into and participation at the upcoming Universal Postal Union (UPU) Congress (ministerial) in September in Qatar. UPU rules and policies can directly affect, positively or negatively, private sector companies, including in the package delivery and financial services fields. There are still some challenging issues ahead for the Congress but we are pleased that State has significantly ramped up its openness to business participation and policy recommendations.
- ***Out of the Batter's Box on BITs:*** After the long-awaited late April rollout of the Administration's new 2012 Model Bilateral Investment Treaty ("Model BIT"), we are in active dialogue with USTR and State, the co-lead agencies for BIT negotiations. We are encouraged by the Administration's quick moves to reengage with key potential BIT

negotiating partners, especially India and China. Unfortunately, those two key partners seem, thus far, slow to react to the U.S. offer to revive formal BIT negotiations. To pick up on an Olympics metaphor, BITs with key countries like China and India are, unfortunately, going to turn out to be more of a marathon than a sprint, but they are and will remain high priorities for USCIB.

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

- ***ICC Customs Committee Finalizes Customs Guidelines Update:*** On June 12, 2012, Nasim Deylam, USCIB Manager for Customs and Trade Facilitation, attended the meeting of the ICC Committee on Customs and Trade Regulations in Mexico City, Mexico, chaired by USCIB member Anthony Barone of Pfizer. The committee had a discussion with Alejandro Gutierrez Fuentes, Central Administrator of International Affairs at Mexican Customs, on Trusted Trade Programs and Mexico's single window initiative. The committee also finalized a year-long initiative to update the ICC Customs Guidelines, drafted by the late John Raven. In light of the adoption in early 2012 of the ICC Policy Statement on Transfer Pricing and Customs Valuation, the committee discussed possible means of dissemination, including a seminar on transfer pricing and valuation later in the year.
- ***USCIB Members Present at ICC Symposium on Trade Facilitation:*** ICC Mexico and ICC Headquarters co-hosted a Trade Facilitation Symposium in Mexico City on June 13 – 14, 2012 bringing together business leaders and customs authorities from Latin America. The symposium covered topics such as balancing security and facilitation, trusted trader programs, transfer pricing and customs valuation, practical challenges with free trade agreements, counterfeiting, piracy and customs procedures, challenges of global supply chains, globally networked customs, integrated border management, emerging market issues, and Mexican trade strategy. USCIB members from DHL, Ernst & Young, KPMG, Microsoft, and Pfizer were featured as panelists and moderators. Other notable speakers included DHS Assistant Secretary for International Affairs, Alan Bersin, Gaozhang Zhu, Director of Compliance & Facilitation at the WCO, ICC Secretary General Jean Guy Carrier, and Mexican Under Secretary of Ministry of Economy Lorenza Martinez.
- ***USCIB Leads Meetings with CBP, Senate Finance and Ways & Means on Need for E-Commerce Fix in HTSUS:*** In the last two weeks of June, Nasim Deylam and USCIB members from FiftyOne, eBay, Hanesbrands, DHL, FedEx, and Sandler Travis & Rosenberg met with the CBP Office of Regulations and Rulings, and staff from the Senate Finance and House Ways & Means committees to discuss proposed updates to Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS). USCIB proposed new language 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. Additional proposals were offered with regard to textiles and apparel returns. All meetings were productive and met with understanding of the logistical difficulties posed by current language. USCIB will continue to push for a positive

outcome and hopes to see a legislative fix within either the Miscellaneous Tariff Bill or the Customs Reauthorization Bill later this year.

- ***Dawn Shackleford, USTR, Reports on WTO Trade Facilitation Negotiations:*** Dawn Shackleford, Deputy U.S. Trade Representative (USTR) for WTO and Multilateral Affairs, joined the USCIB Customs and Trade Facilitation Committee on July 18, 2012 to provide an off-the-record update of the status of the WTO Trade Facilitation Agreement negotiations. She reported positive momentum and the development of a revised negotiation text, 'Rev 12', following the April meeting of the Negotiation Group on Trade Facilitation (NGTF) in Geneva. In the months since, the group has met once more and has been working to clean up the text in the areas of Transit and Special & Differential Treatment. Dawn also informed members that two new issues have been submitted to the text for inclusion and these potential inclusions are stalling the release of a 'Rev 13'.

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

- ***Annual USCIB-OECD Tax Conference Features International Speakers:*** Over 250 people attended the annual USCIB-OECD Tax Conference that was held on June 4-5, 2012. The conference featured timely discussions on the transfer pricing of intangibles, the definition of permanent establishment, and tax in emerging economies. Featured speakers included Pascal Saint-Amans, new director of the OECD Center for Tax Policy and Administration; Jose Fernandez, Assistant Secretary, Economic and Business Affairs, U.S. Department of State; and Masatsugu Asakawa, Deputy Vice Minister for International Affairs, Ministry of Finance, Japan and Chair, OECD Committee on Fiscal Affairs. The conference featured the first public discussion of the OECD's Discussion Draft on Intangibles which was lead by Joe Andrus, Head of the Transfer Pricing Unit at the OECD.
- ***USCIB Tax Committee Comments on Indian GAAR rules:*** The Central Board of Direct Taxes (CBDT), Ministry of Finance of India invited comments on the Draft Guidelines regarding implementation of General Anti Avoidance Rules (GAAR). USCIB submitted comments acknowledging the need of governments to protect their revenue base but also emphasizing the need of businesses to be able to reliably predict their tax costs when making an investment. The letter also discusses the potential impact of the GAAR on double taxation treaties.
- ***USCIB Developing Comments on OECD Transfer Pricing Guidance:*** The OECD recently released discussion drafts on transfer pricing of intangibles, transfer pricing safe harbors, and transfer pricing timing issues. USCIB has held a number of conference calls to identify the relevant issues and identify individuals to draft comment letters. These issues, in particular the rules for transfer pricing of intangibles, are key projects over the coming months. Comments on all these topics are due to the OECD on September 14, 2012.
- ***USCIB Attending OECD Consultation on Permanent Establishments:*** The OECD has scheduled a consultation with business representatives for September 7, 2012 on

the revised commentary to Article 5 of the Model Convention on Income and on Capital. Having submitted comments on the discussion draft, USCIB has been invited to attend the consultation. Carol Doran Klein will be attending along with Tax Committee Chair, Bill Sample, and Rafic Barrage.

## **Membership**

- **Recruitment:** The D.C. Membership Department and D.C. Policy Staff met with prospective members Halliburton, General Motors, Underwriters' Laboratories, Estee Lauder, Corning, and McKesson to discuss how USCIB membership would be of benefit to them.
- **New Members:** USCIB has recently welcomed the following new members: Dickstein Shapiro LLP, McDermott Will & Emery LLP, McKenna Long & Aldridge LLP, and WeiserMazars LLP.
- **Member Meetings:** The DC Membership Department and D.C. Policy Staff met with representatives from member companies IBM, Intel, Qualcomm, and Citi in an effort to better understand their policy priorities for the next year and beyond and to see how USCIB can better accommodate their policy needs

## **Upcoming Events**

- **OECD Consultation on Permanent Establishments** - September 7, 2012, Paris, France
- **OECD Technical Advisory Group on International VAT/GST Guidelines and Business Preparatory Meeting** - September 11-13, 2012, Paris, France
- **USCIB Trade and Investment Committee Meeting** – September 11, 2012, USCIB, 1400 K Street, N.W., Suite 905, Washington, D.C.
- **USCIB/BIAC/OECD Trade and Jobs Program** – September 13, 2012, Washington, D.C.
- **WCO Harmonized System Committee Meeting** – September 17 – 28, 2012, Brussels, Belgium

Again, please feel to contact any of our Washington staff (see next page) 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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