



USCIB Washington Update

Highlighting Key Activities, October – November, 2012

During the months of October and November, USCIB's Washington, D.C. office hosted Ambassador Kramer for a briefing on WCIT, partnered with two Chinese groups in organizing a forum on U.S./China business and legal issues, met with USTR on forced localization concerns, discussed Centers of Excellence with CBP, represented BIAC at the OECD Trade Committee plenary meeting, coordinated with member company representatives at the Internet Governance Forum, met with State on China BIT negotiations, pressed OECD on member investment issues, presented USCIB views at a public consultation on three OECD transfer pricing papers, 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*

- ***USCIB Shares Views on Forced Localization with Arrow Augerot, USTR:*** On November 2, 2012, Rob Mulligan, USCIB Senior Vice President Washington, and Shaun Donnelly, USCIB Vice President for Investment, Finance and Banking, went to the USTR offices to talk with Arrow Augerot about the progress of her interagency task force on forced localization and we updated her on our work with members including the most recent version of our matrix of examples. She noted that they have concerns with the term “forced” and are using the phrase “localization barriers to trade”. The task force has developed a definition which she shared with us and we have provided feedback from our members. We discussed whether it would be useful to organize a program in Geneva next spring to raise awareness of the localization issues. We noted our concern with potential work in UNCTAD on local content requirements in the context of environmental regulations that impact trade.
- ***Rob Mulligan Represents BIAC at OECD Trade Committee and OECD Trade Forum:*** For the first time, BIAC was invited to attend the plenary session of the OECD Trade Committee on November 7, 2012. As a Vice Chair of the BIAC Trade Committee, Rob Mulligan was one of three BIAC representatives at the table. The OECD asked BIAC for its views on several issues including trade in services, trade and employment and global value chains. After the meeting, **Ken Ash**, Director of the OECD Trade and

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Business and Industry Advisory Committee (BIAC) to the OECD
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Agriculture Directorate, underlined that he sees great value in the BIAAC Trade Committee's initiatives to build increased linkages with the OECD Trade Committee. That evening BIAAC hosted an informal dinner for several members of the OECD Trade Committee including:

- **Ambassador Fernando de Mateo**, Chair of the OECD Trade Committee (Mexico)
 - **Didier Chambovey**, Vice Chair of the OECD Trade Committee (Switzerland)
 - **Harry Oldersma**, Chair of the OECD Working Party of the OECD Trade Committee (Netherlands)
 - **Vicki Plater**, Deputy Director Ministry of Foreign Affairs and Trade (New Zealand)
 - **Jun-ichiro Kuroda**, Principal Director MEFTI (Japan)
 - **Raed Safadi**, Deputy Director OECD Trade and Agriculture Directorate
 - **Patrick Low**, Chief Economist of the WTO
- ***USCIB Uses BIAAC Investment Committee Meeting to Press OECD on Company Problems:*** Shaun Donnelly participated in the October 10, 2012 meeting of the BIAAC Investment Committee, including formal and informal BIAAC dialogue with the OECD's important Investment Committee. BIAAC pressed hard for the OECD to address real world investment problems faced by businesses. We worked with one USCIB member company to put their growing problems in South Africa forward as one of the two BIAAC cases which sparked active discussions. The BIAAC Investment Committee also expressed real concern over the ICC's draft proposal for early negotiation of an international investment agreement, perhaps in the WTO. While in Paris, Shaun also discussed this issue with the ICC Secretariat. He also was the BIAAC Representative at a high level conference October 9, 2012 on the OECD's Codes on Capital Movements.
 - ***China BIT Discussions with State and USTR:*** Shaun participated in an informal brainstorming session November 26, 2012 among leading trade associations and senior officials from the State Department and USTR, the two co-lead agencies on Bilateral Investment Treaty (BIT) negotiations. Everyone agreed on the importance of a strong US-China BIT and we got an update on the serious preliminary discussions underway with the Chinese. Much of the focus in the discussion was on how best to treat the key issue of State-Owned Enterprises (SOEs) in BIT negotiations with the Chinese. The U.S.-China BIT effort is very important and USCIB will continue to push hard. There are some very tough issues, including SOEs, and this one will not get finalized quickly.
 - ***USCIB Raises Forced Localization at BIAAC Trade Committee:*** Rob Mulligan attended the Business and Industry Advisory Committee to OECD (BIAAC) Trade Committee meeting in Paris on November 6, 2012 and led discussion on forced localization concerns. Representatives from several European business groups indicated they are hearing similar concerns and it was agreed that the Committee will develop a discussion paper. USCIB will help write the initial draft. Members also discussed the work of the OECD on global value chains, state-owned enterprises, services trade restrictiveness, and the relationship between trade and jobs. Rob reported on the program USCIB did with OECD in Washington on their Trade and Jobs

report. He also flagged for members growing concern over illicit trade. A summary of the meeting will be available soon.

- ***USCIB Media Briefing on Forced Localization:*** With many governments creating new local content and activity requirements for foreign investors as a condition for operating in their territories, Rob Mulligan and Shaun Donnelly held a briefing for interested media on the issue on October 23, 2012. USCIB members have contributed anecdotal evidence of various forced localization measures around the world, which has been compiled and shared by USCIB with U.S. negotiators in the context of the Trans-Pacific Partnership talks and in other forums. Participating media at the briefing included Bloomberg News, the Financial Times and the Washington Post. USCIB will continue to raise this issue with the media on a priority basis.
- ***USCIB Task Force Drafts 2013 Trade and Investment Agenda:*** As we did last year, the USCIB Trade and Investment Committee established a small task force during its September meeting to draft a trade and investment agenda for 2013. Representatives from GE, Citi, Levi Strauss, UPS, Deloitte Touche, Siemens, and IBM agreed to serve on the task force. The group met on October 4 and 24 to discuss the key trade and investment issues for members in the coming year and prioritize those areas where USCIB could provide the most value added work. After several rounds of comments and revisions, the task force has developed a draft that will be discussed at the next full Trade and Investment Committee meeting on December 13, 2102.
- ***USCIB Co-Chairs TPP Investment Session with USTR Negotiators:*** Shaun Donnelly co-chaired the October 18, 2012 meeting of the U.S. business community for the TPP's Investment Task force with the lead U.S. negotiators for the Investment and Financial Services chapters. These periodic small informal sessions prove very useful to member companies with key interests in the Investment and Financial Services chapters. Interested member companies should 1) join the U.S. Business Coalition for the TPP and 2) let Shaun know of your specific interest in the Investment and Financial Services Chapters.
- ***World Bank Procurement Policy Discussions:*** Shaun Donnelly and a few member companies and other key trade associations participated in a small group session with the U.S. Executive Director to the World Bank on October 5. Some recent changes at the Bank are adversely affecting U.S. business in key sectors and this brainstorming session explored some possible solutions.
- ***USCIB Registers Concerns over UNCTAD Mission Creep on Trade and Environment Issues:*** Rob Mulligan, Shaun Donnelly, and Norine Kennedy had a phone exchange with senior USTR officials on October 23, 2012 over reports that the UN Conference on Trade and Development (UNCTAD) in Geneva was moving forward with an unhelpful initiative to present itself, rather than the WTO, as a forum to 'resolve' overlapping conflicts between trade and environmental agreements, policies, and priorities. USTR and the State Department are aware of this problem and want to work with us to blunt this effort by UNCTAD to usurp WTO responsibilities.

- ***BIAC Export Credit Task Force Pushing Ahead:*** Under the strong leadership of Steve Howlett from GE, BIAC's Export Credit Task Force is effectively pressing its agenda on global export credit discipline to the member nations (OECD members and beyond) in the several Export Credit agreements administered through the OECD. Steve led a strong BIAC delegation in the mid-November semiannual consultation with the OECD bodies. Steve also did a preliminary conference call with a small group of USCIB member companies on November 7, 2012. Interested members can let Shaun Donnelly know and he will connect you with Steve Howlett and the BIAC Secretariat.
- ***ICC Banking Commission Meets in Mexico:*** The ICC's Banking Commission, the global standard setter for a lot of trade finance documentation, definitions, and procedures, held a successful semi-annual meeting in Mexico City in mid-November. A strong USCIB delegation led by our USCIB Banking Committee Chair, Mike Quinn of JPMorganChase, was active in shaping positive outcomes.

ICT Policy – Promoting Sound Policies for New Technologies

- ***Ambassador Terry Kramer Briefs USCIB Members on Challenges and Opportunities at WCIT:*** On November 13, 2012, Ambassador Terry Kramer, Head of the US Delegation for the World Conference on International Telecommunications (WCIT), spoke to USCIB members and other interested parties about preparations for the WCIT at an event hosted by David Gross, a partner with Wiley Rein LLP, and chair of USCIB's ICT Policy Committee. The WCIT, a treaty conference held by the UN's International Telecommunications Union (ITU), will take place December 3-14, 2012 in Dubai, United Arab Emirates. Ambassador Kramer said the United States would strongly oppose proposals put forward by some countries aimed at generating revenue from content transmitted online from a sending party as well as giving governments a greater hand in managing Internet traffic. He said the US would argue that the issues driving these proposals -- including financing broadband build outs and addressing spam, hacking, and other security related challenges – are more appropriately addressed in multi-stakeholder forums, not binding treaty negotiations. In the run-up to the WCIT, the US delegation will focus on building support among “swing states,” such as South Africa, Kenya, Uganda, Ghana, and certain Asian countries, according to Ambassador Kramer.
- ***USCIB Collaborates on Multi-Association Letter on the EU Data Privacy Regulation:*** USCIB collaborated with the several other associations in the U.S. and Europe on a letter to communicate high-level, multi-association consensus concerning problematic aspects of the proposed EU Data Privacy Regulation. EABC sent the letter to key members of the EU Parliament and European Commission during the week October 15, 2012. In general, the letter focuses on: (1) concerns about the net effect of both lessened and increased administrative burdens; (2) overly prescriptive implementation; (3) problems w/ DPIA mandates and prior approval; (4) desire for a more interoperable model, which, for example, might include the ability to use BCRs across groups of companies; and (5) problems with “profiling” language, among other issues.

- ***USCIB Members Play Leading Roles at Internet Governance Forum (IGF):*** Barbara Wanner, USCIB Vice President, ICT Policy, and members of USCIB's ICT Policy Committee participated in the 7th annual Internet Governance Forum (IGF), November 5-9, 2012 which was held in Baku, Azerbaijan. The theme of the forum was "Internet Governance for Sustainable Human, Economic, and Social Development." USCIB members from AT&T, BT, Cisco, Foley Hoag, Google, HP, Lockheed Martin, Microsoft, NBC Universal, The Walt Disney Company, Verisign, Verizon, and Wiley Rein played leading roles as moderators and panelists in plenary sessions and workshops. The plenary topics explored critical infrastructure resources, access and diversity, Internet government for development, and security, openness and privacy. USCIB members made important contributions to a special pre-event, "Enhanced Cooperation on Internet Governance: From Deadline to Dialogue," co-sponsored by ICC BASIS, the Internet Society, and the Association for Progressive Communications. Other workshops sponsored by USCIB members delved into subjects as wide-ranging as "Exploring IXPs and other Internet Cloud Infrastructures," to "Social Media, Young People, and Freedom of Expression."

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

- ***USCIB Customs Committee Meets with CBP on CEE:*** The USCIB Customs Committee met on October 16, 2012 at the USCIB Washington office. John Leonard, Acting Executive Director, Trade Policy and Programs, U.S. Customs and Border Protection, joined us to discuss Centers for Excellence (CEE). He started with an overview [presentation](#) on CEEs, and informed the committee that the rollout of the final five CEEs (Agriculture & Prepared Products, Base Metals & Machinery, Consumer Products & Mass Merchandising, Industrial & Manufacturing Materials, and Textiles, Wearing Apparel & Footwear) are to be completed by September 30, 2013. The Commissioner was planning to announce the locations of these five CEEs on October 29 at the CBP Trade Symposium in Washington, which due to Hurricane Sandy, was rescheduled for November 27-28. Jerry Cook suggested the creation of a USCIB Customs Committee CEE Working Group that can lead efforts on letters, advocacy, and strategy. If you would like to participate on this group, and/or have any questions about John's presentation, please contact Nasim Deylami (ndeylami@uscib.org).
- ***USCIB Leads Discussion at ICC Customs Committee on Customs Applied to IP Trade:*** On October 24, 2012, Nasim Deylami attended the meeting of the ICC Committee on Customs and Trade Regulations in Montreal, Canada. The committee debated changes to two draft documents, the ICC Guidelines for Traders in Goods and the updated ICC paper on the impact of customs duties on trade in intellectual property and services. Other areas of discussion included Globally Networked Customs and the implication on the private sector, reports from the recent meetings of the WCO Harmonized System Committee, Technical Committee on Customs Valuation and Private Sector Consultative Group. The following day, the ICC hosted a ***Seminar on Transfer Pricing and Customs Valuation***, a day-long gathering of experts in the field. Presentations were made by USCIB members from Microsoft, Deloitte, Ernst & Young, and the law firms of Barnes, Richardson & Colburn and ITC Trade Law on customs valuation from traders' point of view, global standards in tax valuation, global standards

in customs valuation, the conflict between tax and customs valuation, recent developments in the U.S. and global repercussions, the recent ICC policy statement on transfer pricing and customs valuation, and the emerging issue of reference pricing. If you are interested in seeing these presentations, please contact Nasim Deylami (ndeylami@uscib.org). The ICC Customs Committee is planning another trade facilitation symposium for mid-late 2013, and details will be distributed as soon as they are solidified.

China – Improving Market Access for U.S. Business in China

- USCIB Convenes China Business and Legal Forum in Washington, D.C.:** On Tuesday, November 13, 2012, in Washington, DC, USCIB partnered with the China Council for the Promotion of International Trade (CCPIT) and the U.S.-China Legal Exchange Foundation (UCLEF) to host a *Business and Legal Forum on U.S.-China Trade and Investment*. A large Chinese delegation, headed by CCPIT Vice President Dong Songgen, including senior executives from Chinese companies, industry trade groups, legal experts and government officials participated in the program. The event addressed a range of business issues, presenting both Chinese and American perspectives on such critical topics as intellectual property and innovation, energy and green growth, and enabling frameworks for trade. **Nicole Melcher**, the Commerce Department's Director for China and Mongolia, provided keynote remarks, explaining how the U.S. seeks to help smaller companies tap into the burgeoning Chinese market. She said helping American SMEs export to China is a top priority under the Obama administration's National Export Initiative, which aims to double U.S. exports by 2015.
- USCIB China Committee Raises Market Access Issues with Audrey Winter, USTR:** On October 18, 2012, the USCIB China Committee and the USCIB Trade & Investment Committee met Audrey Winter, Deputy Assistant USTR for China Affairs. Audrey briefed the group on the current environment of bi-lateral economic relations between the U.S. and China and gave a snapshot of what is currently on the agenda for USTR with regard to China. She reported that there will be a U.S.-China JCCT meeting before the end of the year. Members used this opportunity to highlight some of the key issues that were identified by USCIB in its submission to USTR on China's compliance with its WTO commitments. The meeting also included a report on recent U.S. Government restrictions on Chinese investment by Ron Oleynik, Partner, Holland & Knight, and concluded with next steps for the Committee. For more information, please contact USCIB's China Affairs Manager, Justine Badimon at jbadimon@uscib.org.

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

- USCIB Presents Views at Public Consultation on Three OECD Transfer Pricing Papers:** The OECD released three comment documents on June 6, 2012. These documents on transfer pricing of intangibles, transfer pricing safe harbors and administrative concerns, and transfer pricing timing all raised important issues for members. The USCIB Tax Committee committed significant resources and produced thoughtful comments letters on these issues. As a result, we were invited to attend the public consultation (which was limited to those who had made comments) and make a

brief presentation on options realistically available and the perspectives of the parties. Carol Doran Klein, USCIB Vice President and International Tax Counsel, and Paul Flignor, DLA Piper, attended on behalf of USCIB. A summary of the meeting was sent to the Tax Committee.

- ***USCIB Attends OECD Meeting on VAT:*** Carol Doran Klein also represented USCIB at the first OECD Global Forum on VAT held November 7 and 8, 2012. The principle outcome of the Forum was the recognition of the need for consistent global rules to avoid both double non-taxation and double taxation. The OECD's press release provided that the Forum "considered that the work on the International VAT/GST Guidelines provides the ideal basis for the development of such global standards."
- ***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. USCIB is working with BIAC to develop comment letters on these subsequent versions. Draft letters on Beneficial Ownership and Emissions Trading will likely be circulated for comment in early December (the deadline for comments is December 15, 2012). Comments on the Permanent Establishment draft will likely be circulated later, as the deadline for comments is January 31, 2012.
- ***Michael Lennard, UN, Briefs USCIB Tax Committee on Upcoming Projects:*** The Tax Committee met on November 29, 2012. Michael Lennard of the UN discussed recent and upcoming projects including work on a potential new article on services and work on taxation of natural resources. He invited business participation on the UN's subcommittees/working groups on these topics. Carol Doran Klein will contact Michael to discuss USCIB's possible participation. In addition, the committee discussed ongoing work including the OECD's work on base erosion and profit shifting, the ongoing project on intangibles, and USCIB's and BIAC's collaboration on permanent establishments.

Membership

- ***Recruitment:*** The D.C. Membership Department and D.C. Policy Staff met with prospective members Inditex, Polo Ralph Lauren, Halliburton, Dun and Bradstreet, UL, and Duff & Phelps 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 Exxon, SAS, Verizon, DuPont, e-Bay, P&G and 3M 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: Mozilla, Fenwick & West LLP and The Nickel Institute.

Upcoming Events

- **USCIB Trade and Investment Committee Meeting** – December 13, 2012, 9:30 – 11:30 a.m., USCIB Office, 1400 K Street, NW, Washington, DC
- **USCIB ICT Policy Committee Meeting** – December 19, 2012, 2:30 p.m. – 4:30 p.m., Wiley Rein Conference Center, 1776 K Street, NW, Washington, DC
- **UN Commission on Science and Technology for Development (CSTD) Intersessional Meeting** – January 7-9, 2013, Lima Peru
- **USCIB Customs Committee Meeting:** January 10, 2013, 1:30 – 3:30 p.m., USCIB Office, 1400 K Street, NW, Washington DC
- **ICC Digital Economy Commission Meeting** – January 15-16, 2013, ICC, Paris, France
- **APEC Data Privacy Subgroup Meeting** – January 30-February 2, 2013 (tentative), Jakarta, Indonesia

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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