



WASHINGTON UPDATE

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Highlighting Key Activities, December 2015 – January 2016

During the months of December 2015 and January 2016, USCIB staff met with Daniel Bahar (USTR) on U.S.-China BIT negotiations, issued a Trade and Investment Agenda for 2016, engaged Commerce and State on the U.S.-EU safe harbor negotiations, discussed next steps in BEPS with Grace Perez-Navarro (OECD), drafted a multi-association letter to the Hill urging action on the Custom Reauthorization bill, spoke at Bloomberg and WITA events on the need for strong investment protections in TPP and other trade agreements, and much more. Below are 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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- ***USCIB Trade Committee Meets with Daniel Bahar and Drew Quinn from USTR:*** At the December 9, 2015, meeting of the USCIB Trade and Investment Committee, Daniel Bahar, Deputy AUSTR for Investment, provided members with an off-the-record report on the U.S.-China BIT and the Investment Chapter of the TPP. Drew Quinn, DAUSTR for Southeast Asia and Deputy Chief Negotiator for the TPP, provided further information regarding the TPP and responded to member questions on it and other issues. Both speakers thanked USCIB for its statement of support for the TPP, released on December 8, 2015. Other issues discussed at the meeting included recent developments related to TTIP, TiSA, ITA, EGA, the TFA, and cross-border data flow papers being worked on at the ICC and BIAC.
- ***USCIB Trade and Investment Agenda for 2016 Identifies Key Priorities:*** Through a consultation process with members starting back in September, the USCIB Trade and Investment Committee has developed its priorities for 2016 which were finalized and shared with members on January 21, 2016. [The Agenda](#) looks to build on the successes of last year starting with pushing for Congressional approval of TPP, completing the EGA, getting ratification and implementation of the TFA, advancing TTIP and TiSA negotiations, and working closely with the U.S. government on the U.S.-China BIT. In all of these negotiations, we will continue to advocate on key issues of concern to members including forced localization, restrictions on cross-border data flows, state-owned enterprises, investment protection, regulatory cooperation, and intellectual property protection.
- ***USCIB Highlights How OECD Work is Used by Business:*** The OECD Washington office hosted a program on January 29, 2016 focusing on how OECD work is put to use by governments, business, labor and other groups. Rob Mulligan, USCIB Senior Vice President for Policy and Government Affairs, presented the views of USCIB as the U.S. affiliate to BIAC, which is the official voice of business at the OECD. He cited several examples of OECD work products that have had significant impacts on government policies of interest to business including the Policy Framework for Investment, the Anti-Bribery Convention, the Trade in Value Added database, the Data Privacy Guidelines, and the Services Trade Restrictiveness Index. These are just a few of the many OECD products that are used by OECD and non-OECD governments in developing national laws and regulations affecting investment and business activities.
- ***Donnelly Talks TPP and Investment at Bloomberg Conference:*** On December 2, 2015 USCIB partnered with Bloomberg BNA, and member firm Covington and Burling to sponsor an all-day conference in New York entitled, “The Trans-Pacific Partnership: Interpreting New Rules for Trade in the 21st Century”. USCIB VP for Investment and Financial Services, Shaun Donnelly, was a panelist along with Marney Cheek from Covington, and Scott Miller from CSIS (formerly Proctor and Gamble’s lead trade and investment expert, and once longtime Chair of USCIB’s Trade and Investment Committee). The Investment panel laid out the important role strong investment protections plus enforcement through Investor-State Dispute Settlement (ISDS) play in incentivizing and protecting important investment flows. Other panels addressed Market Opening, Innovation and Digital Economies, and Non-Tariff Barriers.

- ***Donnelly Talks TPP Investment at WITA:*** On January 14, 2016, Shaun Donnelly was back on the TPP speaking circuit, joining State Department Assistant Secretary for economic and Business Affairs Charlie Rivkin, Nicolle Bivens Collinson from USCIB member firm Sandler, Travis & Rosenberg, P.A., and other speakers at a WITA session on “TPP: The 21st Century Trade Agreement.” Shaun’s focus was the Investment chapter in TPP, including the controversial – but very important – ISDS enforcement provisions. This session, one in a major series WITA has been running on the TPP, drew an overflow crowd from business, academia, think tanks, and foreign embassies.
- ***USCIB Hosts China BIT Briefing for Members:*** Following up on discussions at USCIB’s mid-December Trade and Investment Committee meeting, USCIB invited the two lead U.S. negotiators for the U.S.–China Bilateral Investment Treaty (BIT) negotiations, Daniel Bahar from USTR and Michael Tracton from State, to provide an hour-long informal briefing for two dozen USCIB members on January 13, 2016. Looking toward the then-upcoming (now-concluded) 24th official negotiating round in Beijing, the U.S. negotiators reviewed the state of the negotiations, U.S. Government priorities, and some key challenges; they then listened to sectoral and company-specific concerns and questions from member companies. The negotiators urged all companies and associations with specific China-related concerns, questions, or suggestions which might fit under the BIT to come forward now and lay out those issues for our negotiating team. USCIB staff stands ready to help facilitate those types of private follow-up meetings. If interested in such a meeting, please reach out to Shaun Donnelly (sdonnelly@uscib.org) and Eva Hampl (ehampl@uscib.org).
- ***Defending Strong Eligibility Criteria for GSP:*** On January 15, 2016, Shaun Donnelly testified in front of the USTR-chaired interagency subcommittee on the Generalized System of Preferences (GSP). The two-day hearing considered a number of long-standing petitions to remove or limit various developing countries from the GSP eligibility list for failure to meet statutory GSP eligibility criteria. Shaun testified regarding Ecuador’s well-documented failure to honor international arbitral awards. He joined member company Chevron, the petitioner, and the Ecuadorian government team testifying and answering questions from the subcommittee. USCIB’s key message was that GSP eligibility criteria must be respected to maintain the credibility of, and support for, the important GSP program, and that Ecuador has clearly failed to meet those criteria.
- ***USCIB Co-Chairs Coalition Briefing on TPP Investment and Fin Services Chapters:*** Shaun Donnelly, one of three co-chairs of the Business Coalition for TPP Investment Task Force, co-chaired a December 3, 2015, briefing for coalition member companies where USTR and Treasury negotiators laid out the key provisions of the Investment and Financial services chapters in the TPP and answered members’ questions. Several members raised concerns and questions over details in the chapters, sparking some very candid exchanges with the USG negotiators. Discussions are still ongoing with USTR and the Hill over some of those provisions.
- ***USCIB Congratulates PepsiCo on Winning Transparency International-USA’s Coveted Corporate Leadership Award:*** For the fourth time in five years, a USCIB member company has won the coveted Corporate Leadership Award from the US chapter of Transparency International, the global anti-corruption organization. PepsiCo General Counsel and Executive Vice President for Government Affairs, Tony West,

accepted the award at the Dec 3, 2015, Integrity Award Dinner in Washington D.C. PepsiCo was honored for its strong commitment to creating an ethical culture and upholding high standards of corporate citizenship, integrity, transparency, and accountability. TI-USA also presented its TI-USA Integrity award to former President Jimmy Carter, and Ambassador Stuart Eizenstat of USCIB-member law firm Covington and Burling accepted the award on behalf of President Carter. Shaun Donnelly, a member of TI-USA's Policy advisory Board, represented USCIB at the award dinner.

- ***USCIB Promotes Open Investment Climate at OECD and BIAC Meetings:*** On December 8, 2015, Eva Hampl, USCIB Director for Investment, Trade and Financial Services, participated in the meetings of the OECD Investment Committee and the BIAC Committee on Investment and Responsible Business Conduct, providing input on the importance of an open investment climate and investment protection. Other specific issues raised by Hampl included urging continued work on SOEs, emphasizing the importance of implementing the [OECD Policy Framework for Investment](#) (PFI), as well as highlighting relevant outcomes from the [G20-OECD Global Forum on International Investment](#) that took place in October in Istanbul. On December 10, 2015, Hampl also attended the OECD Dialogue on *Making Investment work for the Sustainable Development Goals*, a workshop discussing implementing the PFI, once again providing input on the importance of an open investment climate and investment protection for businesses.
- ***Hampl Represents USCIB at Inaugural Anti-Bribery Roundtable with OECD Working Group on Bribery in Paris:*** On December 9, 2015, Eva Hampl participated in an inaugural roundtable with the [OECD Working Group on Bribery](#), which is responsible for monitoring the implementation and enforcement of the [OECD Anti-Bribery Convention](#), the 2009 Recommendations on [Further Combating Bribery of Foreign Public Officials in International Business Transactions](#), and related instruments. Key issues discussed during the roundtable included the demand side of bribery, as well as incentivizing voluntary self-reporting. The discussion was an important step in continuing to build the relationship between business and governments in this area.
- ***USCIB Blog on SDGs and Investment Protection:*** On December 21, 2015, Eva Hampl contributed a blog post to the Investment Policy Central (IPC) web site blog, where USCIB shares a platform on investment topics with a group of other leading trade associations. Hampl posted on [Successfully Fostering Private Investment for Sustainable Development](#), commenting on the OECD workshop on implementing the OECD Policy Framework for Investment.

ICT Policy – Promoting Sound Policies for New Technologies

- ***USCIB Members Continue to Shape 2016 CDEP Ministerial:*** On December 4, 2015, Members of USCIB's ICT Policy Committee wrapped up a week of meetings at the OECD. Working through BIAC, they made important contributions aimed at shaping the Ministerial Declaration and supporting background documents for the Committee on Digital Economy Policy's (CDEP), "2016 Ministerial Meeting on the Digital Economy: Innovation, Growth, and Social Prosperity," which will be held June 22-23, 2016 in Cancun, Mexico. The Cancun Ministerial will highlight the extent to which *the entire*

economy has become digitalized, providing many benefits and some challenges. USCIB members also helped to further refine preparations for Business Stakeholder Day on June 21, 2016. This daylong program will provide the business perspective on such topics as the “cornerstones” for a healthy digital ecosystem, policy conditions that enable innovation, and optimization of the economic and social welfare benefits of cross-border data flows with security and privacy concerns. USCIB Members also contributed to discussions on a BIAAC-organized Hackathon, which will take place on the sidelines of the Ministerial, June 20-21.

- ***USCIB Members Applaud UN’s Recognition of the Importance of Multistakeholder Participation in Internet Governance:*** On December 16, 2015, USCIB Members, participating under the aegis of ICC-BASIS, applauded the conclusion of the High Level Meeting of the U.N. General Assembly on the Overall Review of the Implementation of the Outcomes of the World Summit on the Information Society (WSIS). Led by ICT Policy Committee Chair Eric Loeb (AT&T) and Vice Chair Joseph Alhadeff (Oracle) – who also leads the ICC’s Digital Economy Commission – USCIB members noted positively that, following months of advocacy by business and other stakeholders, the final [Outcome Document](#) included important text that will extend the Internet Governance Forum (IGF) for 10 years, revises previously problematic language pertaining to the role of governments in cybersecurity, and calls for the next WSIS review in 2025.
- ***USCIB Provides Qualified Support for 3rd Draft of the Enhancing ICANN Accountability Plan:*** On December 18, 2015 USCIB once again provided the perspective of U.S.-based global businesses in comments to ICANN concerning the [third draft](#) of the CCWG-Accountability’s proposal aimed at providing mechanisms to enable the global multistakeholder community to hold ICANN’s Board accountable following the transition of IANA stewardship functions currently performed by National Telecommunications and Information Administration (NTIA). USCIB offered [qualified support](#) for most elements of the third draft, noting that the year-plus effort has produced a set of mechanisms that – when further refined – will empower the ICANN community through use of a bottom-up, multistakeholder model. USCIB expressed confidence that with additional work the accountability proposal will enable a seamless IANA transition that will safeguard the continued security, stability, and resiliency of the Domain Name System and openness of the Internet.
- ***Commerce Negotiator Briefs USCIB Members on Progress in U.S.-EU Safe Harbor Negotiations:*** On December 18, 2015 Shannon Coe, Team Lead for Data Flows and Privacy, U.S. Department of Commerce, provided an off-the-record update for USCIB members on negotiations between the United States and the European Commission to conclude a revised Safe Harbor framework governing transatlantic data transfers. USCIB members reiterated concerns conveyed in earlier communications with U.S. and EU officials about the dire ramifications for U.S. and EU businesses and transatlantic economic relations if so-called Safe Harbor 2.0 is not concluded by the January 31, 2016 deadline imposed by EU Data Protection Authorities (DPAs). The DPAs indicated that if U.S. and EU negotiators missed the deadline, they may launch probes of U.S. tech companies to ensure compliance with European law. Ms. Coe noted these concerns and offered to continue to keep Members apprised of developments.

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

- **Grace Perez-Navarro, OECD, Briefs USCIB Tax Committee Meeting on BEPS Next Steps:** At the December 16, 2015 meeting of the USCIB Tax Committee, Grace Perez-Navarro, Deputy Director of the OECD's Centre for Tax Policy and Administration, discussed next steps on BEPS implementation, practical implementation issues including the inclusive framework, and monitoring BEPS implementation. The Committee also discussed the various work streams that USCIB should be focused on over the coming year, including implementation of transfer pricing documentation (including country-by-country reporting and the master file); transfer pricing including profit splits; PE issues including profit attribution and possible work on a PE proxy proposal; dispute resolution; treaty abuse; and contributing to the work of the UN Committee of Tax Experts as appropriate.
- **USCIB Submits Comment Letter to the IRS on Transfer of Foreign Goodwill:** On December 14, 2015, USCIB submitted a comment letter to the IRS on its [proposed regulations under sections 367 and 482](#). The IRS issued proposed regulations that would significantly alter the taxation of the transfer of foreign goodwill and going concern value. The USCIB Transfer Pricing Subcommittee submitted the comments linked above critiquing the proposal, which would if adopted as proposed, have an effect on all such transfers even non-abusive cases occurring in the ordinary course of business.

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

- **USCIB Leads Multi-Association Letter on Customs Reauthorization:** On December 3, 2015, USCIB submitted multi-association letters to the House and Senate leadership and Conferees for the Trade Facilitation and Trade Enforcement Act of 2015, as well as members of the Senate Finance Committee and the House Committee on Ways and Means. The USCIB-led effort garnered over 20 association signatures. USCIB also signed on to two other letters, one urging the bill to go to conference (December 1), and another calling on Majority Leader McConnell to schedule a vote on the bill (January 15). These efforts came after months of exploratory meetings with members on the Hill.
- **USCIB Customs Committee Updated on EU Customs Code Changes:** The USCIB Customs and Trade Facilitation Committee met January 12, 2016. The Committee welcomed a speaker from Deloitte Customs and Global Trade to discuss upcoming changes to the EU Customs Code (UCC). The UCC changes are scheduled to begin to be implemented later this year and include many provisions of concern to USCIB membership. The meeting also featured discussion on pending Customs Reauthorization legislation, and other issue areas the Committee hopes to deal with this year.

Corporate Responsibility – *Developing Standards and Principles, Increasing Awareness of Positive Business Impact*

- ***USCIB Participates in Discussion on Human Trafficking in Supply Chains at Human Rights First 2015 Summit:*** Ariel Meyerstein, USCIB's Vice President for Labor Affairs, Corporate Responsibility & Corporate Governance, participated in Human Rights First's 2015 Human Rights Summit on December 9, 2015, which took place in Washington, D.C. at The Newseum. Ariel moderated a panel entitled, "Modern-day slavery is a global problem that taints many of the products we use every day. How can the United States work with businesses and other governments to eradicate human trafficking from supply chains?" with panelists from the Electronic Industry Citizenship Coalition, USAID's Center of Excellence on Democracy, Human Rights and Governance and the New York University's Stern School of Business.

Intellectual Property – *Strengthening International Protections for U.S. IP*

- ***USCIB IP Committee Identifies Issues for 2016:*** The Intellectual Property Committee met in Washington D.C. on January 13, 2016 to discuss possible changes to the committee structure, 2016 objectives, and areas of potential engagement. The Committee meeting was chaired by the Committee's Vice-Chair, Sharon Reiche, of Pfizer. The IP Committee members agreed that USCIB has an important and unique role to advocate for IP issues at the international level and with policymakers. Some of the action items from the Committee meeting include exploring issues such as anti-counterfeiting/customs and 3D printing. Other suggested areas of work for 2016 include TTIP IP negotiations, the Aarhus Convention in the European Union, meetings with IGO policy makers, and monitoring the ICC IP Commission.

Product Policy – *Ensuring U.S. Products Timely Access to Markets Around the World*

- ***USCIB International Product Policy Working Group Hears from CIEL on SAICM:*** The USCIB International Product Policy Working Group met on December 15, 2015 in Washington D.C. to discuss the Working Group's work program and priorities for 2016, review the Working Group's 2015 activities, and debrief on conflict minerals and its impact on articles and products. The Working Group also welcomed Baskut Tuncak, Senior Attorney at the Environmental Health Program of the Center for International Environmental Law (CIEL), who shared with USCIB members CIEL priorities for the Strategic Approach to International Chemicals Management (SAICM). He also discussed his work on the UN report on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

Membership

- ***Membership Meetings:*** The Washington, D.C. membership department and policy staff met with representatives from member companies Pitney Bowes, Wells Fargo, Nestle

and McGraw Hill Financial to develop our understanding of 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 Marsh & McLennan Companies as a new member.

Upcoming Events:

APEC Alliance for Supply Chain Connectivity (A2C2) Subcommittee Meeting, Lima, Peru – February 22

APEC Customs Subcommittee Meetings, Lima, Peru – February 26

APEC Electronic Commerce Steering Group, Lima, Peru – February 23-27

ICANN 55, Marrakech, Morocco – March 5-10

USCIB Trade and Investment Committee Meeting, Washington, D.C. – March 9

ICC Trade and Investment Commission Meeting, The Hague, Netherlands - March 18

WCO 57th Harmonized System Committee, Paris, France – March 9-18

OECD Committee on Digital Economy Policy (CDEP), Paris, France – March 29-31

Global Connect High-Level Meeting, Washington, D.C. – April 15-17

ICC Commission on the Digital Economy Meetings, Paris, France – April 20-21

BIAC and OECD Trade Committee Meetings, Paris, France – April 20-22

USCIB Corporate Responsibility and Labor & Employment Committee Meetings, Washington, D.C. – May 3-4

USCIB Policy and Program Staff

Rob Mulligan

Senior Vice President, Policy and Government Affairs
202-682-7375 or rmulligan@uscib.org

Erin Breitenbucher

Senior Policy and Program Associate and Office
Manager, Washington
202-682-7465 or ebreitenbucher@uscib.org

Shaun Donnelly

Vice President, Investment and Financial Services
202-682-1221 or sdonnelly@uscib.org

Megan Giblin

Director, Customs and Trade Facilitation
202-371-9235 or mgiblin@uscib.org

Ronnie Goldberg

Senior Counsel
212-703-5057 or rgoldberg@uscib.org

Eva Hampf

Director, Investment, Trade and Financial Services
202-682-0051 or ehampf@uscib.org

Alison Hoiem

Senior Director, Member Services
202-682-1291 or ahoiem@uscib.org

Jonathan Huneke

Vice President, Communications and Public Affairs
212-703-5043 or jhuneke@uscib.org

Norine Kennedy

Vice President, Strategic International Engagement,
Energy and Environment
212-703-5052 or nkennedy@uscib.org

Carol Doran Klein

Vice President and International Tax Counsel
202-682-7376 or cdklein@uscib.org

Helen Medina

Vice President, Product Policy and Innovation
212-703-5047 or hmedina@uscib.org

Ariel Meyerstein

Vice President, Labor Affairs, Corporate
Responsibility & Corporate Governance
212-703-5056 or ameyerstein@uscib.org

Chris Olsen

Policy and Program Assistant, Washington
202-617-3156 or colsen@uscib.org

Rachel Spence

Policy and Program Assistant, New York
212-703-5095 or rspence@uscib.org

Barbara Wanner

Vice President, ICT Policy
202-617-3155 or bwanner@uscib.org

Kira Yevtukhova

Policy and Program Associate, New York
212-703-5082 or kyevtukhova@uscib.org