



WASHINGTON UPDATE

A UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS PUBLICATION

Highlighting Key Activities, August – September 2017

During the months of August and September 2017, USCIB staff arranged a meeting with John Melle, USTR, and Angela Ellard, Ways and Means staff, on NAFTA negotiations; engaged with Alan Wolff, WTO, and Chris Wilson, USTR, in Geneva on deliverables for MC 11; organized a Symposium on Business and Human Rights with over 70 business representatives; submitted comments to USTR on China's compliance with its WTO commitments; hosted a meeting for members with Ken Ash, OECD, on their trade work and Colombia accession; had a dialogue with Martha Newton, Department of Labor Deputy Undersecretary for International Affairs on ILAB; received briefings from USTR's Jason Bernstein and Christina Kopitopoulos on Customs in NAFTA; shared business views on the OECD Going Digital project with Andrew Wyckoff, OECD; 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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- **John Melle, USTR, and Angela Ellard, Ways and Means, Brief USCIB Trade Committee:** On September 12, 2017, Assistant U.S. Trade Representative for the Western Hemisphere and Lead Negotiator for NAFTA modernization, John Melle, provided an off-the-record briefing for members on the latest round of NAFTA talks. He engaged with members on questions concerning negotiating timelines and deadlines, text proposals, investment and ISDS, rules of origin, addressing the trade deficit, digital trade, energy, and other topics. Members reinforced with Melle that withdrawing from NAFTA would go against the principal of “do no harm”.

Angela Ellard, House Ways & Means Committee Chief Trade Counsel and Trade Subcommittee Staff Director of the U.S. House of Representatives, discussed NAFTA and other trade and investment topics in Congress, off-the-record. Ellard highlighted how closely Congress was working with USTR and the administration on the NAFTA process, despite the tight timelines. She noted the strong pushback from Congress to withdrawing from the Korea Free Trade Agreement. Ellard also discussed Trade Enforcement issues, implementation of the Customs Bill, the Miscellaneous Tariff Bill (which has 1,800 provisions suggested for inclusion), and GSP renewal. All of which she emphasized take significant time and resources. Members inquired about potential timelines for the 232 case, specific chapters in NAFTA, the U.S.-China trade relationship, and TPA renewal.

- **USCIB Calls on Administration to Do No Harm in NAFTA Modernization:** On June 12, 2017, USCIB released its [recommendations](#) to the Trump Administration on priorities for the modernization of the North American Free Trade Agreement (NAFTA). The submission calls on the Administration to update the 23-year-old agreement to accommodate new realities in global commerce, including the rise of the digital economy, while keeping what works from the original agreement. Specifically, the document calls upon the Administration to update and strengthen key NAFTA provisions, including the liberalization and protection of investment flows, protection of intellectual property, trade facilitation and improved agricultural market access. It also recommends tackling new areas not included or anticipated in the original agreement, such as the digital provision of goods and services, data localization requirements, and treatment of state-owned enterprises. It further urges U.S. negotiators to work closely with a range of private-sector stakeholders to ensure that a revamped agreement meets business needs in the 21st century. With the third round of negotiations just having concluded in Ottawa, Canada, the negotiations are continuing at a rapid pace.
- **USCIB Co-chairs Business Meeting with USTR’s NAFTA Investment Negotiators:** USCIB co-chaired an August 29, 2017, meeting for a coalition of U.S. companies and trade associations with USTR’s key NAFTA negotiators on investment. In a free-wheeling session with USTR’s Chief of Staff, lead NAFTA negotiator and the key USTR investment policy team, business laid out a strong view on the importance of maintaining, indeed strengthening, key investment provisions in the NAFTA, including strong enforcement mechanisms through a proven Investor-State Dispute Settlement (ISDS) system. We and other business representatives made very clear to USTR leadership that any reported “opt-in/opt-out” system for ISDS would undercut the proven implementation/enforcement system which is critical to mobilizing the foreign direct investment flows so essential for business in today’s competitive global markets.

- **Rob Mulligan Meets with WTO Officials on Planning for Ministerial:** While participating in the WTO Public Forum and the ICC Trade and Investment Commission meeting in Geneva from September 25-30, 2017, Rob Mulligan, USCIB Senior Vice President for Policy and Government Affairs, met with the new WTO Deputy Director General, Alan Wolff, the WTO Director for Information and External Relations, Keith Rockwell, and the WTO Director for Services, Hamid Mamdouh. He also met with Chris Wilson, DCM for USTR in Geneva, Didier Chambove, Swiss Ambassador to the WTO, and Julian Braithwaite, Ambassador to the UK Mission in Geneva. In the discussions with them and others there is still much uncertainty about the potential for significant results coming out of the WTO Ministerial (MC 11) in Argentina being held in December. There is hope that at least work plans can be developed for movement on a range of issues such as e-commerce/digital trade, investment facilitation, fisheries, services facilitation and other areas and this may involve pursuing plurilateral approaches in some cases.
- **USCIB Hosts Meeting with Ken Ash, OECD, on Trade Work and Colombia Accession:** On September 20, 2017, Ken Ash, Director of the OECD Trade and Agriculture Directorate, met with USCIB members and staff to discuss the projects he has planned over the next year. He detailed the work the OECD has done over the past year on both Trade and Agriculture policy, as well as the outlook for his upcoming work with the G20. Members raised issues and offered ideas for the OECD Trade Committee to pursue, and were also able to inquire about the status of Colombia and other countries seeking to join the OECD. Ken provided an open and frank perspective on Colombia, as well as the other countries including Brazil and Argentina.
- **Donnelly and Hampl Defend ISDS for a NAFTA 2.0:** USCIB's Vice President for Investment and Financial Services Shaun Donnelly along with its Director for Investment, Trade and Financial Services Eva Hampl contributed an [op-ed in The Hill](#) titled, "NAFTA 2.0 needs to enshrine investor protections" on July 28, 2017. In the leadup to the update of the North American Free Trade Agreement (NAFTA), Hampl and Donnelly noted that, "overall, the administration's "NAFTA 2.0" wish-list is solid." However, one of the more crucial objectives, investor protection under the agreement's Chapter 11, is not included. "These provisions, which allow U.S. investors both small and large to seek compensation for unfair, discriminatory or inequitable treatment at the hands of foreign governments, are based on bedrock principles embedded in our own Constitution prohibiting abusive government treatment and the taking of private property without just compensation. Without this provision, domestic courts become the only legal recourse for a wronged investor. While Mexico has made great strides in many respects, its court system is still far from impartial. Indeed, miscarriages of justice can happen in any country, including advanced democracies like the United States and Canada," they noted.
- **USCIB Urges China Compliance with WTO Commitments:** On September 20, 2017, USCIB submitted a statement to the United States Trade Representative (USTR) on China's compliance with its World Trade Organization (WTO) commitments, which incorporated a wide array of input from USCIB members across various sectors. In the statement, which is submitted annually, USCIB commended the U.S. and Chinese governments for important work in on-going bilateral dialogues, as well as in support of working relationships between U.S. and Chinese agencies which provide invaluable opportunities for exchanging information and addressing agency-specific issues. The

statement addressed important issues to U.S. business including taxation, customs and trade facilitation, information technology and intellectual property rights. Furthermore, it advocated for continuing negotiations of a Bilateral Investment Treaty (BIT) between the U.S. and China. While USCIB acknowledges the efforts China has made since joining the WTO in 2001 to meet its obligations under the terms of its accession agreement, there still remain significant WTO obligation compliance concerns. These concerns include government procurement, trade restrictions in information technology and continued intellectual property violations in audiovisual, software, agriculture biotechnology and chemicals.

- ***USCIB Pushes Market Access Concerns in BIAC Colombia Paper:*** USCIB has been working with Business at OECD (BIAC) to advocate on behalf of business in the OECD accession process of Colombia. With the Market Openness Review concluded by the OECD Trade Committee, and the Formal Opinion now in draft form, Business at OECD finalized a document in September with recommendations for pre-accession commitments. These recommendations, which include significant USCIB member input, address market access concerns for industry on issues where Colombia has not yet risen to the standard of OECD countries. The draft formal opinion is set to be reviewed in November at the next meeting of the OECD Trade Committee.
- ***GSP Back on the Agenda:*** With the U.S. Generalized System of Preferences (GSP) system facing another of its periodic reauthorization deadlines at the end of the year, USTR is moving to get ducks in a row on pending country and product eligibility petitions, some of very long standing. USCIB has played and will continue to play a lead role on a specific request by Ecuador, with its problematic record toward international investors and respecting international arbitral awards, to add flowers and vegetables to the GSP eligible products list. USTR's kick-off hearings September 26-27, 2017, focused on country eligibility petitions where, again, Ecuador was a key country of concern. Beyond the policy issues inherent to GSP and the challenge of identifying budget offsets for "foregone revenues", the yearend legislative calendar looks daunting with urgent competing legislation so GSP risks again lapsing.
- ***USCIB Aggressively Blogging for Strong Investment Protections:*** USCIB Staff have been actively blogging on major investment policy issues over the summer. Posting on the blog site of [Investment Policy Central](#), Shaun Donnelly and Eva Hampf jointly penned "NAFTA 2.0 Needs to Enshrine Investor Protections" (an op-ed originally placed in [The Hill](#) in early August. Shaun also had an IPC blog post in mid-August "U.S. Business Speaks Up Forcefully for Strong Investment Provisions in NAFTA." Investment Policy Central is a joint effort of USCIB, the U.S. chamber and other leading U.S. trade associations, committed to strong policies and program to promote Foreign Direct Investment (FDI).
- ***Donnelly Co-Authors Commercial Diplomacy Volume 2:*** USCIB Vice President Shaun Donnelly has co-authored Part 2 of "Support for American Jobs", a major report on "commercial diplomacy" by the American Academy of Diplomacy (AAD), a prestigious organization of former senior U.S. government foreign policy leaders where Shaun is a member. Shaun and co-author Ambassador (ret.) Chuck Ford lay out in [their report](#) the progress made and also the challenges remaining for the U.S. Government, including its embassies and Ambassadors abroad, to provide the kind of high-level aggressive support needed to assist U.S. companies to win sales, contracts, investment and joint

venture deals in today's competitive global environment. Thanks to the USCIB member companies and others in the business community who provide valuable input to this important study.

ICT Policy – Promoting Sound Policies for New Technologies

- ***USCIB Discourages Regulatory Overreach in Comments to ITU:*** USCIB filed [comments](#) with the International Telecommunications Union (ITU) on August 14, 2017 as part of its public consultation on “Public Policy Considerations for OTTs.” USCIB urged the ITU to avoid expanding its jurisdiction and work programs to include Internet-related issues. USCIB acknowledged the ITU’s primarily technical mission to develop international technical standards and enable telecommunications network interconnectivity, noting that these are the ITU’s “core competencies and uncontested remit that should not be compromised.” Expanding the ITU’s work program to include Internet-related issues is well beyond its remit, core competencies, and budgetary resources, USCIB underscored. USCIB further highlighted: (1) the promise of innovative online services and applications for realizing the economic, developmental, and societal benefit goals set forth in the U.N. Sustainable Development Goals (SDGs); and (2) the related need to ensure an enabling environment for continued innovation and investment in these services.
- ***USCIB Members Promote APEC Electronic Commerce Steering Group (ECSG) Work with EU:*** Members of USCIB’s ICT Policy Committee made important contributions at the August 20-23 meetings of APEC’s Electronic Commerce Steering Group (ECSG) in Ho Chi Minh City, Vietnam. USCIB’s Barbara Wanner, Vice President, ICT Policy, joined representatives from Apple, C&M International, Cisco, HP, ITI, and The Walt Disney Company. They shared best practices and highlighted the benefits of participating in APEC’s Cross-Border Privacy Rules System (CBPR) via formal presentations, interventions, and informal discussions with other delegates. Highlights of this meeting included: (1) formal announcement that South Korea was approved to become the [fifth APEC member economy](#) to participate in the [Cross-Border Privacy Rules \(CBPR\) system](#) and that Singapore had submitted dual applications to be certified under the CBPR system and the complementary [Privacy Recognition for Processors \(PRP\) system](#); (2) a dialogue with the European Commission concerning possible approaches to realize interoperability of the CBPR and EU General Data Protection Regulation (GDPR); and (3) consideration of a U.S. Government proposal to “Modernize the ECSG.” The latter is aimed at broadening the scope of the ECSG work to addressing issues arising from the digital transformation of the economy.
- ***USCIB Members Engage with OECD Secretariat on Going Digital Project:*** On September 6, 2017 USCIB hosted a special meeting to enable members to engage with Andrew Wyckoff, Director of the OECD Directorate for Science, Technology and Innovation (STI) in informal discussions about the status of various elements of the OECD’s ambitious Going Digital horizontal project. The OECD’s Committee on Digital Economy Policy (CDEP) will lead this effort, working closely with the Trade and Agriculture Committee and some 12 other OECD committees. Wyckoff encouraged USCIB members to comment on papers that will form the substantive foundation of the Going Digital project as well as to actively intervene during November meetings of the

CDEP and its Working Parties. Related to the Going Digital Project, on September 7, USCIB convened a video conference with Rachael Bae, OECD Senior Counsellor for Trade and Agriculture, and her colleagues. The video conference enabled USCIB members to provide feedback and engage in discussions with Bae and colleagues about elements of a draft scoping paper aimed at providing a conceptual framework for thinking about market openness in the digital economy.

- ***USCIB Members Help Develop 2017-2018 Strategy for ICC Digital Economy Commission:*** Microsoft and USCIB co-hosted the fall meeting of the ICC Digital Economy Commission (ICC-DEC) on September 13-14, 2017, in Washington, D.C.. The meeting featured guest remarks by Susan Ritchie, U.S. Department of State, and Christopher Smart, Harvard Kennedy School's Mossavar-Rahmani Center for Business and Government. Ritchie discussed the U.S. Government's digital economy policy priorities and challenges to them in the United Nations, G20/G7, and OECD; Smart explored the difficulties of setting common guidelines for data flows that promote economic and commercial interests while also protecting privacy and security. Joining Barbara Wanner, Vice President, ICT Policy, were USCIB members from Amazon, Apple, AT&T, BT America, CCIA, Facebook, Google, KPMG, Microsoft, Oracle, PayPal, The Walt Disney Company, TMG, and Verizon. They made important contributions to ICC-DEC discussions concerning: (1) prime international forums at which to advocate the ICC policy statement on ICT, Policy and Sustainable Economic Development; (2) application of technology in financial services; (3) real-time business transaction controls; (4) identity management for business; (4) effective engagement on cybersecurity; (5) navigating policy dialogues on Artificial Intelligence (AI) and creating a special ICC-DEC Working Group to take this work forward; (6) preparing for the 2018 ITU Plenipotentiary; (7) and developing a roadmap of activities and targeted forums at which to promote the ICC's vision of an enabling environment for ICT investment and innovation.
- ***USCIB Supports Continuation of EU-US Privacy Shield Framework:*** On September 15, 2017 – the eve of the first joint review of the EU-U.S. Privacy Shield Framework -- USCIB reaffirmed support for the Framework and issued a [statement](#) underscoring its importance in ensuring continued robust and reliable transatlantic data flows, which have proved vital for healthy U.S.-EU commercial relations. USCIB highlighted three important points for consideration in the Annual Review: (1) the Framework is realizing stronger personal data protections; (2) the Framework is serving as an effective mechanism for certification by Small and Medium Enterprises (SMEs); and (3) the longevity of the Framework remains important.

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

- ***USCIB Represents Members at OECD VAT/TAG Meeting:*** Carol Doran Klein, USCIB Vice President and International Tax Counsel, participated in the recent VAT/TAG meeting where the TAG discussed issues relating to collecting VAT on transactions that take place on platforms. As this was an initial discussion of platforms most of the discussion related to the operation of various business models. There is concern that collecting the proper amount of VAT in the context of platforms is difficult as the information on the customer and supply may be separate from the payment. These issues would be similar to the issues that would arise in the context of some of the

proposals that have been floated as methods to increase the amount of tax paid on digital transactions.

- ***USCIB Submits Letters to OECD on Profits Splits and Attribution of Profits to Permanent Establishments.*** USCIB submitted comment letters on the discussion drafts on [profit splits](#) and [profit attribution](#). The letters both emphasized the lack of detailed guidance in areas where detailed guidance is needed. The profit split letter also pointed out the guidance might create a de facto preference for profit splits in cases in which other methods would be more appropriate. The letter on the profit attribution guidance pointed out that the discussion draft seemed to move away from the Authorized OECD Approach. The move away from the AOA and lack of detail may lead to increased disputes as countries interpret the guidance in various inconsistent ways.

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

- ***Speakers from USTR, CBP, USAID Meet with USCIB Customs Committee:*** The September 20, 2017, USCIB Customs and Trade Facilitation Committee Meeting featured six speakers, including five from the U.S. Government. Jason Bernstein, USTR Director of Customs Affairs, World Trade, and Christina Kopitopoulos, USTR Director for Customs and Trade Affairs, provided an update on the status of the Customs chapters in the ongoing NAFTA modernization process. Jose Raul Perales, Deputy Director of the Global Alliance for Trade Facilitation, and Virginia Brown, USAID Director, Office of Trade and Regulatory Reform, discussed the latest in the work of the Global Alliance for Trade Facilitation, as well as its next projects. Finally, Kristin Isabelli U.S. CBP Congressional Liaison Specialist, and Michael Schreffler, U.S. CBP International Trade Liaison, discussed their team, the WCO E-Commerce Working Group, and the COAC E-Commerce/Section 321 Working Group.

Corporate Responsibility and Labor Affairs – Shaping the Development of CR Principles and Increasing Awareness of Business's Positive Social Contributions

- ***Corporate Responsibility and Labor Affairs Committee Hears from Martha Newton, Department of Labor:*** USCIB's Corporate Responsibility and Labor Affairs Committee met on September 11-12, 2017, in Washington D.C., under the direction of Gabriella Rigg Herzog, USCIB Vice President of Corporate Responsibility and Labor Affairs. Hosted by Baker McKenzie, the meeting was attended by over 50 representatives from member companies, and speakers included a variety of U.S. government officials, civil society and industry. Martha Newton, the newly appointed Deputy Undersecretary for International Affairs at the U.S. Department of Labor (DOL) spoke about the engagement between DOL's International Labor Affairs Bureau (ILAB) and U.S. business, and other DOL officials demonstrated the newly-launched "Comply Chain" app, a toolkit for responsible business. Members also heard from officials from USAID on partnerships with the private sector, and Lewis Karesh of USTR and Steve Moody of the State Department spoke on trade and labor. Several other USCIB members and civil society organizations served as guest speakers, touching on the UN Business & Human Rights Forum, the 2017 International Labour Conference, the future of work, and other topics.

- ***USCIB leads Symposium on Business and Human Rights:*** In partnership with Article One and Barrick Gold, and hosted by Marriott International, USCIB coordinated a “Symposium on Human Rights and Remedy in Business Relationships with Limited Leverage” on September 13, 2017 in Washington, D.C. Attended by over 70 business representatives, as well as U.S. government officials and civil society, the symposium discussed stakeholder expectations for business, brainstormed on how to increase trust between stakeholders and business on the issue of leverage, the challenge of defining remedy, and moving from theory to action around key issues like performance, timing and achieving scale. Speakers included representatives from Mars, Inc., The Walt Disney Company as well as the Global Business Initiative (GBI) and the International Finance Corporation (IFC).
- ***USCIB Foundation Organizes Roundtable on Apprenticeships:*** In partnership with the Global Apprenticeship Network (GAN) and the U.S. Department of Labor, and hosted by the Citi Foundation, USCIB held a Roundtable on Apprenticeships on July 20, 2017 in New York City. Participants discussed apprenticeship models and practice in the U.S. and included representatives of approximately 25 companies who are either actively implementing apprenticeship programs or are interested in getting started. The keynote remarks were given by John Ladd, the Administrator for the Office of Apprenticeship of the US Department of Labor. Apprenticeships were a priority with the previous U.S. Administration, and continue to be so with the new Administration. Underscoring that commitment, President Trump and Labor Secretary Alexander Acosta have launched a series of initiatives that call on Congress to pass reforms expanding apprenticeships and raise awareness about the fact that there are important, very viable career paths outside of the traditional four-year college experience. Apprenticeships are also a priority for the B20 and G20 leaders. USCIB has compiled a White Paper from the roundtable, available [here](#)

Competition – Creating Global Legal Practices for an Open and Competitive Business Environment

- ***ICC/USCIB Competition Meeting Hosts DOJ Antitrust Expert:*** USCIB’s Competition Committee held its annual joint meeting on September 11, 2017 in partnership with the International Chamber of Commerce (ICC) Commission on Competition. Introductory remarks included comments by Paul Lugard, partner, Barker Botts LLP and chair of the ICC Competition Commission, and John Taladay, partner, Baker Botts LLP and chair of the USCIB Competition Committee. The meeting included an off-the-record exchange of views with Bernard A. Nigro, Jr., deputy assistant attorney general, U.S. Department of Justice, antitrust division, on issues of relevance to USCIB membership, including international engagement, trade related competition issues and mergers. The remainder of the meeting provided updates on the ongoing projects of the various task forces of the ICC Competition Commission, including on compliance and advocacy, merger control regimes, due process, the International Competition Network (ICN), cartels and leniency, and court proceeding in antitrust damage claims. Finally, the membership received an update on ASEAN competition issues by Hatasakdi Na Pombejra from HN Pro International, who presented on behalf of ICC Thailand.

Membership

- **Membership Meetings:** USCIB President and CEO, along with the membership department and policy staff met with representatives from member companies CenturyLink, 3M, Sidley Austin, Chubb and DIAGEO 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 Barrick Gold, Comcast, Cooley LLP, and Gilead Sciences as new members.

Upcoming Events:

- **ICC Commission on Corporate Responsibility and Anti-Corruption Meeting**, Paris, France – October 3
- **USCIB ICT Policy Committee Meeting**, Washington, D.C. – October 4
- **UNCTAD 2017 High-Level conference on International Investment Agreements**, Geneva, Switzerland – Oct 9-11
- **World Telecommunication Development Conference (WTDC-17)**, Buenos Aires, Argentina, October 9-20
- **USCIB Environment Committee/Product Policy Working Group Joint Meeting**, Washington, D.C. – October 12
- **OECD Freedom of Investment Roundtable**, Paris, France – October 12
- **BIAC Consultation with OECD Investment Committee**, Paris, France – October 17
- **USCIB IP and Innovation Committee Re-Launch Event**, Washington, D.C. – October 18
- **BIAC Finance Task Force Meeting**, Paris, France – October 20
- **USCIB Digital Trade Working Group Meeting**, Washington, D.C. – October 23
- **OECD Working Party on State Ownership and Privatization Practices Meeting**, Paris - France October, 23-24
- **BIAC Employment, Labor & Social Affairs Committee Meeting**, Paris, France – October 24
- **ICANN 60**, Abu Dhabi, UAE, October 28-November 3

- **Meeting of the OECD Working Party on Security and Privacy in the Digital Economy (SPDE)**, Paris, France – October 30-31
- **OECD Corporate Governance Committee Meeting**, Paris, France – November 2
- **Meeting of the OECD Working Party on Communications Infrastructures and Services Policy (CISP)**, Paris, France – November 2-3
- **Meeting of the OECD Working Party on Measurement and Analysis of the Digital Economy (MADE)**, Paris, France – November 2-3
- **ICC Commission on Customs and Trade Facilitation**, Paris, France – November 9-10
- **Meeting of the OECD Committee on Digital Economy Policy (CDEP)**, Paris, France, November 21-22
- **Eleventh WTO Ministerial Conference**, Buenos Aires, Argentina – December 10 – 13
- **Internet Governance Forum (IGF)**, Geneva, Switzerland – December 18-21

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