Inside

Tariffs harm companies, consumers 3
Tax reform impacts 5
Reinforcing US-China ties 18

Business at the UN: A Conflict of Interest? page 14
It is increasingly evident that the international community is not on track to deliver the expected results under the Paris Climate Agreement (as well as the broader UN Framework Convention on Climate Change) or the UN's Sustainable Development Goals. As I have written many times before, the ambition and scale of these programs cries out for involvement, investment and leadership from the private sector.

So why – at a moment when governments and international organizations should be actively seeking ways to encourage business to step up – is the private sector being accused of having a “conflict of interest,” or of actively seeking to upend global consensus?

Global policy makers being urged by some governments, activist groups and UN staff to freeze out the private sector from meaningful engagement in key international deliberations. These calls have come in the context of the UN climate talks, at the World Health Organization, and in numerous other inter-governmental forums. They reflect a deep misunderstanding of the profit motive, the nature of innovation and the importance of markets in catalyzing action toward shared goals.

Broadly speaking, the “myths” about business influence and the role of the private sector fall into six distinct categories. Let’s dispel them one by one.

Myth #1: Since business seeks profit, its interests are inherently at odds with the public interest.

Businesses cannot succeed in societies that fail, and businesses have a direct stake in secure, healthy, prospering communities and customers. Successful businesses create jobs, pay taxes to national treasuries, and provide for needs and wants of consumers. Businesses that are not making profits are much less likely to invest in innovation and other necessary sustainability related policies and actions.

Myth #2: Business involvement in inter-governmental deliberations must be “managed” as a “risk.”

Over the years, more and more actors from across society have become involved in the UN’s climate and sustainability debates. This is a good thing. In response, international bodies have taken steps to address concerns about conflict of interest for all groups, including the private sector. However, assuming ill intent on the part of one of these parties – the private sector – discourages business involvement and engagement.

Myth #3: Having business organizations in the room results in “undue influence” and “interference” with policy outcomes.

Well-designed, effective and efficient policies depend on well-informed policy makers. For this reason, involvement of business technical expertise and real-world experience is a critical element throughout international sustainability deliberations. It helps to identify challenges, define solutions, carry out policies and assess the effectiveness of actions.

Myth #4: Business is unaccountable and operates in a non-transparent manner, and it must therefore divulge confidential information.

Business is subject to abundant government oversight and legal requirements at the national level, and it faces intense scrutiny from investors and other entities. Moreover, many companies provide additional reporting about their environmental, social and economic policies, practices and performance. In short, business organizations and their members are already among the most “transparent” interests involved in inter-governmental forums.

Myth #5: Business has a disproportionate influence in the UN already, crowding out other important interests.

In most UN forums, all stakeholder groups are subject to similar requirements for accreditation, registration and participation. There is no preferential access accorded to business. In general, business organizations are just one grouping among numerous interests that also represent NGOs, labor, women, youth, gender minorities, indigenous peoples, local authorities and others – and they are usually in the minority in terms of numbers of representatives. In fact, at many UN forums, business representation is so restricted that it discourages smaller companies and entrepreneurs from developing countries from participating.

Myth #6: Business-funded research is inherently biased and thus unacceptable as a basis for policy making.

Businesses have significant cutting-edge research, technical and innovation resources at their disposal, and regularly work in partnership with academic, scientific and UN entities on cooperative research. Innovators, engineers and researchers from the business community are a deep talent pool and important resource as governments design systems-oriented policy responses. Policies and actions to prioritize and respond to sustainability challenges should be based on the fullest scientific and technical information and reviews, and no peer-reviewed credible source should be ignored. Where multilateral forums arbitrarily disqualify or dismiss private sector sources, they subtract important information and findings.

Tackling these myths is important now, because private-sector support and participation is essential if we want concerted global action to achieve the desired results. What’s more, disregarding input and insight from one sector of society in the context of UN deliberations runs contrary to principles of effective governance and stakeholder consultation that the most effective national governments pursue at home.

In short, business needs to be at the table, because business is part of the solution.

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USCIB Warns More Tariffs Will Harm US Companies, Consumers

In the continuing battle of tit-for-tat tariffs between the United States and China, USCIB submitted comments to the U.S. Trade Representative (USTR) on July 23 regarding the proposed 25 percent tariffs on $16 billion worth of Chinese imports. This list of goods followed the first consultation on proposed 25% tariffs on $50 billion worth of Chinese imports, which resulted in the imposition of tariffs on $34 billion on July 6, 2018.

“Tariffs are a blunt tool with many unintended consequences on U.S. businesses,” said Eva Hampl who leads USCIB’s work on China. “They will significantly impact U.S. companies’ ability to export and create important jobs in the United States. They will also negatively impact U.S. customers, increasing competitiveness in the United States for foreign competitors. The Administration’s proposed tariff list was drawn up without significant input from the U.S. business or manufacturing community. The public comment process is the principal means to solicit information from U.S. businesses. Therefore, the Administration must use this process to ensure that its actions in this China 301 process do not inadvertently harm some of the most competitive sectors of the U.S. economy, and the hundreds of thousands of American jobs that depend on them.”

USCIB’s comments however applauded the Administration for looking at alternative approaches, such as initiating a World Trade Organization (WTO) dispute by requesting consultations with the Chinese government regarding certain specific aspects of China’s technology regulations considered in the investigation. “In addition to engaging the WTO process, this should include developing a strategy with clearly defined objectives, direct negotiating mechanism with the Chinese, targeted deliverables, and deadlines with measurable results,” added Hampl. “The Administration should also coordinate in various available forums with like-minded trading partners who are similarly afflicted by China’s actions on intellectual property rights, forced technology transfer, and discriminatory industrial policies.”

USCIB’s comments to USTR were supplemented by a separate multi-association letter on $16 billion worth of tariffs. USCIB will also put together comments on the $200 billion list of proposed additional 10% tariffs on Chinese imports.

Report Urges New Partnerships to Achieve Global Nutrition Goals

A new report calls for governments and private industry to join forces to tackle global malnutrition, saying that achievement of the nutrition-related UN Sustainable Development Goals requires leveraging the clout of companies, financiers and shareholders, working alongside governments and NGOs.

The report comes from the Global Alliance for Improved Nutrition (GAIN) and the USCIB Foundation – the educational arm of USCIB. It was prepared in follow-up to a roundtable of experts in global health policy held last October in New York.

“The future of food is one of the most critical economic and human development challenges of our time, and new solutions are urgently needed to tackle all forms of malnutrition,” said USCIB Foundation President Peter Robinson, who also serves as president and CEO of USCIB. “It cannot be tackled by government or business acting alone. Business is open to doing more and better but we need stronger dialogue and partnerships with governments, NGOs and other public-sector agencies to do that.”

The report was launched on June 19 in Geneva alongside key World Health Organization meetings aimed at promoting adolescent nutrition.

“Nations cannot achieve the SDGs without engaging continued on page 12

“Without exception, every member of the firm providing legal services has done so at the highest level of competency and with an attitude that convinced us that they truly enjoyed the opportunity to provide those legal services. Exemplary.”

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USCIB Gathers Stakeholders to Discuss E-Commerce Framework

On July 31 and August 1, USCIB teamed up with the U.S. Chamber of Commerce to host the second in a series of meetings tied to e-commerce and the work being undertaken by the World Customs Organization (WCO). Dubbed “Industry Days,” these meetings included robust participation from both private sector and public-sector representatives from multiple U.S. government agencies aimed at continuing the established dialogue on the WCO’s E-Commerce Framework of Standards (FoS). The meetings were conducted in a small group fashion, which were stakeholder specific (i.e., carriers, customs brokers, e-payment, marketplaces and vendors).

Per the WCO, “The Framework of Standards is intended for Customs administrations wishing to develop legislative and operational frameworks for cross-border e-commerce.” In June, the WCO Council endorsed the draft FoS that included an introduction, 15 Standards and related introductions, as well as a U.S. tabled Resolution. In addition, the Council approved a one-year extension of the E-Commerce Working Group as well as a draft Work Plan noting the need for flexibility with respect to timelines and adherence. The next meeting of the WCO’s E-Commerce Working Group will take place in October.

“The purpose of these meetings was to bring together relevant intermediaries to discuss and gather perspectives in efforts to assist in USG policy and position development.”

– Megan Giblin

These “Industry Day” meetings are critical to the development of the U.S. government – one government – position, and provide the opportunity for private sector stakeholders to advance general and specific comments and concerns regarding aspects of the FoS, topic specific questions, as well as overall views related to e-commerce.

“The purpose of these meetings was to bring together relevant intermediaries to discuss and gather perspectives in efforts to assist in USG policy and position development,” said Megan Giblin who leads USCIB’s work on customs and trade facilitation. “Overall the meetings were successful and brought together USG agencies including: Department of Homeland Security, Customs and Border Protection, Office of the U.S. Trade Representative, U.S. Department of Treasury, Department of Energy, Department of State, U.S. Postal Service, Federal Trade Commission as well as many private sector stakeholders including many who are new to the WCO E-Commerce Framework of Standards.”

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OECD Tax Conference Assesses Tax Reform Impacts

Months after the signing into law of the most fundamental tax reform in the U.S. in over 30 years, the annual OECD International Tax Conference, organized by USCIB in cooperation with the OECD and Business at OECD, convened June 4-5 in Washington, D.C. to assess the impact of the new law on U.S. multinational companies, reforms in other countries, as well as on cross-border trade and investment.

Some speakers, such as Louise Weingrod (Johnson & Johnson) spoke of the generally positive environment that has resulted from the new tax law, such as a more level-playing field for MNCs and increases in capital investment by U.S. companies. Chairman of the Council of Economic Advisers Kevin Hassett, who gave keynote remarks during the conference, stated that tax reform has been spurring growth and that U.S. reform will spur additional reform in other countries. He also said that reducing the corporate tax rate to 21 percent would have been enough but that the Trump administration tackled some of the other issues too, which has had the desired effect on margins.

“U.S. tax reform is but one piece of an increasingly complex puzzle of changing global tax rules that companies must navigate,” said USCIB President and CEO Peter M. Robinson. “As technology, business models and supply chains have evolved, it is more critical than ever to bring certainty to international tax rules, in order to promote global growth and avoid double taxation. The conference provided an unparalleled opportunity to learn about, and influence, the latest developments in the global taxation system.”

While U.S. tax reform was a contentious issue at the conference, other policy matters were also raised, specifically those related to transfer pricing, dealing with tax-related disputes through arbitration, implementation of the OECD’s multilateral instrument, development with regards to the United Nations Sustainable Development Goals, as well as tax challenges arising from digitalization.

Bill Sample (Microsoft), who is the vice chair of the Business at OECD Taxation and Fiscal Policy Committee and chairs the USCIB Tax Committee, reflected on the key issues for the business community that need to be addressed to get to a G20-mandated, consensus-based solution by 2020 with regards to digitalization. “Business recognizes the political pressure to reach consensus. But for business to be fully engaged, whatever the consensus is, it will need to bear a rational relationship to value creation,” he emphasized.

The sold-out conference, which was held June 4-5 gathered over 300 tax experts, academics and business representatives to interact directly with key leadership from the OECD, its Center for Tax Policy and Administration (CTFA), and senior tax officials from the U.S. and other OECD countries, including Canada, France and Germany.
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ICANN Makes Progress on GDPR-Compliant Framework for Access to Domain Name Data

USCIB Vice President for ICT Policy Barbara Wanner played a leadership role representing USCIB commercial interests at the Internet Corporation for Assigned Names and Numbers (ICANN 62) Policy Forum, which wrapped up on June 28 in Panama City, Panama. The meeting brought together participants from business, government, civil society, and the technical community to focus on policy priorities for the Internet domain name system.

This year’s forum was especially timely, coming on the heels of ICANN's May 17 issuance of a temporary specification for global top-level domain (gTLD) registration data. This action would enable “tiered access” to domain name registrant data, ensuring that ICANN and the industry of more than 1,000 gTLD registries and registrars comply with existing ICANN contractual requirements concerning the collection of registration data and meet the new EU General Data Protection Regulation (GDPR), which went into effect on May 25.

Also in the spotlight was ICANN’s proposed framework to enable third-party access to non-public domain registration data for legitimate law enforcement, consumer protection, brand management and intellectual property protection purposes. The General Names Supporting Organization Council, ICANN’s policy making body, spent virtually the entire forum developing a charter for an “expedited policy development process” (EPDP), which aims to replace the temporary specification within one year. Wanner noted that the council made significant progress and set an ambitious timeline to complete the charter and launch the EPDP by the end of July. “The charter ultimately will define the scope of the policymaking process,” she said.

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USCIB Welcomes New Partners to SDG Business Web Platform

On the margins of this year’s annual United Nations High-Level Political Forum (HLPF) on the Sustainable Development Goals (SDGs) at UN headquarters in New York, USCIB convened a dinner for business, UN organizations and governments to highlight private sector action and impact towards sustainable development, using the UN 2030 Agenda for Sustainable Development as a blueprint. The Businessfor2030 Dinner was co-organized with the International Chamber of Commerce (ICC) and its Swiss and UK National Committees, as well as with the International Organization of Employers (IOE).

In addition to announcing the expansion and globalization of the Businessfor2030 web platform, the dinner and its speakers also set the stage for the SDG Business Forum, organized by ICC and held at UN HQ on July 17. Secretary General of the ICC John Denton addressed the Businessfor2030 dinner, issuing a challenge to the international community to unleash the power and potential of business in order to attain the 2030 objectives across economic, social and environmental areas.

“Three years after the launch of the SDGs, we continue to take seriously that all companies, all sectors must engage to deliver on economic, environmental and social progress,” stated USCIB President and CEO Peter Robinson in his remarks. “No company can sit this out. We commend our own members for having embraced the SDGs and moved forward to embed them not only in corporate responsibility programs, but increasingly across aspects of their planning and investment.”

The Businessfor2030 web platform is a unique resource for business, governments and others in the UN community who are seeking to understand and pursue the SDGs. It presents business examples of SDG action, and provides information on public-private partnerships. Established by USCIB in 2015, it now features over 250 examples of business action, covering more than half of the 169 specific SDG targets.
USCIB Mission to Geneva Targets UN Agencies

In an effort to ensure inclusivity and transparency of international policy deliberations for business at the United Nations, USCIB organized a Geneva “door knock” meeting to UN and multilateral institutions from April 23-27, bringing together a USCIB delegation of members and staff to meet with UN agencies, officials in the U.S. Mission to the United Nations and other important government representatives in order to highlight American policy priorities and concerns. The topical areas and issues of concern included food and agriculture, healthcare, intellectual property and innovation, sustainability, environment and chemicals, and trade.

USCIB presented itself as a unique business organization, affiliated with ICC, IOE and Business at OECD (BIAC), and constructively involved in an array of UN institutions, with positive examples of the benefits of such engagement. USCIB members spoke to how U.S. business innovation, investment, and partnership deliver global progress advancing economic benefits in the U.S. and globally, with examples found on USCIB’s Businessfor2030 web platform, and argued for enabling frameworks of policy, markets and governance.

The USCIB member delegation met with the World Health Organization (WHO), World Intellectual Property Organization (WIPO), the Office of the UN High Commissioner for Human Rights (OHCHR), the World Trade Organization, and UN Environment, as well as country missions, including the U.S., UK, Japan and Brazil.

The delegation was led by USCIB Vice President for Strategic International Engagement, Environment and Energy Norine Kennedy and Vice President for Product Policy and Innovation Mike Michener. USCIB members included representatives from Cargill, AbInBev, CropLife, Ferrero, Sidley and GMA.

USCIB Sets Up New Anti-Illlicit Trade Committee

Illicit trade is a threat multiplier that helps fuel transnational crime, corruption, and greater insecurity and instability around the world. To help combat it, USCIB announced the establishment of a new Anti-Illlicit Trade (AIT) Committee to address the threat that illicit trade poses across sectors, borders, markets and industries.

David M. Luna, president and CEO of Luna Global Networks & Convergence Strategies LLC, will chair and provide leadership for the committee, which will be made up of executives from USCIB’s broad-based membership. The AIT Committee will take a comprehensive, multi-disciplinary approach to elevating the fight against illicit trade, particularly related to the work of the OECD’s Task Force on Countering Illicit Trade, corresponding activity by Business at OECD (the Business and Industry Advisory Committee to the OECD), and the work of the International Chamber of Commerce’s Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative.

“We are delighted to have David leading our work on brand protection and anti-illicit trade,” said Rob Mulligan, USCIB’s senior vice president for policy and government affairs. “USCIB recognizes the threat posed by illicit trade and related converging security threats to all economies, markets, and the reputational and economic impacts to our member companies. Today, global illicit markets account for several trillion dollars every year, and many experts predict that the value of counterfeit and pirated products alone will double within five years.”

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New ICC Secretary General Visits USCIB

John Denton, the new secretary general of the International Chamber of Commerce paid visits to USCIB New York headquarters and Washington, D.C. office in late June and early July. He met with USCIB staff including President and CEO Peter Robinson and Senior Vice President for Policy and Government Affairs Rob Mulligan, along with a number of USCIB members. Discussion ranged from ICC pushing back against populist narratives on cross-border trade and investment to ICC institutional and management priorities.

Denton says he plans to visit the United States often during his tenure, capitalizing especially on ICC’s recent elevation to full UN Observer Status. In between his many duties and visits, including those to USCIB, Denton found time to pen a letter to the Financial Times providing a vigorous defense of the multilateral trading system and the WTO. He has also appeared on MSNBC and took part in the UN High-Level Political Forum on sustainable development in New York.

Unilever Chief Paul Polman Named Chair of ICC

Paul Polman, CEO of consumer goods company Unilever, has been elected chair of the International Chamber of Commerce (ICC) at the ICC World Council in Paris on June 21. Having led Unilever since 2009, Polman is a leading advocate for the role of business in driving progress towards the UN Sustainable Development Goals (SDGs). Under his leadership, Unilever set an ambitious vision to fully decouple business growth from its overall environmental footprint and increase the company’s positive social impact through the Unilever Sustainable Living Plan.

Polman’s commitment to securing long-term sustainable growth and development is also reflected in his membership of the World Economic Forum’s International Business Council, and his role as Chair of the B Team and Vice-Chair of the UN Global Compact.

“It is more vital than ever for business to take a leading role in reaching the Sustainable Development Goals and responding to the many global challenges we collectively face.”

Colombia Gets Approval to Join the OECD

Colombia joined the Organization for Economic Cooperation and Development (OECD) following an agreement among the 35 nation forum’s member states. Colombian President Juan Manuel Santos and OECD Secretary General Angel Gurría signed an accession agreement at the annual ministerial-level council meeting on May 30.

USCIB – which serves as the U.S. affiliate of Business at OECD, the representative private-sector voice in the OECD – issued the following statement:

“USCIB welcomes the progress Colombia has made over the past several years in the context of the accession process to the OECD. We look forward to continued progress and concrete actions being taken on outstanding issues, including on pharmaceuticals and trucking, where the current status does not yet rise to the level of like-mindedness with other OECD countries on open trade and investment.”

US Scuttles Trade Language at OECD Ministerial, Imposes Steel Tariffs

Ministers gathered in Paris in early June for the annual OECD Ministerial Council Meeting. For the second year in a row, the United States refused to join a consensus statement with the other OECD countries.

As happened last year, the U.S. objected to language supportive of globalization and the multilateral trading system. The action came as the Trump administration announced that it would end temporary exemptions from Section 232 tariffs on steel and aluminum granted to Mexico, Canada, and the European Union. The duties went into effect on June 1.

According to USCIB Senior Vice President Rob Mulligan who attended the ministerial, the administration has made clear that it attributes little significance to U.S. leadership in the global trade environment.

“In a misguided effort to re-balance perceived inequities, often based solely on the metric bilateral trade deficits without a view to the larger picture, the administration is effectively alienating the U.S. from the global order that it once championed and led,” said Mulligan.
**USCIB, ILO Discuss Role of Business**

As the International Labor Organization (ILO) gears up to celebrate its centennial in 2019, ILO Director General Guy Ryder met with USCIB and 20 of its company members in Washington DC on July 20 to discuss issues of mutual interest and concern. Topics covered included areas of mutual business including the ILO’s centenary in 2019, the “Future of Work,” the role of governments, the role of business at the ILO, and the work of the standard-setting committee on violence and harassment at the International Labor Conference.

Members highlighted that they see the Future of Work, which is the theme of the ILO’s centenary celebration, as a positive opportunity to highlight the impactful role that government education and employment policies, as well as business initiatives to offer apprenticeship and training opportunities, can have to prepare workers for the jobs of the information economy and beyond.

USCIB and its members also stressed the fundamental role governments must play in writing laws that meet international standards and effectively enforcing them, and they stressed the importance of ILO’s continued focus on helping governments carry out those core functions. Business also recommended that the ILO could helpfully prioritize providing support for governments and other tripartite partners with essential job creation, skills, employment and other relevant topics.

USCIB also spoke very clearly about the issue of violence and harassment at work and emphasized U.S. employer commitment to this topic. USCIB Vice President for Corporate Responsibility and Labor Affairs Gabriella Rigg Herzog stated that the topic is right, the time is now – especially in light of the #metoo movement to push this issue forward.

**Congress Sends Revised Foreign Investment Rules to President**

USCIB was pleased to see both houses of Congress adopt (the House on July 25 and Senate on August 1) as part of the compromise Conference Report on the overall 2019 “John McCain” National Defense Authorization Act (“NDAA”), some fundamental revisions to the Committee on Foreign Investment in the U.S. (“CFIUS”) process for U.S. Government review of foreign direct investment (FDI) into the U.S.

Over the last year, Congress, the Administration and key stakeholders, including USCIB, have been debating a wide range of potential major reforms to CFIUS.

“Some of the proposed ‘reforms’, especially the idea that CFIUS should dramatically expand its remit to cover outward investment, joint ventures, licensing deals, and other innovative partnerships, were very troubling to us at USCIB and many member companies,” noted USCIB Vice President for Investment and Financial Services Shaun Donnelly. “USCIB and others in the business community raised fundamental objections to some of those more expansive proposals.”

**Hampi Testifies Regarding Proposed China Tariffs**

Following the Trump administration’s proposed Section 301 tariffs on Chinese goods, USCIB Senior Director for Investment, Trade and Financial Services Eva Hampi testified before the Section 301 Committee, chaired by USTR on May 16 regarding the proposal. Hampi’s testimony reflected USCIB member concerns about potential consequences the proposed tariffs will have on sectors vital to the U.S. economy. Hampi was joined by over 100 other business representatives to share specific concerns regarding the proposed tariffs.

“We believe that the imposition of tariffs will not achieve the important goal of changing China’s behavior in the space of emerging technologies and intellectual property rights,” said Hampi. “China’s threat of retaliation further exacerbates uncertainties caused by this proposed action.

Rather than create more opportunities for U.S. business, sweeping tariffs will stifle U.S. agriculture, goods, and services exports and raise costs for businesses and consumers.

Hampi emphasized the need for a “holistic structure” to address the aforementioned issues. Speaking on behalf of USCIB, Hampi applauded the Trump administration for looking at alternative approaches, such as initiating a WTO dispute by requesting consultations with China.

The proposed tariffs pose a unique challenge to industrial inputs, which represent over 80 percent of the proposed list. Tariffs on industrial goods are especially problematic because they represent not just a tax on U.S. consumers but a tax on U.S. manufacturers and workers, and on the products they export. Tariffs on aerospace, machinery and IT parts and other advanced technologies can undermine the most competitive sectors of American manufacturing, driving up production costs in the U.S., impacting U.S. manufacturing employment, and making U.S. manufacturers less competitive against global rivals.

**Over 100 Business Representatives Lobby Senate on NAFTA**

Following previous successful NAFTA Senate Lobby Days, USCIB once again participated on April 11, joining more than 100 representatives from the agriculture and business community to talk about private sector concerns and perspectives regarding the ongoing negotiations to modernize NAFTA. The Senate Lobby Day, as in the past, was coordinated as a larger Coalition effort by the U.S. Chamber of Commerce.

“The purpose of this day was to increase support in light of the high-level talks among the NAFTA countries currently taking place in DC,” noted Eva Hampi, USCIB director for investment, trade and financial services. “There is concern in the business community about the Administration’s alleged push to conclude an agreement on an accelerated timeline.”

Hampi led one of the groups that went up to the Hill, where she met with several Republican and Democratic Senate offices throughout the day.

“While the various offices are certainly focused on NAFTA, they do not appear to have a definite action plan on what to do in the event of the potential negative scenarios that may take place, such as withdrawal from NAFTA 1.0 or an inadequate NAFTA 2.0,” said Hampi.

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**Proposed China Tariffs: Breaking Down the Impacts**

Eva A. Hampi

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Donnelly Defends Strong Investment Protections at UN

USCIB Vice President for Investment Policy Shaun Donnelly was on the front lines defending international investment protections, specifically Investor-State Dispute Settlement (ISDS), at the United Nations in New York. Donnelly was the only U.S. business representative with formal observer status at the April 23-27 meeting of the UN Commission on International Trade Law (UNCITRAL) Working Group III on “Investor-State Dispute Settlement Reform.”

“Yesterday’s opening session showed that we on the business side are facing real challenges on ISDS with developing countries and NGO activists pushing to overturn 60 years precedent of legal protections for foreign investors with access to expert neutral arbitration to resolve disputes,” said Donnelly. “The European Union’s defection from strong ISDS provisions in their broad networks of investment agreements has given ISDS critics an unfortunate boost. The EU is aggressively and unhelpfully pushing its ‘multilateral investment court system’ in UNCITRAL meetings.”

Donnelly reminded government delegates and other participants that investment, including Foreign Direct Investment (FDI), is the driver of economic growth, competitiveness, exports and jobs. And strong investment agreements with effective enforcement provisions can play a critical role in facilitating private investment flows.

Report Urges New Partnerships to Achieve Global Nutrition Goals  continued from page 3

the private sector,” said GAIN Executive Director Lawrence Haddad. “But to ensure that engagement is positive, governments need to be proactive, businesses need to be responsible and incentivized. Dialogue, transparency and impact assessment need to pervade their alliances to ensure they have positive effects and no negative effects on the nutrition status of all, especially those most vulnerable.”

Global food and agriculture constitute a $7.8 trillion (U.S.) industry, employing up to 40 percent of the working population in most countries. The report, “No More Missed Opportunities: Advancing Public-Private Partnerships to Achieve the Global Nutrition Goals,” was prepared with Wilton Park, a leading host of critical development dialogues.

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G20 Finance Ministers gathered in Argentina July 20-21 to raise concerns over growing tensions between the U.S. and its major trading partners. Following the meetings, BBC's Aaron Heslehurst spoke with USCIB Senior Vice President for Policy and Government Affairs Rob Mulligan as part of BBC's Talking Business segment regarding international trade tensions that may undermine the global economy and stunt growth.

Mulligan expressed concern that continued escalation of tariffs may cause all kinds of problems for USCIB member companies. "Tariffs will lead to higher costs, drive higher prices for consumers and, we think, in the end, can start driving job losses," warned Mulligan. "In fact, we've seen estimates for the existing tariffs related to steel and aluminum that can cause job losses in the United States of up to 140,000 jobs."

Specifically, on U.S.-China tensions, Mulligan noted, "there are issues with China's unfair trade practices that need to be addressed and we fully support an effort that would bring together all our allies to make that point with China, but we're not sure that raising tariffs the way the President has threatened, even threatening to impose tariffs on all 500 million of China's exports to the United States, is going to be the way to solve that problem."

Herzog Leads US Employer Delegation to ILO Conference

USCIB Vice President for Corporate Responsibility and Labor Affairs Gabriella Rigg Herzog led a five-member U.S. Employer delegation to the 107th annual International Labor Conference (ILC) of the International Labor Organization (ILO) May 28 – June 8. The ILC is the ILO's annual policy setting meeting at which global representatives of national governments, employers and workers gather to negotiate and adopt policy and governance on a range of priority issues.

This year's ILC was attended by over 5,000 participants from across the world, of which 32.7% were women. Topics discussed by delegates included the role of the ILO in carrying out development cooperation programs in light of the new UN Sustainable Development Goals, and what constitutes social dialogue in the workplace and what value can it deliver to industrial relations and productive workplaces. The topic at the top of this year's agenda was the first round of a two-year standard-setting discussion on violence and harassment in the workplace.

"The challenge and the opportunity for the ILO and its tripartite constituents is how to develop an instrument that can protect the most people, with special focus on gender-based violence and harassment," stressed Herzog. "This will be a challenge because while violence in the workplace is broadly understood and condemned, there is less universal understanding and consensus around the world on what constitutes harassment. Given this and the growing realization of the prevalence and negative impacts of these unacceptable behaviors, USCIB and global employers are and will continue to work to address these practices where they appear and push for an effective instrument addressing this issue at the ILO."

While there was consensus among the government, employer and worker representatives on the need for ILO action, there was lack of consensus on core definitions that will determine the ultimate effectiveness of the instrument and its chances to interest governments in ratification. Vague and contested definitions for foundational issues like what constitutes violence and harassment, who is a worker, what are the boundaries of a workplace, and the behaviors from which workers should be protected were adopted. The problems with these overly broad definitions began to become clear to some of the participants when discussions turned to operationalizing the responsibilities of governments and employers.

"USCIB will work to meaningfully engage tripartite ILO partners with an eye towards a refresh in 2019 and a hopefully more balanced text that is both bold in its aspiration but practical in its direction to governments on the important task of working to eliminate both violence and harassment from the workplace," said Herzog.
Governments Reject Discriminatory Barriers to Business at UN Climate Talks

Following intense and sometimes contentious negotiations, governments meeting in Bonn under the UN climate treaty in May rejected any reference to "conflict of interest" or conditionality for observer organizations. Commenting on the successful conclusion of UN discussions to allow transparent and inclusive involvement of business, Justin Perrettson (Novozymes), who co-chairs the USCIB Environment Committee encouraged "all Parties to take full advantage of the depth and breadth of business engagement and experience with climate change issues and to partner with business to help inform and implement ambitious national pledges."

Countries including the Africa Group, China, Ecuador, Venezuela and Cuba began the Bonn deliberations arguing for new measures to protect against "undue business influence," and proposing language to define “conflict of interest” in a way that would inherently discriminate against business and require a statement of support of the UNFCCC in order for any non-governmental entity to be allowed to observe the climate negotiations.

Climate Justice, Youth, Indigenous Peoples and Women and Gender NGOs all advocated restricting, or even banning, certain sectors of business from the UNFCCC discussions, asserting a distorted interpretation of “conflict of interest,” and citing the precedent of the World Health Organization Framework of Engagement for Non-State Actors (FENSA).

Along with Perrettson, USCIB representatives Nick Campbell (Arkema) and USCIB Vice President for Strategic International Engagement, Environment and Energy Norine Kennedy met with U.S. and other government delegations to make the case for inclusive and transparent engagement opportunities for all stakeholders, including business. In addition to the U.S., Australia, New Zealand and Norway spoke out definitively against the addition of any such business discriminatory practices.

The Bonn Climate Change Conference took place from April 30 to May 10 in Bonn, Germany. Approximately 4000 participants from governments, UN bodies and agencies, intergovernmental organizations, business and civil society organizations, and the media were on hand to make final preparations for the 24th Conference of Parties (COP24) in Katowice, Poland, which will take place later this year (December 3-18, 2018).

The main objective of the Bonn negotiations was to advance the Paris Agreement Work Programme (also known as “the Paris Rulebook”) and develop “negotiating text” for the decisions required to make the Paris Agreement operational by COP24. When complete, the Paris Rulebook would set out procedures for carbon markets and guide the tracking of comparability of effort across different national pledges.

Limited progress in Bonn necessitated the announcement of a supplementary negotiation session to be held in Bangkok, Thailand (August 31 to September 8). It will be critical to have a negotiating text at the end of the Bangkok session if the Paris Rulebook is to be agreed at COP24.
USCIB Statement on U.S. Withdrawal From the UN Human Rights Council

Following the Trump administration’s decision to withdraw the United States from the United Nations Human Rights Council (UNHRC), USCIB issued a statement expressing disappointment about the decision. “While we agree with the Administration and Ambassador Nikki Haley that the Council is badly in need of reform, this can only come about through continued, direct and vigorous engagement by the United States, working with allies, civil society groups and representatives of the private sector,” the statement read.

USCIB then urged the United States to reconsider this decision. In the meantime, USCIB and its global business partners will continue to represent the views of the private sector on matters affecting American business in the UNHRC and other international forums. USCIB will also continue its cooperation with the Administration to represent U.S. business interests on social and human rights issues across the United Nations system, including in the International Labor Organization.

“USCIB members are strongly committed to human rights,” said USCIB President and CEO Peter Robinson. “We will continue to advocate for both governments’ duty to protect and corporate responsibility to respect human rights, in line with the UN Guiding Principles on Business and Human Rights.”

Lastly, the USCIB statement noted that the harmful U.S. action to separate children of illegal immigrants apprehended at their southern border from their families is contrary to American values.

“Such troubling practices at home risk calling into question U.S. leadership and dedication to upholding human rights. We are hopeful that President Trump, as he has pledged to do, will address this issue via executive order and reunite these families without delay.”

Goldberg Presents New Report on Global Compact on Migration

The Federation of Uganda Employers welcomed representatives of national and sub-regional employers’ organizations (EOs), including USCIB’s Senior Counsel Ronnie Goldberg from 16 countries in the East, Central and Southern Africa region to Kampala in April for their annual two-day conference.

Panel discussions explored themes of youth employment, regional integration and labor migration, with Goldberg, who attended on behalf of the International Organization of Employers (IOE), outlining the business perspective on the Global Compact for Safe, Orderly and Regular Migration, which will be adopted by the UN later this year.

Goldberg described ways in which the IOE and newly formed Business Mechanism to the GFMD were presenting business perspectives to the government negotiators. “Migration policy is not simply a political issue,” she noted. “Labor mobility is an economic necessity and skills mobility is central to the ability of companies to thrive and compete in global markets.”

The theme of this year’s conference, which was co-funded by the European Union, built on the Declaration from the 2017 event in Walvis Bay, Namibia. Last week, the assembled EO leaders were joined by experts from the IOE, ILO and IOM to explore: “From Declaration to Action – Accelerating an enabling environment for youth employability and entrepreneurship”.

The program also considered best practices to address youth unemployment, as well as ways to foster youth and women’s entrepreneurship. Group sessions worked on a Road Map to identify and implement key areas for action, in line with the objective of the event.

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Robinson Reinforces Ties With Chinese Business Groups

While U.S. economic ties with China have been strained of late, the ongoing working relationship between USCIB and our main Chinese counterpart organizations is growing closer. USCIB President and CEO Peter M. Robinson was in Beijing and Xian in early May, meeting with top officials from the China Enterprise Confederation (CEC), the China Chamber of International Commerce (CCOIC) and China Council for the Promotion of International Trade (CCPIT) and other groups.

Both CEC and CCPIT/CCOIC are part of USCIB’s global network. CEC serves as the Chinese affiliate of the International Organization of Employers (IOE), and as such represents Chinese employers in the International Labor Organization. Robinson, who also serves as IOE vice chair for North America, met with CEC Vice Chair and Director General Zhu Hongren and other senior staff. He discussed USCIB’s work on the UN Sustainable Development Goals, the Business for 2030 website, the Future of Work, as well as climate change, trade and the UN Global Compact.

CCOIC houses ICC-China, the International Chamber of Commerce national committee in the country. In addition, its partner organization, CCPIT, like USCIB, serves as the national guaranteeing association for ATA Carnets, the “merchandise passports” developed by ICC. They played host to the meeting of WATAc, the World ATA Council, which encompasses all ATA Carnet guaranteeing associations.

The official announcement was made by Sheikha Tamadar Al Thani, director of international relations and chamber affairs at Qatar Chamber and ICC-Qatar, during the World ATA Carnet Council (WATAC) meeting organized by ICC’s World Chambers Federation on May 9 in Xi’an, China. The ATA Carnet system is expected to be implemented in Qatar as of August 1, 2018, but the country will only accept Carnets issued for Exhibitions and Fairs. (Many countries and territories also accept them for Product Samples and for Professional Equipment.)

The New York Convention Turns 60

By Grant Hanessian

Hanessian is a partner at Baker McKenzie in New York and chair of USCIB’s Arbitration Committee. He is the U.S. member of the ICC Court of Arbitration and an adjunct professor of law at Fordham Law School. Contact him at grant.hanessian@bakermckenzie.com.

A few weeks ago, the 60th anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards – the “New York Convention” – was celebrated at United Nations headquarters and the U.S. Courthouse in New York.

The tremendous success of the New York Convention, which provides for national court enforcement of foreign arbitration awards and agreements, is one of the principal reasons arbitration has become the preferred choice of parties around the world for resolving cross border commercial disputes. Virtually all the world’s major trading nations have ratified the convention.

Following a conference at the UN featuring representatives from the International Chamber of Commerce, UN Commission on International Trade Law (UNCITRAL), International Bar Association, International Council for Commercial Arbitration, and U.S. Department of Commerce, a “birthday” celebration was held at the U.S. Courthouse on Pearl Street in Manhattan. ICC and UNCITRAL served as co-hosts of the event.

“The New York Convention is a tremendous example of how business and governments can work together to strengthen global governance, and its enduring relevance is a testament to ICC’s leadership in shaping the global environment for private dispute resolution over the past century,” ICC Secretary General John Denton observed at the reception. USCIB General Counsel Nancy Thevenin, who is immediate past chair of the New York State Bar Association International Section, helped organize the event and also made remarks.

ICC’s preeminence in international commercial arbitration is of course well known. The ICC International Court of Arbitration, created in 1923 to encourage settlement of disputes arising from international trade, has administered more than 23,000 disputes involving parties and arbitrators from 180 countries and independent territories.

It may be less well known that ICC initiated the process that led to creation of the New York Convention. At the UN conference, Anna Joubin-Bret, secretary of UNCITRAL, noted that ICC’s Commission on Arbitration and ADR prepared the first draft of the convention and submitted it to the UN in 1953. The UN Economic and Social Council then produced an amended draft that was discussed during a conference at UN Headquarters in May and June 1958, resulting in the UN’s adoption of the New York Convention on June 10, 1958.

Prior to adoption of the New York Convention, parties seeking to enforce foreign arbitral awards usually had to obtain two court decisions of exequatur, one from the country where the award was issued and another at the place of enforcement. The convention eliminated the requirement of double exequatur, significantly restricted the grounds for national court refusal of recognition and enforcement and placed the burden of proving such grounds on the party opposing such recognition and enforcement.

Under the New York Convention, national courts considering applications for
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Business Welcomes New Framework in Competition Enforcement

The global business community has applauded the launch of a new Multilateral Framework on Procedures in Competition Law Investigation and Enforcement (MFP), as announced in mid-June by the U.S. Department of Justice. In a joint statement on June 27, the International Chamber of Commerce (ICC) and USCIB, welcomed the announcement, saying they hoped the initiative would lead to fairer and more efficient antitrust procedures.

“As the world’s largest and most representative business organization, ICC welcomes the U.S. Department of Justice’s new Multilateral Framework on Procedures in Competition Law Investigation and Enforcement,” said ICC Secretary General John W.H. Denton. “Business relies on and thrives in a global economy based on multilateral rules and shared principles. We encourage competition authorities to further engage with the private sector to ensure that investigations are conducted in a consistent and transparent manner worldwide.”

“The spread of antitrust regimes globally over the past 20 years has underscored the importance of due process as a cornerstone of sound competition enforcement,” said USCIB President and CEO Peter M. Robinson. “Multilateral forums such as the OECD and the International Competition Network have done, and continue to do, tremendous work towards normative convergence in this area. USCIB applauds this complementary MFP initiative, which goes beyond soft-convergence to employ a practical mechanism that will promote compliance by competition authorities with a dozen fundamental procedural fairness principles.”

On June 1, U.S. Assistant Attorney General for Antitrust Makan Delrahim, announced the MFP as a tool to “promote greater procedural norms and due process in antitrust, or competition, enforcement.” Delrahim said the United States, “in partnership with leading antitrust agencies around the world, will introduce and invite the global antitrust enforcement community to help finalize and join” the framework.

New USCIB Members

We are delighted to welcome the following companies and organizations as the latest additions to USCIB’s diverse membership:

Expedia Group  Ripple Labs  Salesforce

To learn more about how USCIB membership can benefit your organization, contact Alison Hoiem (202-682-1291 or ahoiem@uscib.org).

The New York Convention Turns 60 continued from page 16

recognition and enforcement of foreign awards may not review the merits of the arbitral tribunal’s decision. National courts have generally construed the grounds for refusal of recognition and enforcement under the Convention narrowly, and they have exercised their discretion to refuse recognition and enforcement only in exceptional cases. Enforcement of arbitral awards by national courts is now considerably easier than enforcement of national court judgements in many countries, greatly facilitating resolution of international business disputes.

The New York Convention, and complementary UNCITRAL texts such as the UNCITRAL Model Law on International Commercial Arbitration in 1985, have led to an increasingly harmonized arbitration law. The UNCITRAL model law, which has now been adopted by 111 jurisdictions in 80 countries, essentially repeats the grounds of the New York Convention for enforcement and setting aside foreign awards.

At the UN event, Helene van Lith, the secretary of the ICC Commission on Arbitration and ADR, emphasized the role ICC continues to play in applying and interpreting the convention through Court of Arbitration scrutiny of awards and the publication of the forthcoming third revised edition of the ICC Guide to National Procedures for Recognition and Enforcement of Awards Under the New York Convention. The increasing availability of national court decisions interpreting the Convention and UNCITRAL model law, through such sources as the ICC Guide and the online Case Law on UNCITRAL Texts, has importantly contributed to a uniform and predictable application of arbitral law around the world.

In these times when multilateral trade arrangements are under stress, everyone interested in the continued growth of international business should applaud the extraordinary vitality of the New York Convention as it enters its seventh decade.
Disney’s Ellen Blackler Named Chair of USCIB’s ICT Committee

USCIB has appointed Ellen Blackler, vice president of global public policy with The Walt Disney Company, as chair of its Information, Communications and Technology (ICT) Committee in August. As chair, Blackler will spearhead the organization’s development and delivery of business views on information technology and internet policy matters worldwide, working with companies and organizations from across USCIB’s diverse membership.

“Ellen Blackler brings in-depth knowledge of critical issues in international ICT policy and cross-border business,” said USCIB President and CEO Peter M. Robinson. “She has played a key role in forging consensus across industries to advance business views in the UN, the OECD and other important multilateral forums. Under Ellen’s stewardship of our ICT Committee, and with the ongoing support of USCIB Vice President Barbara Wanner, we look forward to fostering an even more active and constructive role for the private sector in global ICT policy discussions.”

Blackler manages public policy issues for Disney on a range of issues related to internet policy, human rights, privacy, and children and the media. Prior to joining Disney, Blackler worked for AT&T, where she oversaw policy development on privacy, broadband deployment and universal service, access to ICT for people with disabilities, health care and tax-related issues. Blackler previously served on the staff of the Federal Communications Commission, where she led the team drafting the FCC’s annual reports on the availability of broadband service, among other responsibilities, and in the New York State government.

USCIB’s ICT Committee advocates for policies characterized by free and fair competition, minimal government intervention and free information flows that ensure the continued growth of information and communication technologies in a range of strategic forums, including the UN, OECD, APEC and ICANN. In particular, it leverages USCIB’s overseas network of business groups, including the International Chamber of Commerce and Business at OECD, to secure strong industry representation and input to major multilateral discussions of ICT issues.
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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>September 2018</td>
<td></td>
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<tr>
<td>10 – 11</td>
<td>OECD Climate Change Experts Group Meeting, Paris, France</td>
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<tr>
<td>13</td>
<td>USCIB Trade and Investment Committee Meeting, Washington DC</td>
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<td>13 – 14</td>
<td>Engaging Business Forum – Human Rights Conference, Atlanta, Georgia</td>
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<td>14 – 17</td>
<td>Sixteenth Session of the Committee of Experts on International Cooperation in Tax Matters</td>
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<td>18 – 30</td>
<td>73rd Session of the UN General Assembly, New York, New York</td>
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<td>24 – 26</td>
<td>2018 Concordia Annual Summit, New York, New York</td>
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<tr>
<td>26</td>
<td>USCIB ICT Committee Meeting, Washington DC</td>
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<td>27 – 28</td>
<td>13th ICC New York Conference on International Arbitration</td>
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<td>October 2018</td>
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<td>1 – 2</td>
<td>Global Business Forum on the Sustainable Development Goals, Madrid, Spain</td>
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<td>1 – 2</td>
<td>ICC Environment and Energy Commission, Sao Paulo, Brazil</td>
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<td>1 – 2</td>
<td>ICC Marketing and Advertising Commission Meeting, Cartagena, Colombia</td>
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<td>4</td>
<td>USCIB IP and Innovation Committee Meeting, Washington, D.C.</td>
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<td>8 – 9</td>
<td>OECD Climate Change Experts Group Meeting, Paris, France</td>
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<td>10</td>
<td>BizMEF-BIAC Workshop on Business Engagement in Implementing National Climate Pledges in the Paris Agreement, Paris, France</td>
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<td>15 – 16</td>
<td>45th Session of the UN Committee on World Food Security, Rome, Italy</td>
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<td>17 – 19</td>
<td>World Food Prize, Des Moines, Iowa</td>
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<td>November 2018</td>
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<td>6 – 8</td>
<td>BSR Conference, New York, NY</td>
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<td>8 – 9</td>
<td>Together for Nutrition, Rome, Italy</td>
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<td>11 – 13</td>
<td>16th ICC Miami Conference on International Arbitration, Miami, Florida</td>
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<td>December 2018</td>
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<td>3 – 14</td>
<td>UNFCCC COP24, Katowice, Poland</td>
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<td>11</td>
<td>USCIB International Leadership Award Dinner, United Nations, New York, NY</td>
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<tr>
<td>12</td>
<td>USCIB ICT Committee Meeting, Washington DC</td>
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