Protecting Human Rights: Partnerships Are Key

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As we mark the 70th anniversary of the signing of the UN’s Universal Declaration of Human Rights – a true milestone in the history of human progress – it is worth reflecting on what the private sector, governments and other actors have done, and can do, together in this area.

Last September in Atlanta, USCIB members gathered for our annual human rights conference – held in partnership with Coca-Cola, the International Organization of Employers (IOE) and the U.S. Chamber of Commerce. Partnership was the primary focus.

How can business work and interact with human rights defenders? What are the best avenues in providing access to remedy? How can we address the issue of wages in the supply chain? What is the role of diversity and inclusion in the workplace? These were some of the questions we explored.

Cooperative approaches and strong partnerships are important, because no single actor on the international stage can take sole responsibility for upholding human rights. It must be a joint endeavor.

**Protect and respect**

In 2011, to their credit, and overcoming years of polarizing debate, members of the UN Human Rights Council agreed on a cooperative approach, unanimously adopting the UN Guiding Principles on Business and Human Rights.

The UN Guiding Principles underscored that the duty of governments to protect human rights is clearly established in international law, while also recognizing the responsibility of companies to demonstrate respect for human rights in their business operations. They further stress the need for greater access to remedy for victims of alleged human rights abuses linked to business activities.

This protect/respect remedy framework is extremely useful for understanding where and how governments and businesses can have the most impact.

As demonstrated by USCIB member companies and many others around the world, human rights due diligence under the UN Guiding Principles provides a four-step process: companies actively learn about their human rights impacts, work to prevent and mitigate negative impacts, and communicate how they are addressing potential human rights issues throughout their activities.

Corporate human rights due diligence also allows for learning by doing, identifying potential blind spots and improving over time – working to avoid past failures and collaborating with others to address systemic issues.

**Avoiding a punitive approach**

Despite these actions and progress, some anti-corporate governments and campaigners have persisted in seeking to develop unrealistic and punitive international rules that would shoulder companies with responsibilities that more properly rest with governments.

In Geneva this past October, at the fourth session of a UN working group charged with reviewing standards for companies with respect to human rights, the global business community was united in its opposition to a proposed “zero draft” of a treaty on business and human rights (see page 7).

**Everyone has a role to play when companies work with governments to advance human rights.**

The proposed treaty, championed by Ecuador and a handful of other governments, along with a number of activist groups, would fundamentally shift the burden of policing and enforcing global human rights from governments onto multinational companies.

My colleague Gabriella Rigg Herzog, USCIB’s vice president for corporate responsibility and labor affairs, told delegates trenchantly: “Some in the room have referred to the zero draft as a ‘last line of defense’ approach. But we believe the true first line of defense is strong domestic rule of law, good governance and the state duty to protect human rights. This is where our collective efforts should focus and is the global approach we all are working to achieve under the UN Sustainable Development Goals.”

A joint statement by the IOE, International Chamber of Commerce, Business at OECD and Business Europe conveyed strong concerns on the proposed treaty. For one thing, the business groups said, the draft text includes requirements that are unclear and not aligned with recognized “soft-law” instruments such as the UN Guiding Principles.

Furthermore, the draft UN treaty establishes a different set of requirements for transnational business activities versus other enterprises and organizations. And the draft would open the door to civil and criminal suits in a wide range of jurisdictions, exposing globally operating companies to unprecedented risks and unrealistic liability.

These are obviously complex and evolving issues. Where we can certainly agree is on the importance of human rights and the responsibilities for all actors – individuals, governments, businesses and civil society alike – to work together to advance protection, respect and remedies for human rights around the world.

So on this 70th anniversary of the Universal Declaration on Human Rights, and for the next 70 years and beyond, USCIB and our members look forward to doing our part to advance human rights around the world, in a spirit of partnership and collaboration.

Contact Peter Robinson at (212) 703-5046 or probinson@uscib.org.
Event Focuses on Plan To Promote Food Security, Nutrition Partnerships

With the future of food continuing to be a pressing global challenge and malnutrition profoundly affecting every country, The USCIB Foundation once again teamed up with the Global Alliance for Improved Nutrition (GAIN) to organize a public-private partnerships dialogue to tackle malnutrition. The November 8-9 dialogue in Rome, Italy was a second in a series and was built on last year’s event in New York. USCIB CEO and President Peter Robinson participated in the event alongside Vice President for Product Policy and Innovation Mike Michener.

This year’s event featured the theme of “Together for Nutrition: applying principles for public-private engagement.” The high-level dialogue explored practical and tangible ways to implement and scale coordinated initiatives to put the draft Principles, that were agreed upon last year, into practice. The program focused on both under-nutrition and the rise of overweight and obesity, as well as the associated diet related non-communicable diseases. Leaders of governments, development agencies, and the private sector from a wide range of countries, with a particular focus on developing countries with high burdens of malnutrition, participated in the dialogue.

This year’s event concluded with some important outcomes to help deliver results. GAIN and The USCIB Foundation are planning to take the Principles to donors such as developmental agencies, foundations, and companies interested in public-private partnerships. USCIB will also ask its member companies, with existing public-private partnerships to pilot the Principles of Engagement by applying them retroactively to the ongoing PPP. Michener, who leads USCIB’s work on food and healthcare, also emphasized the importance of engaging the Food and Agriculture Organization (FAO).

“We [GAIN and USCIB] will take the Principles to the Rome-based agencies, starting with a briefing for Permanent Representatives early in 2019, followed by the FAO Program Committee and the Executive Boards of WFP and IFAD,” he said. “We also plan to take the Principles to regional meetings, with the first meeting tentatively set for Africa in late 2019.”

Global food and agriculture constitute a US$7.8 trillion industry, employing up to 40 percent of the working population in many countries yet progress towards the ambitious 2030 Sustainable Development Goals (SDGs) is too slow and the scale and complexity of the problem underscores the need for deepened collaboration and renewed commitment to improving nutrition outcomes for all, especially the most vulnerable, according to Michener.

Robinson Helps Celebrate World Food Prize

The World Food Prize is the foremost international honor recognizing the achievements of individuals who have advanced human development by improving the quality, quantity or availability of food in the world. This year’s co-winner, Dr. Lawrence Haddad, brought the issue of nutrition to the forefront by using both economic and medical research to convince development leaders to make child nutrition an urgent priority in the global food security agenda. USCIB has partnered with Dr. Haddad’s organization, the Global Alliance for Improved Nutrition (GAIN) to promote and strengthen public-private partnerships to help achieve global nutrition goals.

As part of this year’s World Food Prize celebration last week in Des Moines, Iowa, the 2018 Borlaug Dialogue International Symposium convened an impressive array of international leaders, policy makers, farmers, executives from agribusiness and non-governmental organizations, and scientific, academic and development experts to address the most critical issues facing global food security.

USCIB President and CEO Peter Robinson moderated a panel discussion with Dr. Haddad to highlight the importance of public-private partnerships in achieving optimal nutritional outcomes, framed by the GAIN-USCIB Guiding Principles of Engagement between Governments and Business to Improve Nutrition. The panel featured Colorado Governor John Hickenlooper, PepsiCo Senior Vice President for Research and Development Dr. Ellen de Brabander, and Jane Nelson of the Harvard Kennedy School’s Corporate Social Responsibility Initiative.

The future of food continues to be one of the most pressing global challenges, with malnutrition profoundly affecting every country. Progress towards the ambitious 2030 SDGs is too slow; the scale and complexity of the problem underscores the need for deepened collaboration and renewed commitment to improving nutrition outcomes for all, especially the most vulnerable. Countries cannot achieve their SDG goals without an aligned, motivated and incentivized private sector as a key partner. Improved dialogue and collaboration between government, business, civil society and international organizations is crucial for guiding engagement and focusing efforts where they can have the most sustainable impact and long-term success.
USCIB Highlights Business Role in SDGs

In 2019 the United Nations will consider the first three years of experience and implementation of the UN 2030 Agenda for Sustainable Development and consider possible changes. USCIB’s event during the most recent UN General Assembly in September made clear that, three years into the 2030 Agenda for Sustainable Development, substantial progress has been made thanks to the commitment and action of U.S. business, but also flagged areas where stronger links with business would enhance progress towards the SDGs.

Director of the Office of Global Change at the U.S. Department of State Thomas DeBass acknowledged that business will deliver most of the funding for the SDGs, so it follows that governments and the UN must do a better job communicating to business. “Only 10 percent of the financing to achieve the SDGs will come through official development aid and related government sources,” said DeBass. “The other 90 percent will come about through private-sector investment.” But we are still trying to convince the 90 percent using the language of the 10 percent. We need to reorient our sales pitch to speak the language of business.”

Meanwhile companies recognize the business case for embedding sustainability across their operations. Novozymes’ Head of Corporate Sustainability and Public Affairs Claus Stig Pedersen noted, “we don’t have a sustainability policy, we have a business system that adjusts to sustainable development.”

Norine Kennedy, USCIB vice president for environment, energy and strategic international engagement, called for a practical approach to “inclusive multilateralism” that will animate business to further develop and deploy technologies, know-how and investment to advance the Global Goals.

On September 27, the UN held a high-level meeting on Non-communicable Diseases (NCDs), which was attended by USCIB Vice President for Product Policy and Innovation Mike Michener. The meeting served as a review of the prevention and control of NCDs and focused on the theme of strengthening health systems and financing for the prevention and control of NCDs, on each country’s path towards achieving universal health care, including through sharing evidence-based best practices, scientific knowledge and lessons learned.

Op-Ed Dispels Myths of Business “Conflict of Interest” at UN

As the annual United Nations General Assembly was underway in New York September 18 – October 5, USCIB President and CEO Peter Robinson contributed an op-ed in The Hill, titled “UN’s private-sector phobia prevents if from hitting its lofty goals.”

“It is increasingly evident that the international community is not on track to deliver the expected results under the Paris Agreement or the UN’s Sustainable Development Goals,” wrote Robinson. “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?”

Robinson points out that accusations of conflict of interest are rampant across UN agencies, including the World Health Organization and in the context of the UN climate talks. He then systematically outlined six “myths” about business influence in international policy-making and dispelled them one by one. Some of the myths he wrote about including that business interests are inherently at odds with the public interest due to business seeking profit.

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Trilateral Update of NAFTA Welcomed

USCIB issued a statement on October 1 in response to the Trump administration's announcement of a United States-Mexico-Canada Agreement (USMCA), which seeks to modernize the North American Free Trade Agreement (NAFTA). The statement read:

“We welcome the conclusion of a trilateral agreement between the United States, Mexico and Canada on the modernization of NAFTA, which is a longtime priority for our members and American business more broadly.

“USCIB President and CEO Peter Robinson was in Geneva in November for high-level meetings of the International Organization of Employers (IOE), for which he serves as vice president for North America. Robinson also met with senior officials at the U.S. Mission to the UN in Geneva, including Deputy Permanent Representative (and Chargé d'Affaires in the absence of an Ambassador) Mark Cassayre. Tom Mackall, USCIB senior counsel and ILO Governing Body representative, accompanied Robinson.

Cassayre was only recently posted to Geneva, but already speaks with keen knowledge about areas of mutual interest, according to Robinson.

“The meeting afforded us the opportunity to underline to the Mission USCIB’s unique positioning with regards to international institutions, and its role on behalf of U.S. business in global regulatory and standard-setting diplomacy, reflecting our parallel and mutually-supportive missions,” said Robinson.

A major issue of discussion was the emergence in recent years of allegations in some UN organizations of “conflict of interest” and “corporate capture” as an attempt to limit, if not exclude, business (industries, companies, and the organizations that represent their interest) from international discussions in areas ranging from health to climate change to labor protections. Robinson also noted The USCIB Foundation’s collaboration with a Geneva-based NGO, Global Alliance for Improved Nutrition (GAIN), to develop principles for nutrition-related public private partnerships.

“The U.S. Mission seemed very supportive of an all-inclusive approach to today’s economic challenges, and we will look forward to working with them to help ensure preservation of that principle in international institutions,” noted Robinson.

“We also highlighted USCIB’s longtime collaboration with the U.S. Missions in New York and Geneva, and our hope for a second USCIB member company delegation to Geneva, as we had undertaken in spring 2018 with the help of the Mission,” said Robinson. “We ended the meeting feeling confident that this was a solid next step in constructive engagement with the U.S. Mission.”
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Business Unites to Oppose Draft Human Rights Treaty Targeting Companies

At the most recent session of a UN working group charged with reviewing standards for companies with respect to human rights, which took place in Geneva in October, the global business community united in opposition to a proposed “zero draft” of a treaty on business and human rights.

The proposed treaty, which was championed by Ecuador and several other governments, alongside a number of activist groups, would fundamentally shift the burden of policing and enforcing global human rights from governments onto multinational companies, according to Gabriella Rigg Herzog, USCIB’s vice president for corporate responsibility and labor affairs, who attended the meeting.

“Some in the room have referred to the zero draft as a ‘last line of defense’ approach,” Herzog told delegates in a statement on behalf of USCIB and the International Organization of Employers (IOE). “But we believe the true first line of defense is strong domestic rule of law, good governance, and the state duty to protect human rights. This is where our collective efforts should focus and is the global approach we all are working to achieve under the UN Sustainable Development Goals.”

A joint statement by the IOE, the International Chamber of Commerce (ICC), Business at OECD and Business Europe conveyed the groups’ strong concerns on the proposed treaty. These include:

- The zero draft includes requirements that are unclear and not aligned with recognized “soft-law” instruments such as the UN Guiding Principles on Business and Human Rights.
- It establishes a different set of requirements for transnational business activities versus other enterprises and organizations.
- And the draft would open the door to civil and criminal suits in a wide range of jurisdictions, which could lead to “forum shopping.”

“We do not believe that these texts make a helpful contribution to the field of business and human rights and we believe that they risk undermining important progress made in this sphere under the UN Guiding Principles,” stated Viviane Schiave, senior policy executive with ICC. “Furthermore, the process followed by the [UN working group] to date does not give business confidence that this initiative will provide credible and workable solution to such complex human rights issues.”

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Climate Workshop Emphasizes Business Engagement

The Major Economies Business Forum (BizMEF), of which USCIB is a leading member, joined forces with the Business and Industry Advisory Committee to the OECD (Business at OECD) to convene a day long workshop at the OECD Conference Center on October 10 in Paris. The objective of the meeting was to present a draft USCIB report on Business Engagement in Implementation of National Pledges under the Paris Agreement, and to discuss what will be necessary to mobilize business action, investment and innovation to advance national and global actions toward the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement.

The event included key players from the OECD and the UN Climate Change negotiations: Director of the OECD Environment Directorate Rodolfo Lacy, OECD Climate Change Experts Group Chair Helen Plume (New Zealand), Fiji Ambassador Deo Saran, Chair of the UNFCCC Subsidiary Body on Science and Technology Advice Paul Watkinson (France).

Opening the meeting, Secretary General of Business at OECD Russell Mills stated that as key implementation details of the Paris Agreement are completed, business is looking for “smart rules that would animate business expertise and enthusiasm.” Business representatives from Japan, Morocco, the Netherlands, France, the UK, Sweden, and others provided examples of public-private partnerships to advance, assess and improve national pledges under the Paris Agreement.

USCIB Vice President for Strategic International Engagement, Energy and Environment Norine Kennedy presented a BizMEF proposal for an inclusive and recognized platform for business to be introduced in the UN climate change agreement.

“We need an all hands on deck approach to climate policy design, innovation deployment, infrastructure investment and action to deliver current national pledges,” emphasized Kennedy. “Bringing business to the table in an ongoing and mutually beneficial working relationship, linked between national and global levels, will be indispensable to growing prosperity, energy access and security and resilient solutions to climate change.”

Over 50 participants from governments, academia, the UN and business joined the discussion, which also considered the recently announced IPCC Special Report on 1.5 Degrees C. This landmark report found that limiting an increase in global temperatures to no more than 1.5 degrees from pre-industrial levels was possible, but would require unprecedented actions. Parties to the UNFCCC and Paris Agreement have pledged to keep global temperature change to no more than 2 degrees C, yet there is growing political pressure in the UN climate negotiations to agree a more stringent target of 1.5 degrees. The USCIB Report will be finalized to reflect the October 10 workshop discussions and presented at the UN Climate Change Conference of Parties, from December 2 – 14 in Poland.

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On September 6, USCIB submitted extensive comments on the Trump administration’s proposed $200 billion list of tariffs on imports from China, following earlier submissions in response to the escalating trade conflict between the United States and China.

"USCIB and its members continue to be very concerned about the potential unintended consequences these proposed tariffs of 10 or 25 percent on $200 billion worth of Chinese imports are likely to have, affecting many sectors vital to the U.S. economy and jobs," the USCIB statement said.

"Particularly if [the U.S. Trade Representative’s office] imposes 25 percent tariffs on this broad list of products, these tariffs will impact consumers and will severely impact U.S. competitiveness. The negative impact of such tariffs to U.S. consumers and industry appears disproportionate to the intended purpose."

The statement said that, while China’s forced technology transfer requirements and other abusive practices harm U.S. competitiveness, the administration’s “sweeping tariffs endanger the U.S. economy in similar ways.” USCIB said its members are “very concerned that these proposed tariffs will stifle the U.S. economy, and not achieve the important goal of changing China’s behavior.”

The statement also recommended a number of changes to the list of tariffs that was proposed. USCIB also signed on to a broader industry statement appealing to the Trump administration not to proceed with the proposed tariffs, warning the effort would likely backfire against U.S. businesses and workers.

On October 3, Eva Hampel, USCIB senior director for investment, trade and financial services provided testimony to the interagency Trade Policy Staff Committee (TPSC). The interagency panel was chaired by USTR and included officials from the Departments of Commerce, Treasury, State, Agriculture and Labor.

Hampel took the opportunity to speak about the China 301 tariffs noting how disruptive they are to U.S. business. "Extensive tariff actions do not show any indication that they will in fact resolve the underlying issues and change China’s behavior regarding intellectual property theft and forced technology transfer," warned Hampel. "In addition, there are many more issues beyond those that need to be addressed. High-level dialogues between the U.S. and China continue to be of the utmost importance."

As part of the annual request by the U.S. Trade Representative for comments on China’s compliance with World Trade Organization (WTO) commitments and notice of public hearing, USCIB submitted comments on September 21 reflecting USCIB members’ feedback and concerns. Since China acceded to the WTO in 2001, while progress has been made in some areas, there remains significant WTO obligation compliance concerns.

USCIB’s submission highlighted concerns that arise in selected horizontal areas that transcend industry sectors, such as IT security measures, China’s antimonopoly law, intellectual property rights, market access, national treatment and non-discrimination, the regulatory environment, state-owned enterprises, customs and trade facilitation, taxation and labor laws. USCIB’s submission also addressed issues related to specific industry sectors that face problems in China, including agricultural biotechnology, chemicals, electronic payment access, express delivery services, software and telecommunications.

Until China officially accedes to and implements the WTO Government Procurement Agreement, government procurement program concerns remain among USCIB members.

“On China’s fulfillment of its WTO obligations, USCIB acknowledges the efforts China has made since joining the WTO in 2001 to meet its obligations under the terms of its accession agreement,” said USCIB Senior Director Eva Hampel, who leads USCIB’s work on China. “However, there still remain significant WTO obligation compliance concerns. USCIB notes that its member concerns extend beyond those discussed in this paper, including government procurement; until China officially accedes to and implements the WTO Government Procurement Agreement, government procurement program concerns remain among USCIB members.”

Following this submission, Hampel provided testimony on October 3 to the interagency Trade Policy Staff Committee.

The interagency panel was chaired by USTR and included officials from the Departments of Commerce, Treasury, State, Agriculture and Labor. The questions from the panel addressed the cybersecurity law, addressing ICT products and services as well as data flow restrictions, state-owned enterprises (SOEs), anti-monopoly law enforcement, trade secrets, agricultural biotechnology, and the import ban on recyclable materials.
ICC Releases Global Code for Marketing Industry

The International Chamber of Commerce (ICC) has released the tenth revision of its flagship Advertising and Marketing Communications Code – a globally applicable self-regulatory framework developed by experts from all industry sectors worldwide. The Code was launched on September 25 during the National Advertising Division's 2018 Annual Conference in New York.

Underpinning self-regulatory frameworks in 42 countries, the ICC Marketing Code seeks to protect consumers by setting out the “dos and don’ts” for responsible marketing to ensure legal, honest, decent and truthful communications and practices. This revision ensures that the ICC Marketing Code takes into account emerging digital marketing and advertising practices, such as artificial intelligence-enabled marketing, market influencers, vloggers and data analytics.

ICC has been the major rule-setter in international advertising self-regulation since 1937.

Spotlight on Competition Policy at Joint Meeting

Against the backdrop of fast-changing business and policy practices with respect to antitrust and consumer protection, the USCIB Competition Committee held a joint meeting with the International Chamber of Commerce (ICC) Competition Commission in New York on September 5.

The meeting took place in conjunction with the 45th Annual Fordham Conference on International Antitrust Law. Participants in the joint ICC/USCIB meeting represented many jurisdictions, including Brazil, France, Germany, Mexico, Poland, the United Kingdom and the United States.

The keynote speaker was Bruce Hoffman, director of the Bureau of Competition at the U.S. Federal Trade Commission (FTC). Hoffman discussed the latest developments of antitrust policy, including for competition policy litigation and enforcement in the U.S., as well as FTC hearings on the state of competition law and policy.

Russel Mills Takes the Helm at Business at OECD

To this end, Mills will deepen Business at OECD’s strategic dialogue with the OECD Secretary General and senior government officials.

Mills succeeds Bernhard Welschke who served as secretary general from April 2013 until July 2018. Mills brings four decades of experience in market development, technology exploitation, and global business management to his position. His background will be essential to strengthen Business at OECD’s collaboration with OECD and member governments to ensure businesses can operate, trade and invest in open and fair markets thus contributing to the wealth creation that enables societies to flourish.

Mills’ global, on-the-ground experience spans across the United States, the United Kingdom, the Netherlands, Belgium and Switzerland where he held global responsibilities across a wide variety of sectors, including in the chemical industry and related manufacturing sectors. Mills previously chaired the Environment and Energy Committee of Business at OECD for over 5 years, representing the organization in several Ministerial meetings.

Hampl Emphasizes Importance of Foreign Investment at OECD

USCIB Senior Director for Investment, Trade and Financial Services Eva Hampl was in Paris participating in investment and trade related meetings at the OECD October 23-24. Hampl had a speaking role in every meeting, sharing business views, opportunities and concerns. Hampl’s speaking engagements kicked off with a Business at OECD consultation with the OECD Investment Committee. Business at OECD had submitted three papers on investment, covering topics such as investment policies related to national security, the importance of a well-designed investment protection mechanism and foreign direct investment qualities.

Hampl also attended a joint meeting of the OECD Trade and Investment Committees, which included a presentation on the OECD Digital Services Trade Restrictiveness Index by the OECD. At the consultation, Hampl made an official intervention on behalf of Business at OECD, expressing USCIB’s support of the meeting, and raising priority issues, including the multilateral trading system (WTO reform), state-owned enterprises, and digital trade.
Conference Discusses Human Rights Trends

Since 2007, USCIB, The Coca-Cola Company, the U.S. Chamber of Commerce and the IOE have organized an annual forum on business and human rights to foster candid discussions and peer learning opportunities. The 10th Engaging Business Forum took place on September 13-14 at The Coca-Cola Company's headquarters in Atlanta under the theme of “Collaboration Through Partnerships to Address Business and Human Rights Trends and Developments.”

This year’s forum brought together over 200 representatives from the private sector, U.S. government, civil society, and international organizations to discuss the importance of partnerships in achieving business and human rights goals. Participants discussed leading business and human rights issues of the moment, including how business can work and interact with human rights defenders, best practices and challenges for business in providing access to remedy, and how to address the issue of wages in the supply chain.

The keynote speaker at the event was Director-General of the International Labor Organization Guy Ryder. Other speakers included USCIB Vice President of Corporate Responsibility and Labor Affairs Gabriella Herzog, Director of Global Workplace Rights at The Coca-Cola Company Brent Wilton, Director of Stakeholder Engagement at IOE Matthias Thorns, and Michael Congiu of Little Mendelson as the representative of the U.S. Chamber of Commerce. USCIB member company speakers included The Walt Disney Company, Walmart, H&M, and Rio Tinto.

“Our role at USCIB is to support U.S. business in creating and supporting a more prosperous society, including through demonstrating respect for human rights in their activities,” said Herzog.

Donnelly Talks USMCA Investment Developments

USCIB Vice President for Investment and Financial Services Shaun Donnelly joined senior officials of the Canadian and Mexican embassies in Washington on a panel on “What Does NAFTA 2.0 Mean for Investor Protection in North America and Beyond?” The session was hosted by a leading Washington law firm, Sidley Austin, and co-sponsored by the American Society of International Law.

An impressive audience of trade and law experts from around Washington attended. Early reactions to the just announced new USMCA agreement has included many questions and some criticism in business circles that the new pact seems to reduce well-established investment protections in the NAFTA, especially the Investor-State Dispute Settlement (“ISDS”) arbitration procedures to settle disputes between foreign investors and host government.

USCIB Hosts U.S. Chargé to OECD Andrew Havillard

Two dozen USCIB member companies met with Andrew Havillard, acting head (“chargé d’affaires”) of the U.S. Mission to the OECD on October 11 at USCIB’s Washington office. In a wide-ranging hour-long give and take, Havillard reviewed OECD activities and upcoming challenges, cooperation of both the U.S. Mission and the sprawling OECD structures with the Business and Industry Advisory Committee to the OECD (Business at OECD) group and ways to strengthen those government/business links.

Access for Business at OECD members to some important OECD committees was highlighted as an important ongoing problem. Digital trade, tax, health, and competition policy remain important priority areas for USCIB member companies. OECD work on “illicit trade” is also an area of growing interest for member companies. And accession of new member countries to the OECD, both the process and potential individual candidate countries remain crucial issues for USCIB member companies. Member companies were appreciative of the support they are getting from Havillard’s U.S. Mission team in Paris.

USCIB Vice President for Investment Policy and Financial Services Shaun Donnelly, who moderated the session, praised Havillard for making time to meet with business and for his “expertise, candor, and open door for business.”

Trump Nominates US Envoy to Geneva

President Donald Trump nominated Andrew Bremberg in late September to be the next representative of the U.S. to the United Nations and other international organizations in Geneva with the rank of Ambassador. Bremberg currently serves at the White House as a special assistant to the President and director of the Domestic Policy Council. Bremberg earlier served as an aide to Senate Majority Leader Mitch McConnell and the Wisconsin Governor Scott Walker. Like all Ambassadorial nominees, Bremberg must be confirmed by the U.S. Senate before taking up his assignment in Geneva. He will replace Ambassador Pamela Hamamoto, who departed the post in January 2017. Since that time, the Deputy U.S. Representative, originally Ted Allegra, was recently replaced by Marc Cassayre as chargé d’affaires.

USCIB has long worked very closely with the U.S. Mission in Geneva, including with the Ambassador, on a range of important issues in organizations such as the International Labor Organization (ILO), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the International Telecommunications Union (ITU) and the UN Human Rights Commission. As the sole U.S. business organization with official status in these and other international organizations, USCIB is an important partner for the U.S. Government on a broad range of important and challenging issues for American business.

“Getting a new U.S. Ambassador nominated, confirmed and on the job in Geneva will be an important development,” said USCIB CEO & President Peter Robinson. “It’s now been nearly two years since there has been an Ambassador in that post. The fact the President tapped one of his own senior White House Assistants for this job is encouraging as a demonstration of the importance the Administration assigns to this particular post in Geneva.”
USCIB Gears Up for Talks on Global Environment Pact

The first negotiating meeting for a proposed UN Global Pact for Environment (GPE) took place at United Nations headquarters in New York September 5-7. USCIB Vice President for Corporate Responsibility and Labor Affairs Gabriella Rigg Herzog attended those deliberations, alongside USCIB members Pfizer and the American Chemistry Council. The meetings focused on organizing the GPE negotiating process and its future meetings, preparation of a UN Secretary General's report on gaps in international environment policy that will serve as a basis for further negotiations and government positions and priorities relating to the GPE.

UN Member States have voted to launch a negotiation toward the development of a GPE earlier this year. An initiative of French President Emanuel Macron, the Pact is to be a binding, universal “umbrella text” providing a common global legal basis for environmental policy principles, such as the polluter-pays and precautionary principles, environmental rights-based approaches and other international environmental regulations and treaties.

“USCIB plans to submit a scoping paper for business on the GPE, raising questions and concerns based on what has already been agreed in relation to the GPE, such as the extent of U.S. business involvement in the negotiation process, assessment of GPE implications for international environmental policy and potential implications for the SDGs and existing environmental treaties, arising from the proposed GPE,” noted Rigg Herzog.

Bangkok Climate Talks Made Limited Progress

The United Nations Framework Convention on Climate Change convened an additional negotiating session in Bangkok, Thailand from September 4-10. Representatives of over 190 governments gathered in intense discussions to conclude rules for implementation of the Paris Agreement, which are due at the next climate governing body meeting in Poland from December 4-14.

While government representatives worked around the clock in Bangkok to develop streamlined negotiating text that could be finalized at the end of the year, the meeting adjourned with over 300 pages that negotiators will have to tackle in the limited time left and transform into a set of rules that governments and businesses can use as a blueprint for investment, energy mix and other long term decisions.

Sticking points related to differential treatment of reporting procedures by developed and developing countries, and the lack of attention to reporting on financial assistance commitments dating back to the conclusion of the Paris Agreement itself. Developing countries also continue to argue for the inclusion of loss and damage liability in future UN climate agreement procedures.

Business representatives from the International Chamber of Commerce (ICC) and USCIB tracked the talks, meeting with key delegations from the U.S., Canada, Japan, Australia, New Zealand and Europe. USCIB Vice President for Strategic International Engagement, Energy and Environment Norine Kennedy commented on the U.S. business stake in what might seem to be mainly technical details: “An important consideration for U.S. business is preserving American competitiveness and ensuring deployment of U.S. innovation in global markets. The nuts and bolts of reporting under the UN climate agreement will determine how reliably we can assess comparability of effort between countries, so we appreciate the Administration’s continuing focus on clear rigorous rules for reporting such governmental actions across every nation.”
USCIB Outlines Policy Priorities on Artificial Intelligence

In response to a Federal Register request for information concerning the National Artificial Intelligence (AI) Research and Development Strategic Plan, USCIB submitted comments outlining its AI policy priorities.

“USCIB members believe that digital technologies and the online environment enabled by them present unprecedented opportunity to raise productivity, foster creativity and innovation, generate economic growth, build trust, and enhance social prosperity,” said USCIB Vice President for ICT Policy Barbara Wanner. “Key to realizing these social and economic benefits, however, are policies that ensure an open, safe, secure, stable, interoperable, seamless, and sustainable Internet.”

USCIB’s comments emphasized policies that encourage both private investment and public-private partnerships in the R&D needed to drive innovation and realize the potential of AI and other emerging technologies. Such policies are most effectively developed when informed by stakeholder engagement.

“Government policymakers can benefit from close cooperation with business, and other stakeholders to ensure that the legal, policy, and regulatory approaches implemented create a holistic framework that enables sustainable business investment in infrastructure and product innovation, and offers appropriate privacy and human rights protections,” added Wanner.

ICANN Focuses on Domain Names

ICANN 63’s Annual General Meeting (AGM) wrapped up on October 25 in Barcelona, Spain, marking the 20th anniversary of ICANN. The AGM brought together roughly 3,000 participants from business, government, civil society, and the technical community from across the world to focus on policy priorities for the domain name system (DNS).

The meeting was dominated by ICANN stakeholder efforts to develop a formal policy to replace the Temporary Specification for gTLD Registration Data (Temp Spec). “The Temp Spec was designed to ensure that ICANN and the industry of more than 1,000 generic top-level domain (gTLD) registries and registrars meet existing ICANN contractual requirements concerning the collection of registration data, as well as comply with the EU General Data Protection Regulation (GDPR),” reflected USCIB Vice President for ICT Policy Barbara Wanner. “A special group of ICANN’s policy-making body spent most of the meeting focused on moving forward the ‘expedited policy development process’ (EPDP) that must replace the Temp Spec by May 25, 2019.”

ICANN’s proposed Draft Framework for a Possible Unified Access Model for Continued Access to Full WHOIS Data (UAM) was also in the spotlight. At ICANN 63, the Business Constituency (BC), of which USCIB is a member, continued to press ICANN to undertake work to implement the UAM concurrent with the EPDP.

Wanner participated in the meetings in her capacity as the BC’s representative to the Commercial Stakeholder Group (CSG), a position that has enabled greater input to policy discussions at the CSG executive committee-level on behalf of USCIB members and facilitated important meetings with senior ICANN officials and other key constituencies.
As preparations accelerate for this year’s Group of 20 Summit, which kicked off November 30 in Buenos Aires, host country Argentina held key meeting of business, labor and other stakeholders on September 6-7 in the Andean foothills city of Mendoza. USCIB President and CEO Peter Robinson attended alongside high-level representatives of G20 governments, business and labor.

Among the gatherings were the G20 Labor Ministerial, which featured cabinet-level labor officials from each of the G20 nations, including U.S. Secretary of Labor Alexander Acosta, and the Global Employers Forum, organized by the B20 (Business 20), the International Organization of Employers (IOE) and Deloitte.

Robinson took part in a discussion on implementation of the UN Sustainable Development Goals, alongside Kyra Kaszynski of Deloitte and Dante Pesce, chair of the UN Working Group on Business and Human Rights. Pointing to the Business for 2030 platform launched by USCIB to align business activities with the SDGs, Robinson urged governments and employers groups to do their utmost to foster support for the SDGs in their national business communities, including among small and medium-sized enterprises.

“Many SMEs connect with larger companies via cross-border commerce, trade, and investment,” Robinson stated. “So there can be a link and opportunity for larger companies to pass these ‘good business practice’ principles on to smaller national firms, both through supply chain links and by making expectations clear.”

Recognizing the relevance of cooperation and constructive discussion, business leaders released joint B20 statements on employment and education. “As key priorities for the G20 Argentine presidency, both statements aimed to provide concrete, consensus-based, policy recommendations focusing on implementation,” the B20 stated. “In this collaborative spirit, our mission has been to identify and address current challenges and opportunities in the fields of education and employment while advancing with a concrete call to action for G20 countries. We believe these are valuable efforts to lead the way into more sustainable and inclusive societies.”

At B20, Argentina’s President Supports Business

Argentina hosted the B20 Summit October 4-5 in Argentina, gathering business leaders of B20, government representatives and members of international organizations. Among them was International Chamber of Commerce (ICC) Secretary General John Denton. Denton led a high-level panel on “Infrastructure + Energy: Two powerhouses for development”.

The annual summit, organized this year under the stewardship of G20 host country Argentina, provided an opportunity for Denton and selected business leaders to meet with Argentine President Mauricio Macri, who addressed the group at the Casa Rosada Museum in Buenos Aires.

Formally receiving the group’s recommendations to G20 leaders during the closing session of the Summit, Macri said, “Global solutions require the commitment and action not only of governments but also of all the sectors of society, including the business community. Companies are important in the process of dialogue and consensus building.”

The annual B20 process provides a significant platform for the international business community to participate in global economic governance, and supports the work of the G20 by hosting focused policy discussions and developing recommendations geared towards strong, sustainable and balanced growth in the global economy.
Business Groups Fire Back Against Proposed Tax on Tech Firms

Following the United Kingdom’s plan to impose a new tax on sales by many technology companies, U.S. business groups, including USCIB, warned that the proposal would violate tax agreements by targeting U.S. firms. The proposal includes a 2% tax on sales by large social media platforms, internet marketplaces and search engines from April 2020. BBC reported on this development and highlighted comments by U.S. Treasury Secretary Steven Mnuchin, who according to BBC.

“Follow the United Kingdom’s plan to impose a new tax on sales by many technology companies, U.S. business groups, including USCIB, warned that the proposal would violate tax agreements by targeting U.S. firms. The proposal includes a 2% tax on sales by large social media platforms, internet marketplaces and search engines from April 2020. BBC reported on this development and highlighted comments by U.S. Treasury Secretary Steven Mnuchin, who according to BBC.

“The directives reflect a lack of understanding of current and evolving business models and would distort the allocation of revenue or income to functions that do not accurately reflect value creation by the companies earning the revenue or income,” stated USCIB’s letter.

“USCIB supports a consensus-based comprehensive income-tax-based solution applied equally to agreed-upon issues in segments of the digitalized economy,” added USCIB Vice President for Tax Policy Carol Doran Klein. “There is agreement that the global economy, businesses and the public sector are digitalizing. Therefore, any solution to agreed upon issues (if any) must apply to the economy broadly, not to narrow segments of the economy. Any solution must also be broadly agreed to by countries to minimize double taxation and controversy, therefore the G20-OECD Inclusive framework is the best forum for this discussion. The EU itself recognizes the importance of a multilateral approach.”

Hampi Notes Importance of Free Data Flows for Economic Growth

The OECD hosted its Global Forum on Trade on October 22 in Paris, which focused on Trade in the Digital Era and included sessions on digital transformation and what it means for trade, measuring digital trade, data flows, and discussing priorities for trade policy makers.

USCIB Senior Director for Trade, Investment and Financial Services Eva Hampi participated in the event as a panelist in the session on data flows. Fellow panelists included Deputy Assistant USTR for Telecommunications Policy Jonathan McHale, Head of Unit, Services, Director General for Trade Christophe Kiener, and Senior Policy Advisor, European Digital Rights Maryant Fernandez Perez.

“Free flow of data and information is critical for economic development and growth, and that data should be allowed to flow across borders in a secure manner,” said Hampi. “The free flow of data is now a central part of global value chains and a major requirement for a wide range of manufacturing and services industries. Consultation with business in the regulatory process is key in avoiding detrimental and counterproductive effects of problematic localization measures.”

“Looking forward, useful work in international forums includes continuing to address these issues in the G20, progressing the WTO E-Commerce initiative, and the OECD playing an important role not only in defining and quantifying these important issues, but also educating particularly non-OECD countries about the value of free data flows,” she added.
As data breaches are increasingly more common, business-to-business ("B2B") disputes arising from security incidents between companies are also on the rise. Given this, USCIB’s Arbitration Committee hosted a luncheon with Squire Patton Boggs on October 3 focusing on arbitrating B2B data breach disputes. The luncheon focused on the coming wave of data privacy and security disputes between businesses, the legal claims and defenses asserted in these cases and the key role of ADR in resolving these disputes.

The first panel, which was moderated by USCIB General Counsel, Nancy M. Thevenin, focused on the business problem of data breach disputes. Nancy Saltzman, general counsel and company secretary of EXL Service, advised businesses to review their new and old contracts for data breach provisions and risk allocations. Saltzman explained that a breach can occur internally within one’s own company via human or system error or externally via hacking.

Edward Chang of Cyber Risk Management at Travelers described how a breach may release a company’s sensitive information or personally identifiable information of its customers. Chang explained that in terms of insurance, this is a fast-moving field with about 70 different issuers that provide coverage for B2B data breaches. He specified that there are four basic schemes for coverage: (a) incident response; (b) business interruption losses; (c) fraud and business email compromise; and (d) liability. Both speakers agreed that it is not uncommon for companies to quickly go through $10 million worth of coverage where a breach occurs.

The program emphasized the importance for businesses to focus on and negotiate the data breach provisions of any contract in which they are providing access to their data and to consider obtaining insurance to protect against data breaches. The program also emphasized using ADR to resolve these disputes. For example, using the standard ICC arbitration clause followed by provisions for the place of arbitration, applicable law, number of arbitrators with required expertise and language would be a sufficient starting place.
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Giblin Contributes to Setting Principles in APEC Transit Guidelines

USCIB represented industry at a workshop that was organized by Chilean Customs addressing Asia Pacific Economic Cooperation (APEC) Transit Guidelines. USCIB Director Customs and Trade Facilitation Megan Giblin attended the workshop which was held in San Pedro de Atacama, Chile, September 11 – 12, 2018.

Giblin participated in a panel with Chilean and Chinese Customs as well as World Customs Organization (WCO) representatives addressing the challenges and gaps on implementation of the APEC Customs Transit Guidelines. The event included participants from several APEC economies, including Chile, China, Indonesia, Mexico, Peru and Vietnam, in addition to a handful of domestic Chilean industry representatives.

“USCIB participation in this event was critical in providing industry inputs into the process and is consistent with our longstanding engagement and leadership on customs and trade facilitation matters within APEC,” said Giblin. “The dialogue resulted in a positive discussion and a general consensus on the ‘guidelines.’ These ‘guidelines’ are now viewed as ‘guiding principles’ and next steps among all parties, as well as secured a path forward for this issue as Chile takes on the APEC presidency in 2019.”

Op-Ed Dispels Myths of Business “Conflict of Interest” at UN continued from page 4

However, Robinson noted, “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.”

Another myth is having business organizations in the room results in “undue influence” and “interference” with policy outcomes. But Robinson points out that well-designed, effective and efficient policies depend on well-informed policymakers. 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.

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.

As trade disruptions over the past year have escalated, more USCIB members have raised concerns about the potential impact on the WTO and how business can help move forward reforms at the WTO

Wilson also outlined some of the areas the U.S. sees as needing reform in the WTO, including concerns with the Appellate Body.

“As trade disruptions over the past year have escalated, more USCIB members have raised concerns about the potential impact on the WTO and how business can help move forward reforms at the WTO,” said USCIB Senior Vice President for Policy and Government Affairs Rob Mulligan. “Our discussion with Chris helped clarify U.S. government views and informed us, as well as our members, of possible steps to take.”

Members of USCIB’s Trade and Investment Committee sat down with Chris Wilson, deputy chief of mission at USTR’s Geneva office, on August 30 in Washington. The meeting was an opportunity for USCIB to receive the latest developments at the World Trade Organization (WTO) and to raise questions regarding specific U.S. government negotiations or initiatives underway in Geneva.

Wilson highlighted some of the areas that the U.S. delegation is “actively and constructively” working on with the WTO, such as multilateral negotiations to develop new disciplines with respect to subsidies that contribute to over-fishing and an emerging plurilateral initiative on e-commerce.

L-R: Rob Mulligan (USCIB), Chris Wilson (USTR)
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USCIB Defends Pro-Investment Policies at UNCTAD

USCIB Vice President for Investment and Financial Services Shaun Donnelly was in Geneva October 22-26 leading international business advocacy efforts at the annual World Investment Forum (WIF) hosted by the UN Conference on Trade and Development (UNCTAD). Donnelly led a small, but outspoken, group of business representatives, including the European Service Forum and BDI, Germany’s large business organization, and participated in a few sessions, being a constant business presence throughout the course of the week.

According to Donnelly, UNCTAD seems to remain a forum dominated by developing country representatives, academics, and non-government organization activists, often with anti-business orientations. UNCTAD did however include some leading CEOs from Novartis, Nestle, DeBeers and Ethiopian Airlines on opening plenary panels, all of whom provided excellent remarks on why and how major businesses invest abroad.

“We spoke up on the indispensable role Foreign Direct Investment (FDI) plays in financing economic development and providing critical capital for achieving the UN’s Sustainable Development Goals (SDGs) in developing economies,” noted Donnelly.

USCIB members, friends and staff are mourning the loss of Bruce Wilson, an innovator in international trade, logistics and insurance who headed USCIB’s ATA Carnet department for more than a decade. Wilson passed away on October 17 at age 87.

“Bruce Wilson was a big part of my life and that of the USCIB,” said USCIB President and CEO Peter M. Robinson. “We learned a lot from his acumen, business sense and creativity.”

ATA Carnets are international customs documents than enable the temporary, duty-free importation of numerous types of products – including goods for trade shows and product demonstrations, as well as professional equipment – to scores of countries and customs territories for up to one year. The worldwide ATA Carnet system is overseen by the International Chamber of Commerce (ICC) and the World Customs Organization (WCO).

Joining USCIB as director of Carnet operations in 1987, Wilson helped to significantly expand and strengthen the organization’s role as the U.S. national guaranteeing association in the worldwide ATA Carnet system. The company he founded, Corporation for International Business, serves as one of two recognized USCIB service providers for ATA Carnets (the other is Roanoke Insurance Group, Inc.). Wilson traveled extensively, representing USCIB at ICC and WCO gatherings, developing a deep understanding of both North American and international surety markets. One of his many accomplishments at USCIB was the development and implementation of a bilateral agreement between the United States and Taiwan that mirrors the ATA Carnet system, thereby opening Taiwan to additional U.S trade and trade promotion.

“Bruce helped and mentored many people around him,” said Glendy Sung, USCIB’s director of Carnet operations. “His impact on others was exceptional.”

Darren Maynard, who has worked for several years with USCIB on the global development of the ATA Carnet system, added: “It is a significant loss to the Carnet world. Bruce helped shape the industry into what it is today.”

Wilson is survived by his wife Kathleen; a son Curt; daughters Leslie August and Moira; his former wife, Kathryn M. Hamann; and grandsons Nikolai, Henry, Chuck and Harrison.

New USCIB Members

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

Astellas US LLC
Cruise Automation
Steptoe & Johnson LLP

To learn more about how USCIB membership can benefit your organization, contact Alison Hoiem (202-682-1291 or ahoiem@uscib.org).
**december 2018**

3 – 14  UNFCCC Conference of the Parties (COP-24)  Katowice, Poland
11  USCIB International Leadership Award Dinner, New York, NY
12  USCIB ICT Committee Meeting, Washington DC
12  The USCIB Foundation Annual Meeting of the Board of Directors, New York, NY
19  Joint meeting: USCIB’s Environment Committee and International Product Policy Working Group, New York, NY or Washington, DC (TBC)

**january 2019**

22 – 25  World Economic Forum, Davos, Switzerland

**february 2019**

23 – 3/8  APEC SOM-1, Santiago, Chile
27 – 28  ICC Academy’s 8th Supply Chain Finance Summit, Singapore, Singapore

**march 2019**

11-15  4th UN Environment Assembly (UNEA4), Nairobi, Kenya
18 –??  USCIB Corporate Responsibility and Labor Affairs Committee Meeting, Washington, DC (exact dates TBC)
29  Going Digital: OECD Insights for a Changing World” Washington DC

**april 2019**

8 – 11  ICC Banking Commission Annual Meeting, Beijing, China

**may 2019**

6 – 18  APEC SOM 2, Ministers responsible for trade and related meetings, Valparaiso, Chile
29 – 31  ECOSOC 2019 Session, Geneva, Switzerland

**june 2019**

3 – 4  USCIB/BIA/USCIB Tax Conference, Washington DC