U.S. BUSINESS IN ASIA: SUPPORTING TRADE, INVESTMENT AND GROWTH

JULY 2019

SUMMARY OF RECOMMENDATIONS

1. STRENGTHEN U.S. ENGAGEMENT IN THE REGION

- Active participation by U.S. government representatives in bilateral and regional fora
- Support for key U.S. government agencies involved in promoting trade and investment
- Funding of key U.S. government agencies assisting the U.S. trade and investment agenda

2. TRADE AGREEMENTS

- Recognize the benefits of trade and investment in the U.S.
- Consider the needs of SMEs in advancing trade agreements
- Recognize the importance of trade agreements to the U.S. economy
- Launch new bilateral trade agreements with countries in the Asia-Pacific
- Seek an early and mutually beneficial resolution to the U.S.-China trade dispute
- Support U.S. participation in regional trade agreements, such as CPTPP
- Recognize the disadvantage to the U.S. in staying out of regional trade agreements
- Support multilateral trade efforts, particularly the WTO initiative on e-commerce

3. TRADE AND INVESTMENT ISSUES

- Work to remove discriminatory policies in national markets that raise the cost of and/or block U.S. export and investment
- Continue efforts to strengthen IPR protection
- Consider measures to promote optimal supply chain management in the application of trade measures to allow U.S. firms to be internationally competitive, including on customs and trade facilitation, and in allowing flexibility in supply chain structure
- Promote regulatory consistency across multiple markets to support more rapid export growth
- Encourage better transparency and governance in Asia-Pacific countries
- Encourage investment in the U.S. with clear, predictable regulation and an efficient review and approval process

4. SAFEGUARD THE DIGITAL ECONOMY

- Advance digital economy issues in trade and investment discussions
- Avoid forced localization of data, systems, and facilities, and preserve cross-border data flows for storage and processing
- Support the development of e-commerce via improved payment systems and customs clearance processes
- Avoid unilateral digital taxes, which ring-fence the digital economy, and collaborate with the OECD to support a long-term, multilateral approach.

5. INFRASTRUCTURE DEVELOPMENT

- Finalize the opening of the new U.S. International Development Finance Corporation as soon as possible and initiate projects in Asia.
- Utilize cooperation on infrastructure between the U.S., Japan and Australia to select and fund projects in Asia
- Advance digital, energy and infrastructure connectivity in the Indo-Pacific through cooperation with industry and regional governments

6. MEASURES TO ENCOURAGE THE OPENING OF SPECIFIC SECTORS

- Build a policy framework to encourage competitive telecommunications supplies from across the Asia-Pacific
- Eliminate barriers to financial services, such as caps on ownership levels and limits on products, services, and distribution
- Work with other governments to resolve cross-border regulatory issues and reduce fragmentation in financial markets
- Support efforts by the agricultural sector to increase exports, including through the use of science-based food safety regulations

7. U.S. TAXATION

- Enact a territorial taxation or residence-based taxation with respect to U.S. citizens who are residing overseas to bring the U.S. in line with other developed countries
- Advance proposed regulations to GILTI, which offers partial relief to small business owners abroad, and work towards a more comprehensive solution, such as an exception based on residence
- Reform FATCA comprehensively or support specific reform proposals, including a Same Country Exemption (like that of the Common Reporting Standard)

U.S.-ASIA PACIFIC TRADE

62%
of American exports go to the Asia-Pacific

American-based businesses exported over
$637 billion
of goods and services to the Asia-Pacific in 2016

Over
3.5 million
American jobs are supported by goods and services exports to the Asia-Pacific

39
American states
send a quarter or more of their exports to Asia

ASIA-PACIFIC: A GROWTH MARKET

Asia-Pacific annual GDP growth through 2020 projected at
6.2%

60%
of Global Infrastructure Spending Goes into the Asia-Pacific

By 2030,
59%
of global middle class consumption will be a result of middle class spending in the Asia-Pacific

95%
of the world's consumers live outside the United States

The Asia-Pacific Council of American Chambers of Commerce (APCAC)

Representing 28 American Chambers of Commerce (AmChams) in Asia and over 15,000 company members, APCAC supports policies and initiatives that make it easier for American companies to do business in Asia, the fastest-growing region in the world. The AmChams also assist member companies from Asia in trading with and investing in the United States, supporting greater trade, investment, and growth in the U.S.

EXECUTIVE SUMMARY

At the heart of APCAC's message is that free, open, fair and reciprocal trade practices that put companies on a level playing field leads to greater trade, investment, and growth. This translates directly into more exports of goods and services, and more jobs.

U.S. trade with Asia supports over 3.5 million U.S. jobs through agricultural exports, manufacturing, and services. This number will rise as trade expands in this fast-growing region. Improving market access, strengthening protections for investors, and removing tariff and non-tariff barriers will promote trade and investment, and stimulate economic growth. Predictable regulation and a rules-based system are also important.

U.S. firms are very invested in the Asia region. In 2017, U.S. investments in the Asia-Pacific were valued at approximately $941.2 billion. (Source: Statista.com). The U.S. exported $509 billion in goods to Asia in 2018, and around $200 billion in services to the major Asian markets of China, India, Japan, Korea, Hong Kong, Singapore, and Taiwan.[1]

The recommendations in this report focus on initiatives to promote business for members of APCAC for the benefit of the U.S. and Asia. In particular, we call for U.S. participation in trade agreements; high- standard trade rules that take into account next generation technology; strong diplomatic and commercial engagement between the U.S. and Asia; critical tax and regulatory reform by the U.S. government; and recognition of the regional impact that trade frictions between the United States and China will have on American business.

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[1] https://www.census.gov/foreign-trade/Press-Release/current_press_release/exh20b.pdf

SECTION 1:
STRENGTHEN U.S. ENGAGEMENT IN THE REGION

Government-to-Government Engagement

Engagement with the region by the Administration, Congress, and officials is essential. Trips to the region, and participation in regional organization, underline U.S. commitment to the region. The President, Vice President, and the Cabinet have made many visits to the region. The business community appreciates the significant time and resources the Administration spends engaging with officials at all levels, and with the American business community operating in the region. We encourage the continuation of this high-level engagement. The active participation of the U.S. Administration in the main regional multilateral fora, such as APEC and ASEAN, is vital. The AmChams in Asia urge high-level participation in sectoral dialogues and leaders' summits by Cabinet members and senior U.S. government officials in these organizations. AmChams are always happy to host visiting delegations of the Administration and Congressional leaders, in addition to officials and think-tanks.

Recommendation:
Active participation by U.S. government representatives in bilateral and regional fora.

Supporting U.S. Agencies

U.S. embassies in the Asia-Pacific, and throughout the world, work to open new markets and protect existing rights for American corporations and their workers. Our first line of defense, American embassies, is essential for trade and investment. For large or small companies looking to make their first export sales or expand to additional markets, the American embassy offers the trade counseling, market intelligence, industry matchmaking, and commercial diplomacy needed to connect with business opportunities. The U.S. State Department supports the work of embassies and the development of relations between U.S. and foreign governments. USAID plays a key role in improving the lives of those in need in countries around the world. The United States Trade Representative Office (USTR) plays a crucial role in protecting and advancing U.S. interests in trade agreements. The impact of this work ripples throughout the U.S. economy by broadening and deepening the U.S. exporter base, removing obstacles to the export success of American companies, advancing U.S. business interests around the world, attracting foreign direct investment, and supporting job creation throughout small towns and large cities across the United States.

Recommendation:
Support for key U.S. government agencies involved in promoting trade and investment.

Staffing U.S. Agencies

To promote robust engagement, we need strongly staffed agencies in the U.S. and overseas. Many key positions in Washington and overseas have still not been filled, including key policy positions on Asia in Washington and key ambassadorial positions in Asia. Finalization of appointments enables the U.S. to pursue effective enforcement of existing rules, maintain a leadership position in policy and negotiating forums, and compete effectively as other countries maintain or expand their export-support programs. APCAC encourages the U.S. Administration and Congress to provide substantial funding for the U.S. Departments of State and Commerce, and USAID, Office of the U.S. Trade Representative, and the U.S. Trade and Development Agency. We welcome the passing of the U.S. BUILD Act and the creation of the U.S. International Development Finance Corporation (DFC), and encourage staffing of related agencies as soon as possible.

Recommendation:
Funding of key U.S. government agencies assisting the U.S. trade and investment agenda.

SECTION 2:
TRADE AGREEMENTS

Benefits of Trade

Trade agreements are key to establishing free, open, fair, and reciprocal trade practices that put companies on a level playing field, which leads to greater trade, investment, and growth. This translates directly into more exports of goods and services, and more jobs. U.S. trade with Asia supports over 3.5 million U.S. jobs through agricultural exports, manufacturing, and services. This number will rise as trade expands in this fast-growing region. Improving market access, strengthening protections for investors and removing tariff and non-tariff barriers will promote trade and investment, and stimulate economic growth. Predictable regulation and a rules-based system are also important.

Recommendation:
Recognize the benefits of trade and investment in the U.S.

The SME Dimension

Small and medium-sized enterprises (SMEs), one of the primary drivers of job growth in the U.S., also benefit from trade agreements. Too often, SMEs are locked out of important foreign markets when they try to export their made-in-America goods, due to unnecessarily high duties and non-tariff trade barriers. While 98% of the American companies that export are SMEs, fewer than 5% of SMEs export. That means there's huge untapped potential for SMEs to expand their businesses by exporting more to the 95% of global consumers who live outside of U.S. borders. International trade negotiations should pay particular attention to reducing barriers to trade that disproportionately affect smaller firms. These barriers include high tariffs and taxes, unnecessarily complex regulatory requirements, corruption, customs "red tape", restrictions on cross-border data flows, weak logistics services that raise costs, and slow delivery of small shipments. Regulatory harmonization across markets would provide a special boost for American SME exporters.

Recommendation:
Consider the needs of SMEs in advancing trade agreements.

A Mix of Agreements

APCAC urges the Administration to consider a mix of bilateral, regional, and multilateral engagement on trade. One of the greatest deterrents to exporting, especially by competitive U.S. small and medium-sized enterprises (SMEs), is the complexity of different trade rules for every single market. Bilateral trade deals are effective at opening markets on a one-by-one basis, but regional trade deals are better at simplifying the process of exporting to multiple markets. Accordingly, APCAC urges the Administration to focus on opening bilateral markets while simplifying the process of exporting through regional and global agreements.

Recommendation:
Support regional and global agreements in order to simplify the export process.

Support Trade Agreements

APCAC members welcome the opportunity to work with the Administration and Congress to support trade agreements in the region. In supporting trade agreements, the U.S. government and lawmakers can take a direct and conclusive step toward strengthening the American economy by further opening markets and establishing standards that underpin fair competition. Trade agreements can help lower tariffs; expand market access for firms, as well as products and services; update rules for services, protect intellectual property; support digital trade; promote labor and environment standards; encourage regulatory transparency; open up government procurement; remove domestic content requirements; avoid localization requirements; and address unfair competition stemming from government support of state-owned enterprises (SOEs). Growing U.S. participation in international trade and investment agreements will also transmit American standards and values abroad, which will strengthen regulatory regimes and provide more transparency and certainty for U.S. exporters and American companies with supply chains in the Asia-Pacific region.

Recommendation:
Support for key U.S. government agencies involved in promoting trade and investment.

Bilateral Agreements

On the bilateral front, the three U.S. free trade agreements with countries in the region—Australia, South Korea, and Singapore—have proven track records of opening those markets to U.S. goods and services, and improving our balance of payments in each market. In this respect, we applaud the launch of negotiations for a U.S.-Japan bilateral trade agreement and call for it to be a new "gold standard" trade agreement. We also note the consideration of other bilateral trade agreements with countries in the region, including Vietnam. A bilateral trade agreement with Vietnam would allow many of the commitments between the U.S. and Vietnam from the TPP to be included and for additional commitments to be made.

Recommendation:
Continue progress toward new bilateral trade agreements with countries in the Asia-Pacific.

U.S.-China Trade

The U.S. and Chinese economies, as two of the world's largest economies, are deeply intertwined and trade between the two countries supports significant business for American companies and 2.6 million American jobs. Still, APCAC supports efforts to address China's market access barriers, protectionism, opaque regulatory requirements, discriminatory enforcement, and support for the state sector—all of which have created a troubling and un-level playing field for American companies. We encourage both sides to work together to find solutions to long-standing problems and find a way forward for the benefit of both. The extra costs associated with tariffs and the management of tariffs, as well as the redirection of trade to other countries as a result of tariffs, causes great difficulties for business.

Recommendation:
Seek an early and mutually beneficial resolution to the U.S.-China trade dispute.

Regional Agreements

At the regional level, the U.S. needs to be involved in multi-party negotiations to achieve the most favorable results for American exporters and to be party to the next generation of agreements. This will ensure that U.S. companies can remain competitive and are not shutout of opportunities that our rivals will enjoy. Recognizing the value to U.S. companies of adopting a consistent approach to high-level trade and investment standards across a major trading region, APCAC reiterates the long-standing call for the Administration and Congress to bring the United States into the Trans-Pacific Partnership (TPP), now known as the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP)[i] . The Administration could also consider participation in the Regional Comprehensive Economic Partnership (RCEP)[ii] and support efforts toward a Free Trade Agreement of the Asia-Pacific (FTAAP)[iii].

Recommendation:
Support U.S. participation in regional trade agreements, such as CPTPP.

[i] The CPTPP is welcome as a high quality agreement which brings together 11 countries in a high growth region, namely Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.
[ii] There may be opportunities for the U.S. to be part of the Regional Comprehensive Economic Partnership (RCEP), which brings the 10 countries of ASEAN together with China, Japan, Korea, India, Australia and New Zealand.
[iii] In the longer term, a Free Trade Area of the Asia Pacific (FTAAP) bringing together a broader range of countries in the region could be possible. Work is being done in the Asia Pacific Economic Cooperation (APEC) group on the building blocks towards this, which the U.S. government could support.

America Risks Falling Behind

As other governments conclude regional agreements that exclude the United States, our exporters face growing competitive threats in Asian markets that are collectively home to more than four billion potential customers. The lack of U.S. participation in the CPTPP has, for example, slashed the nation's food and agriculture exports by $1.8 billion per year, according to a new report from the Farm Foundation and Purdue University's Global Trade Analysis Project. Many of the EU agreements are providing challenges to the U.S. dairy industry and would require controversial geographic indicators for dairy products. These EU agreements include the EU-Vietnam agreement, as well as the EU-Singapore agreement, both of which are moving towards entry into force.

Recommendation:
Recognize disadvantages to the U.S. in staying out of regional trade agreements.

Global Trade Agreements

Global trade agreements are equally important to U.S. firms. We support efforts to reform the WTO to make it more effective and able to deal with changes that have occurred since its establishment. The WTO plays a key role in the maintenance of a rules-based order for all and, as such, an effective WTO remains central to the international trading system. Sectoral agreements can help overcome blockages at the WTO. We welcome, for example, the proposed e-commerce agreement of the WTO, which includes 14 Asia-Pacific countries and will deal with important trade issues associated with the growth of the digital economy. Advancing the Trade in Services Agreement (TISA) would also help firms address important issues.

Recommendation:
Support multilateral trade efforts, particularly the WTO initiative on e-commerce.

SECTION 3:
TRADE AND INVESTMENT ISSUES

Discriminatory Policies

Discriminatory domestic tariffs in national markets and other restrictions raise the cost of American exports. APCAC urges the U.S. Administration and Congress to engage with governments throughout the Asia-Pacific to eliminate or lower unfair import tariffs and levies on the goods that U.S. workers produce. APCAC also supports prohibiting tariffs on digital products (such as software, music, video, and e-books) in order to promote digital trade and e-commerce, the avenues through which many businesses and consumers access the global marketplace. Removal of joint venture requirements and equal ability to provide products and services and access distribution are also key.

Recommendation:
Work to remove discriminatory policies in national markets, which raise the cost of and/or block U.S. export and investment.

Strengthen IPR Protection

APCAC urges the Administration to work with governments in the Asia-Pacific to strengthen protection of intellectual property, pressing for better rules and more vigorous enforcement. Strong copyright protections and patentability standards are essential to protect U.S. innovators, along with the jobs and solutions to global challenges that they generate. The rights of creators must be respected by establishing clear protections for copyright works, such as songs, movies, books, and computer software. The U.S. must continue to lead in the development of new business models for distributing creative content that keeps pace with evolving technology. It is also essential to establish copyright safe harbors for Internet service providers (ISPs) to develop their business, while also helping to address Internet copyright infringement in an effective manner. APCAC urges the U.S. Administration to continue its anti-counterfeiting efforts, tracking of IPR infringements, and imposing strong measures against countries with widespread violations of IP rights.

Recommendation:
Continue efforts to strengthen IPR protection.

Supply Chain Management

As industry transforms, there are shifts in supply chains. More frequent and just-in-time delivery of smaller value items as part of the digital economy requires regional or national supply chains and logistics. Businesses need to be able to choose the best location for manufacturing and distribution, based on client needs and competition. That means maintaining supply chains and logistics in Asia, in addition to the U.S. and other major markets, like Europe. The shifting of supply chains is also a complicated and expensive process that takes times. Decisions about supply chains should be left to companies to make based on their business and customer needs.

Specific measures that would help optimize supply chain management include:

- Improved customs clearance and trade facilitation for components, equipment and final products to be imported and exported, such as the streamlining of administrative and documentation procedures, customs border requirements and licensing formalities.
- Regulatory frameworks which allow recognition that multinationals can structure their supply chain and business operating models differently as they respond to global trends.
- Appropriate training and education of employees in component manufacturing, which requires depth of precision and highly developed skills, to create more value-added benefits for a country's economy.
- Promotion of emerging sustainable supply chain movements that support refurbishment and repair activities in-country.

Recommendation:
Consider measures to promote optimal supply chain management in the application of trade measures to allow U.S. firms to be internationally competitive, including on customs and trade facilitation, and in allowing flexibility in supply chain structure.

Promote Regulatory Coherence

APCAC encourages the development of an open, fair, and predictable regulatory environment for American companies operating in Asia-Pacific markets. Principles such as transparency, impartiality, and due process in administrative procedures and investigations are crucial. In addition, promoting regulatory consistency across multiple markets will support more rapid export growth, particularly for U.S. SMEs. Countries should be encouraged to use international best practice as often as possible. Extra-territorial application of regulations should be discouraged. Cross-border issues should be resolved to avoid fragmentation.

Recommendation:
Promote regulatory consistency across multiple markets to support more rapid export growth.

Support Transparency and Good Governance

APCAC recommends that the Administration promote good governance and address the corrosive effects of bribery and corruption on economic activity and the un-level playing field that results. Key areas of focus include ready access to information about the laws, regulations, and other rules affecting trade or investment in regional markets; guarantees of due process rights; existence and enforcement of anti-bribery laws; and rules against conflicts of interest in government. Continued enforcement of the Foreign Corrupt Practices Act and capacity building for the enforcement of regional anti-money laundering statutes will be a win-win and will not only benefit U.S. businesses operating abroad, but will also benefit the economies in the Asia-Pacific region. Other countries should be encouraged to adopt anti-corruption regulations.

Recommendation:
Encourage better transparency and governance in Asia-Pacific countries.

Support Investment in the U.S.

Foreign Direct Investment in the U.S. contributes to U.S. jobs, exports and innovation. The U.S. remains the largest single recipient of FDI in the world at $4 trillion (2017 figures). As noted by Select USA, as the global economy has developed, the U.S. must actively compete to retain and attract new investment. In reviewing foreign investment in the U.S., a balance needs to be struck between encouraging investment and protecting national interests. The changes to the Committee on Foreign Investment in the U.S. (CFIUS) threaten to increase the number of projects that need to be reviewed significantly–from dozens into the thousands. The time of review is also expected to increase significantly, preventing firms from making decisions about other investments. Some firms are deciding not to invest in the U.S. due to the difficult and unpredictable review process. As the U.S. needs to compete for investment with other countries around the world, APCAC requests a streamlining of the review and approval process to ensure that the U.S. remains an attractive destination for foreign investors.

Recommendation:
Encourage investment in the U.S. with clear, predictable regulation and an efficient review and approval process.

SECTION 4:
SAFEGUARD THE DIGITAL ECONOMY

The digital economy is impacting every sector, from manufacturing to financial services to agriculture, and spurring growth in every economy. APCAC urges the Administration to engage with industry, and other like-minded countries, to design high-standard, practical policies relating to the digital economy. We welcome the inclusion of digital economy issues in trade agreements such as the Korea-U.S. Free Trade Agreement (KORUS), the Comprehensive and Progressive Trans Pacific Partnership (CPTPP) and the United States-Canada-Mexico Agreement (USMCA), and in the trade negotiations between the U.S. and Japan. We also welcome the launch of the WTO discussions on e-commerce. Issues such as data management policies, taxes on digital products and services and e-commerce need to be resolved if the benefits of the digital economy are to be realized.

Recommendation:
Advance digital economy issues in trade and investment discussions.

E-commerce

The development of cross-border e-commerce in the Asia-Pacific has the potential to change the way in which businesses and consumers conduct commercial transactions. This benefits small and medium-sized enterprises (SMEs) in particular, by enabling them to reach beyond a local customer base and access global markets. Consumers also benefit by being able to choose from a wider range of goods more conveniently and more cost effectively. More should be done to encourage cross-border e-commerce in the region. From investing in physical transport infrastructure to supporting last mile delivery, to broadening internet access, and developing a secure and interoperable payments ecosystem, there are a range of measures governments in the region can take to support e-commerce. APCAC asks that the Administration push policies that preserve the single, global, digital marketplace and include cutting edge rules to promote Internet-based commerce, a central area of American leadership, and one of the world's great opportunities for growth. In particular, simplifying and expediting customs clearance processes for low-value shipments and increasing de minimis thresholds would help enable e-commerce in the region.

Recommendation:
Support the development of e-commerce via improved payment systems and customs clearance processes.

Data Flows

Cross-border data flows are key to the digital economy. The issue impacts every sector, as well as individuals, SMEs, and large multinationals. Firms use regional and global data centers for storage and processing. This allows service to be offered 24/7, work to be shifted based on need, back-up for business continuity purposes, the utilization of specialized skills, and better cyber security. Cross-border data flows benefit small and large firms alike. Many SMEs need to transfer data overseas, as they rely on cloud services offshore, which offer low cost, secure services and allow firms to concentrate on business.

Some countries are proposing or adopting forced localization of data, systems, and facilities. This results in greater costs, as well as inefficiencies and less security. Sometimes, countries are proposing on-shoring to address cyber security privacy and access concerns. The location of data does not impact either. Data management, rather than its location, determines whether privacy is protected. Additional entry points are created for cyber criminals with additional onshore locations. In addition, back-up cannot be provided to manage disruptions due to natural disasters and conflict. A 2018 Brookings Institution study finds that data localization often prevents companies from adequately ensuring data resilience, data recovery, and business continuity by severing connections with key data centers located around the world. As for access to information, firms can provide data within agreed time frames for regulatory, legal, or supervisory purposes, particularly regulated entities, like financial services firms. The language in the USMCA on data flows provides a good basis to go forward at the bilateral, regional, and global levels.

Recommendation:
Avoid forced localization of data, systems, and facilities, and preserve cross-border data flows for storage and processing.

Digital Tax

As "digital companies" grow and scale in response to changes in consumer behavior, traditional retail business models are coming under pressure and, as a result, are increasingly digitalizing their business operations. In response to these developments, there has been considerable discussion concerning the taxation of the digitalization of the economy. The OECD concluded early in its work on Action 1 of the BEPS Project, "Addressing the Tax Challenges of the Digital Economy", that it is not possible to "ring fence" the "digital economy" in the context of international tax policy. That is why the OECD now consistently refers to the tax challenges arising from the "digitalized economy": the entire economy is now the "digitalized economy".[2] Recent academic research has also concluded that the average corporate tax rates of enterprises with highly digitalized business models do not differ substantially from those of more traditional enterprises.[3] However, there continues to be a political push for change in the area of international tax. In response to this dynamic, various countries have proposed unilateral measures, typically in the form of revenue-based taxes that specifically target these so-called "digital companies".

It is widely accepted that these unilateral revenue-based taxes are not a long-term sustainable solution, and most countries have stated that they would prefer an internationally agreed consensus on the taxation of profits. As a result, the OECD is working on a solution for long-term reform of the global international tax system that takes into account the rapid digitalization of the global economy. If such consensus-based reform can be achieved, it is expected that the political desire to implement short-term unilateral digital tax measures, such as a Digital Services Tax (DST), as proposed by the European Commission and other countries, would be reduced. Due to the fact that any revenue-based or unilateral measures will inevitably result in unavoidable instances of multilayer taxation, will apply regardless of actual profitability, and likely cause significant cross-border disputes and market distortions, governments should instead endeavor to collaborate with the OECD to support the long-term, multilateral approach that various countries are working to develop.

Recommendation:
Avoid unilateral digital taxes that ring-fence the digital economy and collaborate with the OECD to support a long-term, multilateral approach.

[2] OECD (2018), Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264293083-en (hereinafter the "OECD 2018 Report").
[3] Dr. Matthias Bauer, Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions, European Centre for International Political Economy, ECIPE Occasional Paper, March 2018 http://ecipe.org/app/uploads/2018/02/ECI_18_OccasionalPaper_Taxing_3_2018_LY08.pdf.

SECTION 5:
INFRASTRUCTURE DEVELOPMENT

Asia has great infrastructure needs. There are a range of initiatives in the region, including the China-sponsored Asia Infrastructure Investment Bank (AIIB) and the Belt and Road Initiative (BRI), as well as the Silk Road Fund. Asian Development Bank, the World Bank, and the International Finance Corporation are also involved. Development aid from governments like Japan is also promoting infrastructure. The U.S. could play a key role in infrastructure development in the region. Several initiatives position the U.S. well. Greater U.S. involvement in emerging forums, such as the Asian Infrastructure Investment Bank (AIIB), where there is an opportunity for U.S. companies, as well as institutions such as Asian Development Bank (ADB), where the U.S. has traditionally played a key role, would be welcome along with concrete action on U.S. initiatives.

Support for U.S. Build Act

We welcome the enactment of the Better Utilization of Investments Leading to Development (BUILD) Act of 2018 and look forward to the opening of the new U.S. International Development Finance Corporation (DFC) in October 2019. The new authorities afforded to the DFC will transform OPIC into a stronger institution in supporting economic development throughout the Asia-Pacific region and globally. Raising the DFC's maximum contingent liability to $60 billion and allowing equity investments are key tools that the American private sector anticipates using to both expand our business in the region and promote growth. We encourage the U.S. Administration, via the DFC, to prioritize deals in the Asia-Pacific area and proactively engage APCAC on ways to increase the DFC's business in the 11 low and lower-middle income economies under our mandate.

Recommendation:
Finalize the opening of the new U.S. International Development Corporation as soon as possible and initiate projects in Asia.

Support for Trilateral Partnership for Infrastructure

APCAC applauds the initiative taken by the governments of the U.S., Japan, and Australia to partner on infrastructure in third countries (the Trilateral Partnership). We note plans for the U.S. and Australia to work together on port redevelopment in Papua New Guinea and in other areas in the South Pacific. In particular, APCAC supports the aim to consult with governments in the region to identify infrastructure projects for potential development and to mobilize private sector investment capital to help deliver such projects.

Recommendation:
Utilize cooperation on infrastructure between the U.S., Japan, and Australia to select and fund projects in Asia.

Support for Indo-Pacific Projects

APCAC welcomes the U.S. Indo-Pacific strategy – including the funding commitments to promote digital, energy and infrastructure connectivity in the Indo-Pacific – as a further demonstration of U.S. commitment to the region. In particular, the creation of a new interagency body via the Infrastructure Transaction and Assistance Network should strengthen U.S. tools for project scouting, financing, and technology assistance in infrastructure development. So too should the new Indo-Pacific Transaction Advisory Fund to help partners access private legal and financial advisory services, which will provide countries with tools as they consider infrastructure funding offers.

Recommendation:
Advance digital, energy, and infrastructure connectivity in the Indo-Pacific through cooperation with industry and regional governments.

SECTION 6:
MEASURES TO ENCOURAGE THE OPENING OF SPECIFIC SECTORS

Support Telecommunications Frameworks for Competitiveness

APCAC urges the Administration to build a strong framework of policies to help ensure the competitive supply of telecommunications services across the Asia-Pacific, benefiting U.S. telecommunications operators who seek to operate in the region, and all those industries in the U.S. that stand to gain from hundreds of millions of potential new customers accessible to them through such networks. This framework ensures that competition can take root and that anti-competitive conduct is discouraged.

Recommendation:
Build a policy framework to encourage competitive telecommunications supplies from across the Asia-Pacific.

Support Increased Financial Services

APCAC recommends that the Administration continue its ongoing efforts to open markets further for U.S. financial services providers, such as banks, securities firms, insurance, and payments. A lifting of market access restrictions to allow wholly owned ventures and the provision of additional products and services, as well as greater local distribution, is key to the success of financial services. There continue to be caps on the percentage of ownership American companies can hold in financial services companies in many countries around the Asia-Pacific region. Additionally, restrictive mandates to process transactions through domestic financial service providers puts American companies at a competitive disadvantage in local markets. In the spirit of reciprocity, the Administration should work to eliminate those barriers to trade. Also, APCAC is seeing a disconcerting trend across the region to adopt regulations that provide a right of first refusal or first order of preference to domestic financial services companies, many of which are state-owned enterprises, particularly in the area of reinsurance.

Recommendation:
Eliminate barriers to financial services, such as caps on ownership levels and limits on products, services and distribution.

Fragmentation

At the bilateral, regional and global levels, it is important is to make sure that the U.S. and other partnering countries approach the regulation of financial markets with the objectives of not only financial stability but also sustainable growth, in close partnership and cooperation with governments in the region to allow for flexible but efficient prudential regulation, including emergency measures in the event of financial crisis. It is important to avoid fragmentation and resolve cross-border issues in an interconnected financial services world. We note the G20 focus in 2019 under Japan's leadership on fragmentation.

Recommendation:
Work with other governments to resolve cross-border regulatory issues and reduce fragmentation in financial markets.

Support American Farmers

APCAC recommends that the Administration press for sound, science-based food safety export and import regulations. With America's food supply among the safest in the world, this will help partner countries protect the health and safety of their food and give American farmers and ranchers a fair chance to feed the region's people. We applaud the U.S. Department of Agriculture's (USDA) recent creation for an Undersecretary of Trade, and encourage U.S. agencies and financial institutions to provide more opportunities to leverage U.S. financing for the agriculture sector.

Recommendation:
Support efforts by the agricultural sector to increase exports, including through the use of science-based food safety regulations.

SECTION 7:
U.S. TAXATION

Adopt a Territorial (residence-based) Tax System for American Individuals

The U.S., unlike all other developed countries, imposes tax on the worldwide income of its citizens, even when they reside and work overseas. This unique system results in an un-level playing field as American citizens compete for jobs abroad—including at U.S. companies—with foreigners who are less expensive to employ. Imposing worldwide taxation on U.S. citizens based overseas undermines the competitiveness of U.S. companies and individuals, and results in fewer U.S. exports and fewer U.S. jobs.

As the Administration and Congress enacted a territorial tax system for U.S. corporations in 2017, so too should a form of territorial taxation or residence-based taxation be enacted with respect to U.S. citizens who are residing overseas, in line with the approach of every other developed country in the world. The Tax Fairness for Americans Abroad Act would do so, and would level the competitive playing field and promote U.S. exports and U.S. export sector job growth.

Recommendation:
Enact territorial taxation or residence-based taxation with respect to U.S. citizens who are residing overseas to bring the U.S. into line with other developed countries.

Review and Reform the Foreign Account Tax Compliance Act (FATCA)

FATCA's costly reporting requirements and its significant legal and financial risks can make it unprofitable for financial companies to serve Americans overseas. While the introduction of the Common Reporting Standard has somewhat leveled the playing field, APCAC urges lawmakers to reform the law comprehensively or support specific reform proposals, including a Same Country exemption, like that of the Common Reporting Standard.

Recommendation:
Reform FATCA comprehensively or support specific reform proposals, including a Same Country Exemption, like that of the Common Reporting Standard.

Transition Tax and GILTI

The Transition Tax and Global Intangible Low Taxed Income (GILTI) provisions, which were introduced as part of the Tax Cuts and Jobs Act of 2017, may result in double-taxation for American small business owners in Asia who own controlled foreign corporations or CFCs. In contrast, the Code provides some relief for domestic U.S. corporations that own CFCs. There is no support in the legislative history for the proposition that Congress was aware of the disproportionate tax burden that GILTI, in particular, would impose on individual owners of CFCs. We believe Congress or Treasury should consider providing an exception for such small business owners.

To provide additional detail: while the introduction of the Transition Tax and the Global Intangible Low Taxed Income provisions, as part of the Tax Cuts and Jobs Act of 2017, may have primarily targeted U.S. multinational corporations, they also apply to U.S. individuals operating a business through a foreign corporation, but without certain benefits that help U.S. corporations mitigate double taxation (e.g. an indirect foreign tax credit and certain deductions). Both provisions tax the U.S. individual on earnings generated by their foreign subsidiary (with the Transition Tax being imposed on the past accumulated earnings through December 2017 and GILTI being imposed annually on the current earning starting in 2018), even if no distribution is made by the foreign subsidiary. Both of these provisions can cause financial difficulties for American small business owners abroad, as they create phantom income (deemed income inclusion without a cash remittance), and some taxpayers may now have a significant tax liability but no cash on hand to pay.

In proposed regulations under Section 250, published March 4, 2019, Treasury provided partial relief. The proposed regulations make clear that individuals may elect to treat their ownership of a CFC to be held by a fictitious C corporation (a “962 election” and a “962 corporation”) for purposes of Subpart F and GILTI, thereby making it possible for the individual's GILTI income to be eligible for the 50% deduction under section 250. However, use of a section 962 corporation does not prevent the phantom income issue, since any earnings at the CFC level (even when not distributed) will be subject to Subpart F and GILTI taxation currently, regardless of whether or not there is distribution. Therefore, we would like to work towards a more comprehensive solution for American small business owners abroad, such as an exception based on residence. Still, the proposed regulations are welcome (even if partial) relief, and we request that these regulations be finalized as soon as possible, so small business owners can balance their tax obligations and business cash flow with minimum impact on business operations.

Recommendation:

Advance proposed regulations for GILTI which offer partial relief for small owners abroad and work towards a more comprehensive solution, such as an exception based on residence.

ABOUT APCAC

Established in 1968, the Asia-Pacific Council of American Chambers of Commerce is the association of 28 American Chambers of Commerce (AmChams) in the Asia-Pacific region.

APCAC's collective membership represents over 15,000 businesses, over 50,000 overseas American workers, and over 10 million employees. American enterprises provided over $620 billion in trade and investment in the APCAC region in 2016.

APCAC

ASIA PACIFIC COUNCIL OF AMERICAN CHAMBERS OF COMMERCE

ADVANCING REAL OPPORTUNITIES FOR AMERICAN BUSINESS IN THE WORLD'S MOST DYNAMIC REGION

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