



## ASIA-PACIFIC COUNCIL OF AMERICAN CHAMBERS OF COMMERCE

### 2013 Annual Report

#### **I. Overview**

The Asia Pacific region will be the primary engine of global economic growth over the coming decades. As a consequence, it is hard to overstate the vital importance of ensuring that the regional trade and broader regulatory architectures develop in a way that promotes cross-border investment, transparency and level playing fields for all market participants, and eliminates barriers that would discourage trade and market access. The United States, as a leading provider of goods and services that can address many of Asia's needs, must strongly advocate for such an environment. The Asia-Pacific Council of American Chambers of Commerce (APCAC) therefore applauds the United States' on-going pursuit of the Trans-Pacific Partnership (TPP) as a lynchpin of its trade strategy in the region. The vitality of the TPP is demonstrated by the recent invitation to Japan to join the 11 other TPP partners in negotiations. A firm and increasing commitment to the Asia-Pacific region, including via a strong and expanding the TPP, will allow companies to eliminate duplicative and unnecessary barriers, disseminate regional and international best practices and enhance our connectivity to most of the world's fastest-growing economies and customers. At the same time, the United States can further advance these goals by ensuring that U.S. measures, including tax policy and extraterritorial regulation of overseas activities, are carried out in a manner harmonized with global norms, and which put U.S. companies and individual workers on parity with their competitors. The United States can also work with its Asia-Pacific partners to advance growth through regulatory reform and initiatives in particular sectors.

#### **II. U.S. Engagement in Asia = U.S. Jobs**

Asia and the United States are inextricably connected by historical ties and common security interests as well as by the cross-border movement of people, data, goods, services, and capital.

The Asia region is the destination of 60 percent of U.S. exports. The region accounts for 60 percent of the world's GDP and 50 percent of global trade even though it contains only 40 percent of the world's population. More than fifty-seven million Americans work for companies that benefit from global exports, according to the U.S. Treasury. Leveraging these dense connections is crucial to sustaining the recovery in both Asia and the United States.

As Asian economies have prospered, American companies are realizing new opportunities. Their tested ability to operate in a large number of countries, bringing global standards of excellence and sensitivity to local cultures and economic conditions, is a powerful competitive advantage. Survey data shows that most American companies operating in China, for example, are there to produce for the local market. As ASEAN furthers its project of creating a unified market of 600 million people, American multinationals have a major opportunity to participate across the entire region. Japan, though it has experienced the slower growth typically seen in developed countries, remains the world's third-largest economy, and presents substantial opportunities for U.S. businesses, remaining the second-largest market outside the United States for many U.S. companies. Indeed, the most recent data shows growth, under the influence of "Abenomics", surging to an annual rate of 3.5 percent, as Japan is also poised to consider key structural reforms that if done right could further enhance opportunities for U.S. firms.

American firms in Asia have led in developing integrated supply chains that are efficient and highly responsive to shifts in demand. Contrary to U.S. public perception, the process of globalization produces employment growth in high quality jobs at home. U.S. Bureau of Economic Analysis data for the period 1988 through 2010 show that employment at overseas affiliates grew by 4.6 million (or 71 percent to a total of 11 million), and employment in the U.S. parent companies also grew by 5.3 million (or 29 percent to a total of 23 million). Average compensation in the U.S. parent companies was 20 percent above the average for all other jobs in the U.S. economy. ***Investing abroad is highly correlated with investment and an increase in well-compensated jobs at home.***

To sustain economic growth, the United States needs millions of high-paying jobs. These jobs will be created more rapidly if U.S. policy, and that of other countries, supports the free movement of goods and capital through expanded regional trade and investment agreements, and if the United States and other countries eschew the temptations of protectionism and tax policies targeting the growth of multinational corporations, and tax policies that make Americans less competitive to employ outside the U.S.

We therefore call on the U.S. government to lead with respect to the emerging institutions and agreements supporting regional integration and free trade, to support foreign direct investment by U.S. companies abroad and by Asian companies in the United States, and to facilitate the competitiveness of both U.S. companies and individual American citizens working in Asia.

### **III. U.S. Commercial and Trade Engagement with Asia**

APCAC believes that the U.S. Government's Asian trade policy can effectively strengthen the American economy by supporting the private sector with trade and investment initiatives oriented toward partnership with the Region.

#### President Obama's visit to Southeast Asia

- We were pleased to see President Obama in attendance at the November 2012 East Asia Summit (EAS), for the third year in a row. The EAS was hosted by Cambodia in Phnom Penh. The President also paid an historic visit to Myanmar, the first by a U.S. President, and welcomed the first Myanmar President to the White House in almost 47 years on May 20.

- While in Phnom Penh, President Obama and his TPP counterparts in attendance at the EAS meeting approved a motion to set the end of 2013 as an informal deadline for the completion of the TPP in preparation for the creation of the FTAAP.
- We fully support stronger coordination among these TPP leaders and are eager to see the TPP finalized and implemented.

At the same time, we encourage all governments in the Asia-Pacific region to act together through regional mechanisms such as Asia-Pacific Economic Cooperation (APEC) to enhance mutual growth. It is crucial to stand against protectionism. Enhanced trade and investment are mutually beneficial for the United States as well as other Asian-Pacific nations and their people.

APEC is the most important Asian trade and cooperation mechanism of which the United States is a constitutive part, and indeed the TPP has long been seen as the nucleus of the long-term APEC vision of a Free Trade Area of the Asia Pacific (“FTAAP”). The U.S. Government should continue to leverage the APEC process, led this year by Indonesia and next year by China, to achieve needed market reforms and trade liberalization in the region, especially by supporting capacity building measures for which APEC has demonstrated a strong competency.

For our part, U.S. businesses in Asia pledge to work cooperatively with the U.S. Government and regional governments to support an active APEC agenda. The APEC Business Advisory Council will attract a high degree of participation if APEC itself is vibrant and active.

While overall progress through APEC and on regional agreements, primarily the TPP, is vital, there is also a place for groundbreaking bilateral agreements with key trading partners. The Korea-U.S. Free Trade (“KORUS”) Agreement came into effect last year. Early data show that there has been a significant and positive impact on U.S. exports of goods subject to tariff reductions under the FTA. In order to continue these positive trends, it is essential that U.S. policymakers continue to emphasize the need for full and faithful implementation of KORUS FTA commitments by the Korean government.

### Numbers

- There was a significant increase in U.S. manufacturing exports to Korea year-on-year from March through September 2012. For example, sales of GM, Ford and Chrysler to Korea increased 24.4 percent year-on-year from March through July 2012. U.S. exports of civilian aircraft, engines and parts increased 39 percent in 2012.
- U.S. agriculture exports to Korea in key products for which there were tariff reductions under the FTA also increased markedly year-on-year from March through September 2012. This included: oranges (up 41.4 percent); walnuts (up 54.3 percent); almonds (up 63.3 percent); lemons and limes (up 76 percent); and cherries (up 84 percent year-on-year from March through October 2012). U.S. wine exports to Korea rose 19.4 percent year-on-year between January and July 2012. U.S. pork now has 43.2 percent of the Korean market (up from 38.6 percent in 2011).

KORUS shows the kind of impact that a successful TPP would have. Still, successful negotiation of an agreement is not enough. It is also vitally important that the United States monitor and enforce compliance with agreements, ensuring that market-opening provisions are faithfully carried out.

*Recommended U.S. Actions:*

- The guiding objectives for the Office of the United States Trade Representative (USTR) should be promotion of open markets and national treatment, negotiation and full implementation of high standard free trade agreements and bilateral investment treaties, and World Trade Organization (WTO)-consistent trade enforcement. The United States should ensure that higher labor and environmental standards in trade agreements encourage sustainable development and do not restrict trade or close the U.S. market.
- The U.S. Government should leverage its role in APEC at the leader, minister, and working group levels with the aim of building consensus on policies that promote trade and investment among the APEC economies, and addressing “behind the border” issues such as transparency and level playing fields.
- We strongly support successful conclusion of the Trans-Pacific Partnership Agreement. The addition last year of Canada and Mexico, the imminent participation of Japan in the negotiations, and expressions of interest by other countries, underscore the important role TPP can play, in time becoming an effective FTAAP.
- At the same time as we support the successful conclusion of the TPP, and expanding it to include other APEC economies provided they join on the same terms as current members, we also support consideration of FTAs that have been in discussion with Thailand, Malaysia, and Taiwan and would urge consideration of one with Japan.
- The U.S. Government should continue to work with U.S. industry and the Korean Government to ensure full and faithful implementation of the KORUS FTA.
- We encourage the United States to consider negotiating a Free Trade Agreement with ASEAN. ASEAN has already finalized FTA negotiations with China, India, Australia, New Zealand and South Korea, which will give their companies a competitive advantage over U.S. companies operating in or exporting to ASEAN.
- We recommend an increasing level of engagement with Myanmar (Burma). Attached hereto is an Appendix with APCAC’s specific observations and recommendations with respect to enhancing trade relations and interaction with Myanmar.
- The U.S. Government should continue to work with our Asian trading partners to ensure that their agricultural markets are opened to U.S. products. Currently, one-in-three acres of American farmland is used to grow food that is exported to a growing global market, the fastest of which is the Asian agricultural market.

*Recommended Asia-Pacific Actions:*

- Governments around the Asia-Pacific region should work cooperatively through the APEC process, ASEAN, and others to realize an open market throughout the region and to promote specific capacity building initiatives, as detailed in the sector-specific portions of this Report.
- Greater transparency in the regulatory process, provision of level playing fields for both local and foreign market participants, and removal of barriers to cross-border investment flows should be priorities.
- Promote regulatory exchanges and harmonization, including the promotion of independent Central Banks whose activities are governed by domestic, regional, and global economic conditions.

#### **IV. Promoting a Conducive Climate for Trade and Investment**

The more open a country's economy is to innovation, the greater the benefits to consumers and the overall economy. Greater transparency and regulatory predictability attract investment.

Unfortunately, open markets and level playing fields are hampered by limits on foreign investment, with some countries having formal limits on foreign ownership stakes in domestic companies, including financial institutions and others. Furthermore, soft barriers, such as state-sponsored enterprises and institutions with special privileges, and restrictive or unclear regulations that chill innovation and competition, discourage market entry. Such soft barriers should be addressed in a way that promotes open trade and investment.

While it is clear that some differences in regulations from country to country reflect local conditions, there should be broad agreement on several overarching themes and goals:

##### Regulatory equality

All participants in any market should be subject to the same laws applied in the same manner. A level playing field enhances consumer choice by bolstering competition among existing market participants, allowing new market entrants fair access, and giving equal treatment for all. Governments across the Asia-Pacific region should avoid policies that unfairly benefit domestic enterprises – including state-owned enterprises – at the expense of foreign or new entrants to the market. This obviously supports Asian companies' regional and global presence, as well as the ability of each country to provide regional services. It also enables regional economies of scale and participation in technological innovation.

##### Transparency

Open processes by which regulatory agencies publicize proposed rules well in advance and invite the public to comment on such rules promote the rule of law and boost investor confidence in the regulatory system. Such procedures should also be followed by self-regulatory organizations exercising delegated authority such as industry associations and

standards committees. The KORUS FTA provides an excellent basis for discussions in this arena.

Improvement of legal institutions, including clear regulatory frameworks governing companies and products, serves to promote legal certainty and the investor confidence that rides on such certainty. Clear systems to enforce creditor rights in a timely way are also necessary to incentivize lending to the corporate sector.

A cardinal principle of legal transparency and predictability is that laws and regulations should be made effective prospectively, with ample time for consideration and preparation of processes to comply with such rules. Laws or regulation should not be made effective retroactively, as this undercuts the expectations of legal stability that are critical to investment decisions.

Transparency also extends to the availability of information. For example, in the financial area, modern tools for risk management should be encouraged, particularly in the small and medium-sized enterprise (SME) and consumer lending sectors, including the promotion of accessible, full-file credit bureaus that allow the development of credit scoring to reduce loss, and comply with prudent lending norms.

Uneven and unpredictable application of transfer pricing rules is a disincentive for global companies to share technologies and solutions across borders, as it leads to unintended technology transfers, risks of double taxation, and the transfer of rights and services of intellectual property other costs. Transfer pricing rules, including with reference to intellectual property, transfer of rights, and services, should be made clearer through an APEC initiative to provide greater guidance on OECD norms and, as a practical capacity building measure, initiatives to train local taxing authorities in their even application.

### Anti-corruption

Corruption remains a serious problem in many Asian markets. The Foreign Corrupt Practices Act has been useful in reducing corruption by widely publicizing the legal liabilities U.S. companies and individuals face if they violate it. We support vigorous enforcement and a strong compliance environment among American companies. Stronger enforcement by the EU and Japan of relevant laws governing their companies would be welcome. We also support sunshine laws, improvements in transparency, and better enforcement throughout the region. Simplification and harmonization of customs regulations and procedures, and of licensing and certification requirements, materially reduce the opportunities for corruption. As tariffs are gradually reduced by free trade agreements, we urge governments to turn their attention to non-tariff barriers in the conviction that more efficient and open procedures will improve the business environment by reducing corruption as well as by making doing business easier.

### Legal Services

Several Asian jurisdictions remain completely closed to U.S. law firms, while others restrict the nature of the services that may be provided. This denies a full range of legal services to consumers whether they be companies incorporated in the host country or the U.S and other companies investing there. The restrictions also deny career opportunities to both lawyers licensed in the host country as well as U.S. licensed lawyers. U.S. law firms should be

permitted to establish offices fully integrated with lawyers licensed in the host country, in order to provide a full range of services at an international standard, including advice on host country law and transactional and contentious matters involving the host country, on the basis of national treatment, and without cumbersome barriers to registration or operation.

*Recommended U.S. and Asia-Pacific Actions:*

The U.S. Government and its APEC Partners should cooperate to advance the following policy initiatives, including through the use of model standards under APEC:

- Greater transparency and participation in the regulatory and rule-making process, including such measures as public comment procedures, no-action letter requests, and meaningful opportunities for all market participants to offer input into the development of regulation.
- Establishment of a level playing field so that like market participants are subject to the same laws in the same manner, and that preferential treatment or advantages among market participants providing like services are eliminated.
- Liberalization or elimination of foreign ownership caps, including those applicable to the financial service sectors, with exceptions limited to areas of national-security need.
- Greater harmonization and uniform application of transfer pricing rules to facilitate trade in knowledge-based goods and services, protection of intellectual property, and avoidance double taxation risks.
- Elimination of barriers to U.S. law firms establishing fully integrated offices including lawyers licensed in the host country throughout the Asia-Pacific region.

## **V. Sectors**

### Energy and the Environment

Energy policy is increasingly driven by the need to improve energy efficiency, reduce and mitigate greenhouse gas (GHG) emissions, and expand and diversify energy supply. Technology is at the heart of solutions to these needs, and addressing all three will require huge capital investments. Public policy must therefore support technological innovation by protecting intellectual property and facilitating investment by efficient capital markets and a sound legal framework. Trade liberalization is also vital for such solutions: the U.S. should push for full implementation of the landmark APEC agreement to reduce tariffs on Environmental Goods and Services, and for elimination of non-tariff barriers to new technologies and renewables, such as wind. The U.S. should set an example by continuing to expeditiously authorize the export of Liquefied Natural Gas (LNG).

*Recommended U.S. and Asia-Pacific Actions:*

The U.S. Government and its APEC partners, cooperating with each other and through the APEC framework, should:

- Move rapidly to negotiate an agreement to eliminate customs tariffs and other trade barriers for products and services in the clean energy segment. We fully support and applaud the strong step forward taken by the successful APEC agreement to reduce tariffs on Environmental Goods and Services to 5 percent or less by 2015, signed at the APEC Summit in Honolulu, and the appendix of covered environmental goods and services (EGS) items agreed to last September in Russia. This agreement should be implemented swiftly, while negotiation continues to further reduce and ultimately eliminate those tariffs.
- Further improve GHG reduction measures and energy security. Every country has opportunities to substantially increase the share of renewables in its energy mix. This should be accomplished through setting goals for renewable energy growth and utilizing appropriate policies - such as feed in tariffs, production tax credits, and required grid access – to meet those goals.
- The United States should set an example for trade liberalization in the region by authorizing the export of Liquefied Natural Gas (LNG). LNG export restrictions would discourage U.S. energy exploration and economic growth. Moreover, restricting exports would be counterproductive to ongoing efforts to encourage other countries to embrace similar policies, for example with rare earths.
- Ensure protections of intellectual property used in energy efficiency and GHG reduction measures, including in the development of renewables and alternative energy sources.
- Encourage the more efficient generation, transmission, distribution, and use of electricity, enact policies to promote combined heat and power, intelligent grids, smart meters, low energy use buildings, and efficient appliances to achieve this objective.

### Financial Services and Investment

The modernization and harmonization of financial services regulations and promotion of trade in financial services are keys to advancing economic growth in both developing and developed economies. Such reforms will provide greater depth, stability, and dynamism to regional financial markets, facilitate trade in financial services, and ultimately provide the liquidity needed to boost domestic demand in countries across Asia, all of which will drive economic growth as well as more balanced flows of trade with the U.S.

We note particularly that as Asia regionalizes, the beneficiaries will increasingly be Asian financial services firms expanding to neighboring countries and throughout the region as well as American, European, and Japanese firms already operating regionally.

### Capital Markets

The strengthening of capital markets-related services enhances competitiveness for domestic business, reduces the cost of capital, and improves the efficiency of capital allocation. Capital market access for foreign securities firms means deeper, more liquid local bond markets that enhance the effectiveness of domestic monetary policy, reduce economies' exposure to foreign currency-denominated debt, and contribute to the overall soundness of domestic financial systems. Debt and equity markets require state-of-the-art exchanges with an appropriate mix of oversight and self-regulation. A vibrant and innovative investment management industry is needed to efficiently make a range of investment products available to the public.

### Commercial Lending

Commercial lending provides needed liquidity to businesses that enables job creation and growth. Innovative commercial lending products ensure that such liquidity is available not only to the established enterprises that are more likely to procure bank credit, but also to emerging and small businesses that are the seeds of future innovation. An example of regulatory transparency crucial for commercial lending is the presence of clear legal systems to perfect security interests in collateral (both movables and receivables) and assignment of claims. This would facilitate asset-based lending and factoring, which are important sources of liquidity for SMEs and others.

### Insurance

The insurance industry is an important participant in achieving market efficiency and transparency by providing insurance and risk-sharing products to individuals and institutions, as well as through its role as a significant investor in institutional risk. Insurance regulation should allow innovation in new products and channels, promote competition, and ensure regulatory consistency and level playing fields, while protecting policyholders.

### Electronic Payment Services

The Asia Pacific region has much to gain by ensuring that the market for electronic payment services (e.g. credit and debit cards) remains open and competitive. Electronic payment services have been an important contributor to Asia Pacific development and economic integration. According to a January 2013 study by Moody's Analytics, greater usage of electronic payments added \$983 billion in global economic growth (2008–2012), spurring growth in GDP equivalent to creating 1.9 million jobs. Electronic payments contributed to a 0.8 percent increase in GDP in emerging markets and a 0.3 percent increase in GDP in developed markets. Electronic payments offer opportunities for un-banked and under-banked consumers to store value and conduct transactions in a secure manner. Electronic payments also offer governments an avenue to reduce shadow economy activity to better monitor transactions and ensure that tax revenue is correctly calculated and collected. At the same time, the electronic payments industry recognizes its obligation to protect data privacy while ensuring that transaction data is both protected and made available to governments for legitimate law enforcement purposes, subject to appropriate safeguards, such as requiring subpoenas. We urge Asia Pacific governments to maintain open markets for electronic payment services to ensure that their banks, merchants and consumers enjoy access to the most competitive and innovative payment services available.

## Consumer Finance

Underpinning a vibrant macro-economy is domestic consumer-led demand. This requires a robust, well-regulated consumer credit market. Proper disclosure of financial terms and promotion of financial literacy initiatives are prerequisites to ensuring consumer confidence and preventing abuses, and are preferable to the imposition of non-market based restrictions such as lending caps or artificially low interest rate ceilings. Though well intentioned, such restrictions reduce the supply of credit, are recessionary, and displace many borrowers to the informal credit sector.

### *Recommended U.S. Actions:*

- Bilaterally and through its participation in APEC and other regional organizations, the U.S. Government should work to achieve the adoption throughout the region of measures designed to improve market access and promote the initiatives noted below.

### *Recommended Asia-Pacific Actions:*

APEC Members should support regional initiatives along the following lines, including implementing appropriate changes in local laws and regulations:

- Promoting by appropriate regulation the development of and appropriate access to modern, full-file credit information systems by all regulated lenders, and use of such systems for improved risk management and competitive risk-based pricing options for borrowers.
- Encouraging the provision of credit to the corporate and SME sectors by improving the transparency and predictability of the legal architecture for secured lending, specifically through improving systems to perfect security interests in collateral (both movables and receivables) and assignment of claims, search existing liens, and enforce creditor rights.
- Promoting well developed intermediary sectors, including a robust investment management and insurance industry. It is important to ensure that regulation is transparent, consistent, and that it does not result in unintended consequences that hinder growth in the real economy. Regulation should allow for the introduction of new products and services to markets where they do not exist, while providing appropriate regulatory oversight and consumer / investor protection.
- Promoting financial inclusion through a healthy consumer credit sector, with regulations that protect borrowers from abusive practices and ensure fair disclosure, but which otherwise allow flexibility to lenders to provide sufficient credit on market-based terms to support household consumption and broader economic growth.
- Encouraging cross-border funding, capital and data flows by, for example, removing unnecessary restraints on cross-border commercial borrowing, and ensuring that restrictions on cross-border data flows are generally limited to reasonable data security and privacy protections.

### Infrastructure Development

Many Governments throughout the Asia-Pacific region are focusing on improving of domestic infrastructure, recognizing the importance of state-of-the-art transportation, roads, ports, rails, logistics, telecommunications, and other infrastructure to a country's overall capability to attract capital and investment and ensure growth.

#### *Recommended U.S. Actions:*

- In bilateral discussions, the U.S. Government should encourage and promote increased infrastructure development. Doing so will open new markets to American goods and services both during and after the development phase and improve economic development and the lives of ordinary people in the region.

### Internet Economy

Governments and private companies are expanding Internet-based services throughout the region; there are increasing opportunities for global service providers. The rapid and healthy development of the Internet Economy will require collaboration on a range of regulatory issues and standards.

#### *Recommended U.S. and Asia Pacific Actions:*

- The APEC Economies should jointly review the provisions of their respective laws and practices governing privacy on the Internet to ensure clarity and transparency in interpretation and enforcement. A regional approach is necessary for smooth transactions across borders. Such an approach should include support for voluntary industry initiatives and models, focusing on common concerns such as online identity, content filtering, and the collection and usage of online consumer behavioral data.
- Authorities are increasingly concerned about the growing boldness and pervasiveness of cybercrime. Consultations should focus on common enforcement efforts and offering models and expertise to other governments in the region with the goal of promoting e-commerce across borders through creation of coordinating entities.
- Cloud computing depends on leveraging the power and flexibility of data centers often remote from the location of end users. Data compilation, subject to appropriate safeguards, and its applied usage generate value. APEC Economies should exchange views on their own deployment and use of "cloud services" and the challenges to realizing the free and secure flow of data across borders. Best practices might also be discussed, with an emphasis on interoperability, data portability, and service level agreement (SLA).
- Most APEC Economies are investing heavily in information and communication technology (ICT) as a means of rationalizing the delivery of government services and providing greater accessibility and transparency in service delivery for consumers. Discussions in this area can facilitate the sharing of best practices, highlight areas of cost saving, and strengthen the infrastructure for a broader integration among the APEC economies.

- All APEC Economies are concerned about how to teach students the skills they need for success in the Internet Economy of the 21<sup>st</sup> century and how to train teachers and develop curricula that can tap into the power of search and other applications linked to the Internet. The Economies should share their experiences and budget priorities and consider how the government and private sector might work together to deliver innovative education hardware, software, and content.
- The value of ICT in healthcare is widely recognized, whether it is new remote diagnostic aids, the use of digitized medical records to improve care and reduce costs, or the introduction of comprehensive health platforms that seamlessly link doctors, patients, and administrators in the interest of better health. But there is still a long way to go in deploying and utilizing these technologies. APEC Member Economies should share their plans for healthcare ICT and consider how to link these with actions by other Economies within APEC.

## Health Policy

### **Pharmaceuticals, Medical Devices, & Diagnostics in Healthcare**

Governments and the private sector throughout the region should cooperate to strike a balance among improving cost efficiency in health care delivery, ensuring public access, and supporting innovation. The pharmaceutical, medical device and diagnostic industries aim to play a constructive role in improving the health and welfare of people, including by driving economic growth and job creation.

These are not mutually exclusive goals -- the right balance needs to be found based on conditions in each society. We offer the following observations on the healthcare marketplace in the region as a basis for considering where cooperative efforts should be focused:

### **Investing in the Healthcare System & Infrastructure**

We support investment and reform programs to improve health care delivery. Non-traditional public health threats, such as avian flu, SARS, dengue fever, multi-drug resistant staphylococcus aureus (MRSA), and other infectious diseases with new or faster vectors of transmission require coordinated regional and global preparation for pandemics, including transparent monitoring and reporting and cooperation on scientific research. We support activities to spread best practices to minimize the occurrence of healthcare-associated infections (HAI).

We support an increased focus on prevention, early detection, early treatment, and the promotion of the appropriate use of the latest and most effective vaccines, medicines, medical technologies, diagnostics, and services available. Focusing health care spending and health care professional efforts earlier in the disease continuum can improve the quality of life for patients, increase the productivity of the workforce, and achieve multifold cost savings and efficiency gains for the overall health care system.

### **Rewards for Innovation**

Investment in health care is a driver of economic development and productivity, not a lagging indicator that follows prosperity. U.S. healthcare companies invest heavily in research and development in areas of medical science that have seen increasingly lower yields and more

complex development pathways, in order to save and improve the quality of lives of patients around the world. We believe that open market mechanisms based on fair competition and quality of products are the best determinants of pricing and reimbursement and are desirable for both providers and payers to maximize efficiency.

### **Medical Product Regulatory Convergence**

Asia Pacific countries should facilitate collaboration across the private, academic and public sectors and allow for efficient translational pre-clinical and clinical development that supports investment in research and development that has the potential to lead to innovative new medical solutions. Asian economies should promote regulatory systems that are transparent, predictable and efficient and that minimize country-specific standards and practices through harmonization of medical product regulations, so that patients have timely access to effective medicines and medical devices.

### **Protection of Intellectual Property Rights**

The fundamental concepts of regulatory data protection/data exclusivity and patent protection are not sufficiently applied in many economies. Their absence reduces the incentives for the development of innovative new medicines, diagnostic tests, and medical devices that meet unmet patient needs. Compulsory licensing of patented medicines should be a last resort and implemented only following appropriate consultation with rights holders as well as other stakeholders. There is growing understanding that widespread counterfeiting of pharmaceuticals is a danger to public health and the safety of medicines, not only in the country of manufacture, but around the world, including in the U.S. Loopholes favoring counterfeiters should be addressed aggressively.

We support active cross-border cooperation among enforcement agencies attacking intellectual property rights (IPR) infringement, especially the global trade in counterfeit pharmaceuticals. Pricing and reimbursement mechanisms are often opaque and unpredictable, with poor recourse for appeals in markets such as Taiwan and Korea. The mechanisms also unduly favor local and generics manufacturers.

#### *Recommended U.S. Actions:*

- Encourage region-wide adoption of regulatory data protection/data exclusivity and protection of patented medicines (including biologics) in order to promote innovation.
- Safeguard the investment in research and development and the resulting hard-won discoveries by promoting a strong IPR regime throughout APEC.
- Promote sharing of best practices on the adoption of preventive medicine, vaccines and early detection throughout the region to help reduce the growing economic burden of disease in rapidly developing and aging societies.
- Promote international cooperation in enforcement.

#### *Recommended Asia-Pacific Actions:*

- Strengthen the global network of Centers for Disease Control to promote timely sharing of crucial information and a shift in health policy toward early detection, preventive medicine, and the appropriate use of vaccines in national immunization programs.

- Enforce an intellectual property rights system that fully provides protection for inventions and data as well as transparent, predictable, and effective means of enforcement and redress.
- Establish both short- and long-term goals for HAI management and reduction, as appropriate according to the level of resources, to encourage improved outcomes and identify effective solutions and interventions.
- Encourage multi-sector collaboration and public-private partnerships to increase awareness, improve capacity and share best practices.
- Establish pricing systems that fully recognize the value of innovation in transparent, predictable and efficient, harmonized regulatory processes that maximize patient access and physician choice.
- Asia-Pacific collaboration in APEC can help to improve the environment for medical product manufacturing and export by:
  - Promoting medical device and drug regulatory convergence by 2020 based on the APEC Regulatory Harmonization Strategic Plan;
  - Strengthening medical sector codes of conduct based on the APEC Kuala Lumpur and Mexico City Principles;
  - Reducing the economic burden of disease based on the APEC Non-Communicable Disease Action Plan and the APEC Healthcare Associated Infections Action Plan;
  - Combating counterfeit (unsafe) medical products based on the APEC LSIF Anti-Counterfeit Medicines Action Plan; and
  - Improving the investment environments for life sciences via the APEC Enablers of Investment Checklist.

### Logistics and Express Delivery Services

While governments in Asia recognize the socio-economic importance of and have committed to the liberalization and development of the logistics sector (including express delivery services), this is often not carried through in their domestic policies. In several instances, increased protectionist measures (especially foreign ownership restrictions) have been adopted in domestic legislation. For instance, Indonesia's Postal Services Law (Number 38 of 2009) requires full or majority local ownership in courier and express delivery services, which contradicts its own Investment Law (Number 25 of 2007) and related Negative List of Investment. It also contradicts Indonesia's commitments in the ASEAN Economic Community Blueprint to allow for foreign (ASEAN) equity participation of not less than 51 percent by 2010 and 70 percent by 2013 for logistics services. Complex and duplicative regulations, in areas such as licensing and customs, also continue to hinder the flow of goods and services.

*Recommended U.S. Actions:*

- Encourage governments to follow through on their liberalization commitments in order to reap the catalytic and multiplier benefits from logistics and express delivery services for their broader socio-economy.
- Promote cross-border trade and investment through high standard Free Trade Agreements and Bilateral Investment Treaties, towards the elimination of foreign ownership restrictions.

*Recommended Asia-Pacific Actions:*

- Recognize and work to address the threat from disguised protectionism raising new barriers “behind-the border” to investment or to trade in goods and services, in the form of restrictive domestic legislation, regulations and licensing requirements.
- Implement APEC 2009’s commitments to make it 25 percent cheaper (less cost involved in regulatory processes), faster (less time to obtain regulatory approval) and easier (fewer procedures) to do business in the region by 2015.

## **VI. American Workers and Companies Abroad**

### Create a Level Playing Field

U.S. policy is often unintentionally harmful to Americans who are on the front lines of the sales forces in Asia and elsewhere promoting U.S. exports. For instance, the United States is the only developed country to tax its citizens on their worldwide income. The U.S. tax system coupled with recent changes to U.S. tax law has weakened the competitiveness of individual Americans relative to non-Americans

Consequently, in many American multinational companies in Asia, there are fewer Americans among their staff each year. One company in the services sector, for example, has 4,200 employees across the region, among them approximately 200 expatriates, of whom only two are Americans. Yet we know that Americans working abroad directly support U.S. employment by promoting our exports, and drawing on their U.S. connections in their professional lives.

It is especially important to encourage U.S. companies to hire Americans for overseas positions, as every American moved to an overseas office means one more open position in the U.S. that could be given to an American in the continuing difficult domestic job market. Further, we know that U.S. competitors send thousands of employees to be trained on the ground in their U.S. operations. It is essential that the United States make a real effort to ensure that the future cadre of American business leaders get hands-on training in those markets that are producing their toughest competitors. APCAC realizes that as the President and Congress work to reduce the federal budget deficit, there will be intense, and completely proper, scrutiny of various tax benefits, deductions and exclusions. However, this scrutiny should fully consider the above-noted benefits to U.S. exports and the creation

of jobs both for the many Americans employed overseas as well as for those employed in the United States, and the negative consequences for our competitiveness if budget negotiations reduce or eliminate the protections afforded by the Foreign Earned Income Exclusion under Section 911, or further limit the full crediting of foreign tax paid by Americans abroad.

In an analogous way as for individuals, American companies currently operate at a distinct disadvantage to their foreign competitors. The United States is one of the few countries in the world that taxes its corporations on their world-wide income, rather than adhering to a “territorial” taxation system. As one critical aspect of creating a level playing field, amend U.S. tax policy to make American corporations competitive with foreign competitors, including by adopting a territorial taxation system like other developed trading partners.

#### FATCA Implementation and Impact on U.S. Individuals and Institutions in Asia-Pacific

The Foreign Account Tax Compliance Act (FATCA), enacted in 2010, is designed to improve tax compliance involving assets and offshore accounts. FATCA will require foreign financial institutions (FFIs) to report directly to the Internal Revenue Service (IRS) information about financial accounts held by U.S. taxpayers, or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

While APCAC acknowledges the importance of tackling offshore tax non-compliance, it is apprehensive of the significant complexity of the policy and the significant burden the policy imposes on middle class Americans abroad. The 544-page FATCA regulation continues to raise questions concerning interpretation and application of its provisions. Since early 2011, due to insufficient knowledge and information about FATCA, many foreign banks have already begun closing banking and brokerage accounts for U.S. customers so as to avoid the complex risks and costs of the complying with the new U.S. regulations. This is compounded by the fact, that starting several years ago, U.S. based financial institutions began refusing to open accounts with foreign addresses (under Regulation S). This severely restricts banking and investment options for long-term U.S. citizens working and supporting the U.S. economy abroad.

While progress has been made in documenting and clarifying FATCA rules and procedures as well as intergovernmental agreements (IGA’s), it is critical for successful implementation that the U.S. Treasury and the IRS ensure that roles and responsibilities of all parties are clearly defined and understood. Further, FATCA rules and IGA’s should be revised or interpreted to minimize the number of different scenarios that each financial institution will need to prepare for. In general, the U.S. Treasury and IRS should seek to further minimize compliance burdens and increase inter-governmental cooperation.

In order to mitigate any further negative impacts on U.S. competitiveness, as well as the risk of reduced access for U.S. citizens to overseas financial services, we recommend the following actions.

*Recommended U.S and Asia-Pacific Actions:*

- APCAC urges regulators to continue to work with FFIs to mitigate the risk of conflicting interpretations and misinformation and to ensure FFIs are encouraged to register and participate rather than eliminate their U.S. citizen account holders.
- APCAC endorses campaigns driven by regulators and industry bodies aimed at educating the public of FATCA requirements and to facilitate awareness. The development of requirements related to clear client disclosure in investment materials is imperative in helping educate clients. Clients should be assured that by providing completed FATCA paperwork, there would be fewer circumstances in which withholding would apply.
- APCAC urges the IRS to provide more assistance to taxpayers for understanding new requirements and, particularly during the initial implementation, to expand the IRS presence abroad. Currently there are only 4 IRS offices outside the U.S. (3 in Europe and 1 in China). There is no toll free number to call from outside the U.S. Additionally, there are very few qualified U.S. tax preparers and attorneys abroad to which taxpayers may turn to for economical advice. This leaves millions of U.S. citizens abroad with no access to free or low-cost assistance, which may reduce the compliance rate.
- The IRS should clearly state standards for “Know Your Customer” and Anti-Money Laundering (“KYC/AML”) processes and procedures that would meet FATCA compliance hurdles to reduce the uncertainties in managing compliance effectively.
- APCAC requests a review of the complexity of completing IRS forms to comply with FATCA which has increased the minimum time to compile substantially.

APEC Business Travel Card

The APEC Business Travel Card (ABTC) was developed in response to the need for business people to gain streamlined entry to the economies of the Asia-Pacific region.

Nineteen APEC economies currently participate in the ABTC Scheme: Australia, Brunei Darussalam, Chile, China, Hong Kong (China), Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, PNG, Peru, the Philippines, Singapore, Taiwan, Thailand and Vietnam. The United States and Canada are Transitional Members of the scheme.

Cardholders from all participating economies are now entitled to use 'fast-track' immigration lanes (currently designated for air-crew) at international airports.

There are currently 57,000 ABTC cardholders; all are foreign citizens.

We were heartened by President Obama’s signing of ABTC legislation at the 2011 APEC Summit in Honolulu. Since then, however, there has been a disappointing delay in

implementing regulation. We are hopeful that the Department of Homeland Security, based on recent representations, will move forward to have these regulations fully implemented by June. Doing so will be one more practical way to put American business people on a par with their foreign competitors who enjoy the ABTC.

### Counting Americans Abroad

The number of Americans living abroad is estimated at 4.3 to 7.2 million. The exact number is unknown because we are not counted by the U.S. Census.

### *Recommended U.S and Asia-Pacific Actions:*

- APCAC urges Congress to reverse the provisions of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), which significantly raised taxes on working Americans overseas. Legislation that threatens to reduce or eliminate the Foreign Earned Income Exclusion should be opposed because it decreases Americans' competitive advantage for jobs overseas that directly support U.S. exports.
- If an individual mandate on insurance coverage is proposed, an exemption limited to the time the individuals resides overseas should be available to Americans living abroad, unless a full range of plans designed for U.S. citizens residing abroad is available. Such plans should include an option for U.S. citizens living abroad to obtain health care coverage that will cover them on return trips to the United States.
- U.S. citizens returning from abroad should have immediate full rights of residency, and insurance companies should be required to cover such individuals as they would if the person had never left the United States.
- Medicare and Social Security coverage and benefits should be available regardless of location to all Americans and their spouses who paid into the U.S. system during their working years and would otherwise be qualified to receive benefits in the United States.
- APCAC encourages the Congress to pass pending legislation to authorize the Department of Homeland Security to issue ASEAN Business Travel Cards to Americans.
- We urge that new procedures be developed and tested in time to include the substantial population of Americans living abroad in the 2020 census.

## **VII. Conclusion**

From the global recession of 2008-09, we learned once again that Asia is not decoupled from the United States. The recession that began in the U.S. housing and financial markets spread quickly and with telling effect through the region. Nonetheless, Asia remains a dynamic engine of growth.

Fiscal and monetary conditions have gradually normalized; now the key needs are to preserve free trade and investment, to improve capital efficiency, shift toward private investment, increase consumption, foster the services sector, improve health care and education, and provide a more robust social safety net, especially by fully funding pension schemes.

Regional unity may remain a distant prospect, but regional integration of trade and investment are proceeding with gathering momentum across multiple platforms and organizations. For the United States, and we would argue, for other Asia Pacific economies as well, it is important that these changes support an open architecture, well-integrated with the global economy.

As an Asia Pacific nation, the United States is committed to participate in building a secure and prosperous future together. Member companies of APCAC fully support this aspiration. We must now go forward together.

## MYANMAR APPENDIX

### Political and Economic Change

The past few years have seen the country of Myanmar reach many political and economic milestones. The past few years have seen the shift away from restrictions and privileges benefitting the military, party elite and crony businessmen. President Thein Sein and his administration have implemented an ambitious program of reform in an effort to spur rapid economic growth in Myanmar by opening up to foreign investment.

#### I. Easing of Sanctions

In July 2012 the US implemented the easing of certain financial and investment sanctions on Myanmar in response to the major reforms by the Burmese government over the past year. These changes permitted the first new US investment in Burma in nearly 15 years and broadly authorized the exportation of financial services to Burma. We applaud President Obama hosting President Sein at the White House in May and hope to see continued engagement at the highest levels.

#### II. Opportunities for U.S. Companies

The opening up of the country has led to significant opportunities for U.S. company entrance. Myanmar is one of the last few largely untapped markets and is now welcoming in foreign investment. U.S. businesses will be bringing global best practices, creating a major learning opportunity for the Myanmar people. It has been said that Myanmar is undeveloped because of isolation, not because of lack of potential, a very unique case in the 21st century.

#### Natural Resources and Geographic Location

Myanmar is rich in natural resources and has a geographic location ideal for commerce with China, India, and Southeast Asia, some of the largest and fastest growing markets in the world. Its coastal access could allow Myanmar to become a central shipping hub and a major actor in both regional and international trade. Myanmar also has largely undeveloped oil and gas reserves as well as vast hydropower resources from rivers in the north and east. Myanmar's strategic location and rich natural resource reserves give the country great potential. The government wants to make sure that resource and commercial development is done sustainably and responsibly, creating a demand for expertise from the world's most advanced organizations.

#### Sizeable Labor Force, Growing Consumer Market

Myanmar has a population estimated at 60 million, a sizeable labor force, and given the projected wage increases in the near future, likely a growing consumer market. As the consumer market in the country grows, there will be demand for new and varied products, which citizens did not previously have access to. These products will need to be delivered by companies that are prepared for, or experienced in working in developing markets. APCAC sees this new and growing consumer market as a great opportunity for a variety of U.S. exporters to reach a new market.

### Demand for Infrastructure

The current low level of infrastructure poses one of the largest challenges for businesses moving into Myanmar. The infrastructure is largely unreliable, inadequate, or nonexistent. In particular the country's electricity, transportation, and telecommunications infrastructure is very poor. As Myanmar emerges from such a long stint of international isolation, there is a huge pent-up demand for infrastructure. This is another great opportunity for American companies to gain business opportunities and help feed a need in this rapidly changing country. The U.S. government should encourage transparent bidding and fair procurement practices, including as to IPR incorporated in the equipment supplied.

### Domestic Sectors

The education, healthcare, and technology sectors- are all largely undeveloped and represent opportunities for U.S. investment.

### **III. U.S. Agencies in Myanmar**

We ask for an increase in resources for the U.S. Embassy in Yangon. Given the pressure associated with the country opening up so quickly, the staff at the embassy is currently overloaded. There is currently no American Chamber of Commerce in Myanmar. We hope to establish an AmCham office as soon as practically possible, in order to serve the business needs of members operating in the country. We also hope to see the EXIM Bank and Trade & Development Agency moving into Myanmar in the near future.

### **IV. Specifically Designated Nationals List**

The list of entities, companies, and individuals with whom U.S. companies and individuals are not permitted to engage in business remains quite extensive. We encourage the United States to revise the SDN list in light of the major changes that have occurred in Myanmar over the past two years. The speedy removal of President Thein Sein from the list so that he could make a visit to the United States illustrates that many individuals need not be on the list. An on-the-ground investigation is necessary in order to determine the current circumstances around those in question, and more clarity is required so that those with similar names are not blacklisted.

### **V. Issues with Reporting Requirements**

Following the ease on the prohibition of investment in Myanmar, the U.S. government issued new reporting requirements for companies and individuals investing in Myanmar. These companies and individuals are now required to disclose the policies and practices they have in place in order to prevent engagement in corruption. We ask that, as the U.S. government continues to work on the new reporting requirements, it tries to make the requirements as straightforward and non-burdensome as possible.

### **VI. Issues for the U.S. Government to Raise with the Burmese Government**

Despite the progress achieved through Myanmar's domestic reforms, there is still much to be accomplished. We hope that ongoing dialogue between the United States and Myanmar will continue to produce desirable results for the people of Myanmar and their new economic partners. Reform should address, among other things, the following areas:

#### Fragile Institutions Processing Rapid Change

The scale of reform needed to transform Myanmar into a peaceful democracy is huge. Capacity is severely limited and Myanmar will need a great deal of assistance in order to implement reforms.

#### Inadequate Physical Infrastructure

The Electricity, Transport and Telecom sectors remain largely undeveloped. These are key infrastructure needs for a developing economy and need to be swiftly implemented. The telecom law and license tender are a positive development, however it remains to be seen whether the process is truly independent and transparent.

It is critical that the telecom license tender is seen to be transparent and free of corruption as this will form a precedent for other sectors that will be privatized in the future.

#### Legal System

While the Myanmar has retained a common law framework, corruption and lack of transparency in Myanmar's legal and regulatory systems remain a significant barrier to commerce. The signing of the New York Convention in March was a very positive step in the right direction, but the country will need far greater legal capacity to function effectively.

#### Banking, Finance and Insurance

Myanmar operates largely a cash economy. The government's reluctance to open this sector to foreign investors has left the system largely undeveloped. Facilities for project finance, B2B and B2C commerce, retail lending, intra-bank and international transactions need to be implemented as a matter of priority in order to enable the investment and capital flows that Myanmar desperately requires to develop.

#### Media Restrictions

Official press censorship was abolished in August 2012, and was replaced by a watchdog agency. The new Minister of Information has vowed to adopt "international standards of press freedom and public service media." The government of Myanmar should reassure media organizations that the announced standards will be upheld.

## **VII. Conclusion**

Myanmar offers great potential to foreign businesses, but the amount of progress it must sustain to truly develop remains large. The United States can help to ensure smooth development by working with the Burmese government. Greater engagement will be required to build capacity

and help the government develop policies, laws and regulations that enable sustained U.S. investment.