April 28, 2025

Ms. Rebecca O. Burch
Deputy Assistant Secretary (International Tax Affairs)
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Rebecca:

We are writing to provide input on the America First Investment Policy Presidential Memorandum ("the Memorandum) signed on February 21, 2025. Section 2(k) of the Memorandum directs a review of "whether to suspend or terminate" the 1984 *United States-The People's Republic of China Income Tax Convention* ("the U.S.-China Tax Treaty") to "reduce incentives for United States persons to invest" in China. The NFTC is a strong supporter of the U.S. tax treaty program because U.S. tax treaties reduce excessive and discriminatory taxes imposed by foreign countries on U.S. companies and individuals, thereby improving the competitiveness of U.S. businesses and the U.S. economy.

We applaud the Administration for working to increase investment and manufacturing in the United States. We strongly urge the Administration to consider not terminating or suspending the U.S.-China Tax Treaty due to its important role in supporting the competitiveness of American companies and the U.S. economy vis-à-vis third countries that continue their treaty relationship with China. Instead, if particular provisions of the U.S.-China Tax Treaty are contrary to U.S. policy or disadvantage American companies, then we highly recommend requesting the renegotiation of such provisions.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, accounting for over $6 trillion in revenue and employing nearly 6 million people in the United States. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

As global competition grows ever more intense, it is vital to the health of U.S. enterprises and to their continuing ability to contribute to the U.S. economy that they be free from excessive and discriminatory foreign taxes, double taxation, and other tax impediments to the flow of capital that can serve as barriers to full participation in the international marketplace. The ability to access foreign markets is fundamental to the economic growth of U.S. companies. When investment decisions are made, tax treaties are one of many factors impacting investment decisions and are rarely the determining factor for these decisions. Nonetheless, tax treaties are a crucial component of the framework that is necessary to allow that growth and to balance competition. This is why the NFTC has long supported the expansion and strengthening of the U.S. tax treaty network.

Tax treaties are critical to the competitive position of U.S. businesses operating in foreign jurisdictions. For example, by prescribing internationally agreed thresholds on both activity and presence for the imposition of taxation by foreign countries, and by requiring foreign tax laws to be applied in a nondiscriminatory manner to U.S. enterprises, treaties offer a significant measure of certainty to U.S. businesses. The U.S.-China Tax Treaty importantly provides that the business profits of a U.S. business cannot be taxed by China unless the business maintains a permanent establishment ("PE") in China. It further provides that China cannot tax the wages of U.S. employees of U.S. businesses unless those employees are present in China for more than 183 days in the calendar year or the wages are borne by a PE. Without the U.S.-China Tax Treaty, the different tax nexus thresholds under China's domestic income tax law would govern, and these thresholds would be subject to change unilaterally by China. Short-term U.S. business travelers would create a high risk of triggering a taxable presence for their U.S. employer because there is no minimum threshold under China's domestic rules in terms of days present when assessing whether such individuals may constitute a taxable presence of their U.S. employer. Without the U.S.-China Tax Treaty, one day of travel by a U.S. employee may trigger an obligation on the U.S. employer to file a tax return in China and pay taxes on profit allocated to that person's time. Profit attribution by the Chinese Tax Authorities may be applied with very high rates on a deemed profit basis - the U.S.-China Treaty helps ensure the appropriate attribution of profits to Chinese activities and for transfer pricing purposes. Further, U.S. employees who travel to China for work, even to negotiate the sale of exports from the United States, would have an obligation to file individual income tax returns in China.

Tax treaties also protect the legitimate enforcement interests of the United States by providing for the administration of U.S. tax laws and the implementation of U.S. treaty policy. Another extremely important benefit that is available exclusively under tax treaties is the mutual agreement procedure, which allows U.S. businesses and individuals to request relief in cases where China takes action that may result in taxation not in accordance with the treaty. Tax treaties also allow companies to apply for Advance Pricing Agreements, where the competent authorities of the relevant countries negotiate on behalf of the company to provide tax certainty and relief from double taxation for a set number of years. This bilateral administrative mechanism provides another opportunity for the avoidance of double taxation on cross-border transactions.

The tax systems of most countries also impose withholding taxes, frequently at high rates, on payments of dividends, interest, and royalties to non-residents. Tax treaties are the mechanism by which these taxes on gross income are lowered on a reciprocal and bilateral basis. If U.S. enterprises cannot enjoy the certainty of foreign withholding rates offered by a tax treaty, which cannot be changed unilaterally by the foreign country, they are liable to suffer excessive levels of foreign tax and to be at a competitive disadvantage relative to competitors from other countries that do have such benefits. Tax treaties serve to prevent this barrier to U.S. participation in international commerce, not just in the country of the treaty but in other countries that enjoy treaty benefits with the counterparty.

The termination of the U.S.-China Tax Treaty may lead to China imposing additional and higher withholding taxes on American companies. The imposition of these increased foreign taxes would be to the detriment of the U.S. fisc. Additionally, termination of the U.S.-China Tax Treaty would put the U.S. at a major disadvantage vis-a-vis third countries that continue their treaty relationship with China. As of the end of 2024, China had tax treaties with 114 countries (or regions). Many of those tax treaties include beneficial withholding tax rates. A renegotiation of the U.S.-China Tax Treaty could remove any disadvantage to U.S. companies rather than increasing the disadvantage via termination.

If U.S. businesses are going to maintain a competitive position around the world, we need a treaty policy that protects them from double taxation or excessive levels of foreign tax, particularly if their competitors already enjoy that advantage. The United States has lagged behind other developed countries in developing its tax treaty network and leveling the playing field for cross-border investment. This gives a competitive advantage not enjoyed by American businesses.

We reiterate our support for the Administration's effort to promote investment and manufacturing in the United States, and are concerned that terminating or suspending the U.S.-China Tax Treaty would undermine this goal by making U.S. businesses and the U.S. economy less competitive. We urge the Administration instead to take the approach of renegotiating any problematic provisions in the U.S.-China Tax Treaty to ensure that China does not receive any unfair advantages over the U.S.

Finally, we hope the Administration will recognize that many businesses have acted in reliance on the existence of the long-standing U.S.-China Tax Treaty, which has both protected U.S. investments and created a stable environment that brings in beneficial foreign investment. We request that any action provide an adequately long transition period to allow U.S. businesses to restructure their affairs to adapt to such a dramatic change.

We further urge the Administration to continue to expand the U.S. treaty network outside of China to strengthen and solidify the competitiveness of U.S. industry and the U.S. economy.

Sincerely,

Anne Gordon
Vice President, International Tax Policy
National Foreign Trade Council

cc: Lindsay Kitzinger, International Tax Counsel
Elena Virgadamo, Deputy International Tax Counsel for Treaty Affairs
Henry Louie, Deputy to the International Tax Counsel for Treaty Affairs