Submission of the U.S. Chamber of Commerce

ON: "Comments on Energy, Information and Communication Technology, and Infrastructure in the Indo-Pacific Region"

TO: U.S. International Trade Administration

BY: U.S. Chamber of Commerce

DATE: January 4, 2019

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce appreciates the opportunity to present the following suggestions in response to the U.S. Department of Commerce's International Trade Administration's Federal Register Notice entitled *Request for Comments and Notice of Roundtable on Energy, Information and Communication Technology, and Infrastructure in the Indo-Pacific Region.*

The Chamber, and our various bilateral business Councils, are encouraged by the renewed energy and focus that the Administration is placing on the Indo-Pacific region. The political attention directed to the region has been key in helping to reassure many of our commercial partners of the United States' continued presence in the region, and we fully support the whole-of-government approach being taken.

To help maximize this approach, the business community strongly encourages the Administration to establish a clearly identifiable central coordinating body within the U.S. government that is responsible for implementing the Indo-Pacific initiatives such as the Digital Connectivity and Cybersecurity Partnership (DCCP), the Enhancing Development and Growth through Energy (Asia EDGE) program, and the Infrastructure Transaction and Assistance Network (ITAN). The broad scope of the Indo-Pacific focus requires the U.S. government to have a clear and identifiable lead, which in turn will help facilitate cooperation with both the private sector and foreign governments.

One model that has been successful is the Trade Policy Staff Committee chaired by the Office of the United States Trade Representative, and it could serve as an example for a coordinating body of the Indo-Pacific Strategy. Under any such structure, the Chamber asks that there be a subcommittee designated to engaging with the private sector, as many U.S. companies have struggled to identify the tools and programs available to them under the strategy.

In addition to the above suggestion, the Chamber has prepared the following recommendations based on extensive consultations with the business community, and in particular those most active and invested in the Indo-Pacific region.

I. U.S. Chamber of Commerce General Recommendations and Guiding Principles for the Digital Connectivity and Cybersecurity Partnership (DCCP)

In previous comments, the Chamber has highlighted how the United States has positioned itself as a leader in the global digital economy; however, our advantage is not assured as certain governments are increasingly restricting digital commerce and seeking to undermine American technological innovation. Today, many countries are still pursuing a flawed approach to economic development—and it is particularly acute in the digital world.

Restrictions on cross-border data flows via forced localization measures, new complex and burdensome regulatory regimes, irritant *de minimis* requirements for e-commerce, investment measures that force technology transfers, and misuse of competition law are some of the most common challenges digital goods and services of American companies of all sizes, across all sectors, face in the Indo-Pacific.

Our desire is for our trading partners to recognize the economic potential of a liberalized approach to digital trade, join the United States in championing trade obligations that support the cross border movement of data, and adopt interoperable regulatory frameworks around privacy and cybersecurity. In order to make more progress in the Indo-Pacific, the Chamber recommends a whole-of-government approach to our engagement abroad. The Digital Connectivity and Cybersecurity Partnership (DCCP) is a welcome step in this direction, and we would like to offer the following guiding principles and suggestions to help ensure that the effort is successful:

1. **Take a whole-of-government approach and establish a clearly identifiable central coordinating body within the U.S. government.** In coordination with industry stakeholders, the Department of Commerce, State Department and other relevant U.S. agencies should develop a regional strategy that has specific outcomes and timelines. Linking this strategy with ongoing U.S. government initiatives is key. For example, the State Department should coordinate closely with USTR to ensure that any digital language in existing and future trade agreements advances this vision. This is particularly important in the upcoming U.S.-Japan trade negotiations.

2. **Bilateral and regional strategies are both necessary and should be mutually reinforcing.** Due to the cross-border nature of the digital economy, a successful regional strategy will include engagement with strategic partners as well as in strategic multilateral forums, such as APEC and ASEAN. The APEC e-commerce working group, for example, could be tasked with looking at the digital trade rules within the USMCA to determine how they can be broadened in the APEC context. In addition, bilateral engagement to promote U.S. digital priorities will be key and should also reflect the vision for the region. Existing bilateral forums, such as ICT Dialogues, should reflect and include DCCP priorities.

3. **Advocacy on policy is critical.** We fully support the State Department's initiatives to advance economic growth through an open, interoperable, and secure Internet across Asia. Leveraging the mandate of the DCCP and the full weight of the U.S. government, we encourage the State Department to lead and coordinate a whole-of-government approach that promotes a multi-stakeholder model for Internet governance, privacy, and cybersecurity across the Indo-Pacific. We believe that this should be prioritized first and foremost, and that it is a precursor for advancing connectivity and market access in the region. One way of doing this would be for a roadshow that focuses on key policy developments in the United States, in particular the CLOUD Act and the NIST cybersecurity and privacy frameworks.

4. **Extend the reach of U.S. digital principles across the Indo-Pacific through negotiated trade agreements, the G7, and the G20.** USMCA was an important step forward in many respects for digital trade, and we encourage the U.S. government to use it as a building block to expand high-standard digital trade rules across the Indo-Pacific. The U.S.-Japan trade agreement negotiations should be leveraged to help set a new gold standard for digital rules in Asia.

   The G7 and G20 are important venues for shaping the agenda for several of the world's leading governments as they each seek to make policy decisions affecting the digital economy, which then directly impacts digital trade. In recent meetings, the G7 and G20 have placed an emphasis on the digital economy as part of their conversations. The Administration has worked hard to ensure G7 and G20 digital communiqués carry the right messages on regulation, combating protectionism, and the benefits productive engagement with the digital economy holds for every nation.

Behind the scenes, however, it has been increasingly more difficult to maintain positive statements related to the digital economy as certain members seek to advance alternative agendas. We would recommend that the United States identify G7 and G20 partners across a range of digital policy matters and then work with these select partners well in advance of future meetings to develop strong common positions on these issues. Without more forward planning, we are concerned that digital policy discussions in the G7 and the G20 may reach a stand still.

5. **Support international privacy and cybersecurity frameworks that facilitate digital trade and seamless movement of data across borders.** In the Asia-Pacific region, the United States has advanced the APEC Cross Border Privacy Rules (CBPR) system that promotes the movement of data between borders to bridge national privacy regimes. The United States and other governments that have already adopted the CBPR system should work to promote the principles behind, and the expansion of, APEC CBPRs within APEC as well as holding discussions on how to expand the principles across other non-APEC economies. This can take place via case studies around the APEC CBPR framework and best practices that can be promoted and paired with workshops and forums.

   While differences between privacy regimes can be bridged through CBPR-style mechanisms, cybersecurity regulatory frameworks are increasingly being developed and implemented that also threaten the movement of data. The United States has created the NIST Framework for Improving Critical Infrastructure Cybersecurity, an innovation-friendly framework encouraging technology neutral approaches to cyber risks. However, approaches being developed in foreign jurisdictions often look much different, notably in China, Vietnam, and Indonesia. The United States needs to become more active in both shaping and aligning these emerging regulations, but also in developing new mutual recognition agreements to establish cross-border cybersecurity requirements similar to those that ensure data movement in alignment with national privacy regimes. In doing so, improved cybersecurity regulations will not only facilitate digital trade, but will also increase cybersecurity by enabling companies to scale best-in-class cyber solutions across borders.

   Similarly, the Chamber recommends that the DCCP should organize workshops and forums throughout the region promoting the NIST Cybersecurity Framework 1.1 (for an overarching perspective) and/or the Financial Services Sector Coordinating Council (FSSCC) Financial Sector Profile (for a perspective on sectoral application). The DCCP can identify multilateral mechanisms, which will enable Critical Infrastructure operators to comply with national security measures requirements through the use of international standards such as ISO 27001 and 27103. The interoperability of security measures requirements would benefit government and industry by ensuring that regulatory fragmentation does not create blind spots or vulnerabilities which can be exploited by hostile actors.

6. **Increase U.S. government participation in international organizations that focus on the digital economy.** In addition to expanding digital trade rules through trade agreements and data flow agreements, the U.S. government should enhance its participation in international bodies, including the International Telecommunications Union (ITU), to provide a positive narrative around an open Internet and multi-stakeholder approaches to privacy and cybersecurity. Officials from other governments are extremely active in these types of international bodies, and in many instances advocate for policies that put U.S. firms at a significant disadvantage. It is important that the U.S. government and the private sector be proactive in sharing the economic benefits of an open Internet to counter such messaging.

   Additionally, the DCCP should also focus resources and expertise on standard setting bodies. Given the importance of standards for new technologies (i.e., 5G, connected and autonomous vehicles, etc.), the U.S. government, in partnership with the U.S private sector, should have a more robust presence in standard setting bodies and organizations.

7. **Ensure that U.S. officials are well-versed in these emerging issues.** Both the State Department and Commerce Department play an important leadership role in these capacity building programs. Our foreign embassies, for example, are often the first line of defense against impediments to digital trade and are important messengers for a liberalized approach to the digital economy.

   One area that we would recommend investing greater resources in is an expanded Digital Attaché program. Since its inception in 2016, the State and Commerce Departments have operated a Digital Attaché Program that has proven to be a valuable resource through which U.S. stakeholders can identify, respond to, and avert policies that would otherwise have been harmful to the competitiveness of U.S. businesses. Expanding this program, ensuring adequate resources, and giving digital attachés a clear mandate focused on digital trade is critical to ensuring American leadership in the digital economy—not only in the Indo-Pacific but across the globe.

   Foreign governments are deploying substantial resources to promote digital trade rules that benefit their own businesses and simultaneously erode U.S. digital competitiveness. This includes robust promotion of their privacy frameworks, overwhelming participation in standard setting bodies, and the use of cybersecurity laws to promote industrial policies or censor political dissent. While the Commerce Department recently expanded its program to include a new Digital Attaché in Vietnam, we would recommend additional posts in Indonesia, Thailand, and Australia/New Zealand in any future expansion of the program.

8. **Expand capacity building, technical assistance, and regulatory reform efforts.** One of the priorities for DCCP is to focus on advancing an open Internet. This can be facilitated through enhancing regulatory exchanges and technical workshops between the United States and foreign counterparts on issues that impact the adoption and procurement of digital technologies. This includes seeking commitments to identify and update legacy regulations that prevent new business models and technological applications from being deployed. The private sector should have a formal role in these exchanges. Markets that should be prioritized include: China, Korea, Indonesia, Malaysia, Thailand, Vietnam and India.

Similarly, the Chamber underscores the important role that U.S. regulators will play in an effective whole-of-government effort. The Federal Trade Commission, for example, has been active with the Department of Commerce in advancing a better understanding of U.S. privacy protections abroad, shaping foreign privacy laws, and enforcing data flow agreements to which the U.S. is a party.

Other U.S. regulators are also increasingly being relied upon to answer the call. U.S. financial regulators need to take on a leadership role to ensure regulatory frameworks abroad do not limit opportunities for U.S. FinTech leadership. U.S. auto and aviation regulators also need to engage internationally to shape foreign counterparts' regulatory designs that will affect American competitiveness abroad for autonomous vehicles and drones. Further, regulators in foreign markets are beginning to contemplate regulatory questions about artificial intelligence, machine-based decision-making, access to algorithms and big data, as well as a host of other issues.

Further, the DCCP should empower like-minded regulatory counterparts in other countries in the region to do the same. Japan, Australia, Singapore, and Korea can all be important voices in advocating for appropriate legislative and regulatory measures around the digital economy, and working closely with these countries will also provide opportunities to help mitigate challenges in their domestic markets as they arise.

9. **Develop a catalogue of existing and emerging challenges.** To clarify DCCP priorities, the U.S. government should compile a database of upcoming, pending, and existing regulations that are impacting the digital economy. The database should be cross-sectoral and leverage the diplomatic community already stationed in the Indo-Pacific. It may be beneficial to extend this request to Japanese and Australian counterparts, and commit to regular exchanges of information with the private sector communities from these three countries. Such a catalogue should also be accessible to the private sector.

II. General Recommendations on Enhancing Development and Growth through Energy (Asia EDGE) and Infrastructure Transaction and Assistance Network (ITAN)

1. **Enhance financing mechanisms for telecommunications infrastructure.** As countries continue to enhance their connectivity through telecommunications infrastructure, wireless connectivity, 5G networks, and satellite communications, they are increasing turning to financing options and infrastructure packages presented by Chinese firms that are in turn backed by the Chinese government. The EU has also enhanced competition in this space, recently announcing a plan to improve energy, transport and digital links with Asia starting in 2021. The plan, which would be backed by funds from the EU's common budget from 2021, private sector loans, and development banks, did not specify how much the bloc would spend.

   U.S. private sector corporations are unable to compete with the levels and ease of availability of financing options at the disposal of their Chinese and European competitors, and enhanced

U.S. financing options would allow them to compete on a more level playing field. To this end, we have been encouraged by the Better Utilization of Investments Leading to Development (BUILD) Act of 2018's attempts to streamline development financing mechanisms to be better leveraged by the private sector, and by the focus placed on developing energy and infrastructure projects within the Indo-Pacific strategy. We encourage efforts to create and fully leverage the new U.S. International Development Finance Corporation (USDFC), and we reiterate the Chamber's long-standing belief that a fully functioning Export-Import Bank is crucial for American competitiveness. Additionally, U.S. financing options can be better leveraged by coordinating with like-minded partners on an individual basis and through multilateral development banks.

2. **Eliminate funding restrictions based on an energy project's technology.** OPIC, IDFC, or any other U.S. or U.S.-funded multilateral financing mechanism should not limit support based on an energy project's technology. Specifically, OPIC, (and USDFC, once operational) should eliminate its prohibition on supporting nuclear projects. While we understand there are local and cultural considerations to be made in determining the right energy mix for an economy, we believe that consumer choice, diversification of energy sources, and the ability to leverage technological innovation will be important for the region's economic growth.

3. **Create a database or catalogue of opportunities for infrastructure and energy investment, by country, and facilitate dialogues with the host country on how to initiate those projects.** In meetings with local governments and community leaders, the business community would like to see Foreign Service Officers and Foreign Commercial Service officials focus on identifying real needs and opportunities in the host country well before a project may be put to tender. An instruction cable or démarche from their respective headquarters requesting embassy officials to catalogue possible investment opportunities would help inform U.S. companies of upcoming public tender opportunities.

   Further, governments should prioritize locations for infrastructure projects in the Indo-Pacific based on their combined economic value and coordinate their respective investments. In the absence of a database or catalogue, a promising bottom-up approach to enhance information sharing in this space would be the formalization of meetings between the U.S. ambassadors and partner government officials to identify need and opportunities.

4. **Create a level playing field for U.S. energy companies.** U.S. companies operate in many countries in the Indo-Pacific where energy policies are designed to favor local partners, which limits the range of private sector activities available to U.S. companies. These policy programs and government structures vary from the acquisition and allocation of energy resources to pricing and supply regulations, which are set by policymakers and embedded into the energy industry policy. Often, this results in U.S. companies being forced to compete with firms benefitting from artificially low domestic energy prices or with state-owned companies that receive support from central or local governments.

   Going forward, the business community encourages the government to sharpen its message on the successful model of America's competitive, innovation-driven energy market with light-touch enabling regulations, and the importance of a life-cycle approach to infrastructure investment. Given the regular turnover of local government officials, and direct competition with local companies that share close relationships with the government, the business community asks that U.S. government initiatives be buttressed by long-term strategies that sustain policymakers' political will, increase public sector and institutional capacity, and encourage public pressure for a level playing field.

5. **Expand capacity building, technical assistance, and regulatory reform efforts**. Some governments in the Indo-Pacific lack the ability to assess the contracts of competing bids for infrastructure and energy projects—for example, terms of debt repayment or infrastructure life-cycle costs—and struggle to oversee projects during the implementation phase. The U.S. Department of Treasury's Office of Technical Assistance and the U.S. Trade Development Agency's (USTDA) Global Procurement Initiative offer modest support to Indo-Pacific governments in this regard, and these existing programs would benefit tremendously from an increase in funding. A small investment in these areas would have an outsize impact for American companies operating in the region.

6. **Foster an energy market that chooses winners based on transparent processes**. Enabling all resources to compete fairly in bilateral tender, energy market, capacity market, and balancing markets will ensure that market rules and pricing are technology-neutral and do not privilege incumbents over newcomers. The Indo-Pacific strategy should include additional advocacy on why market opportunities should be designed as a "pre-market" mechanism, foreseeing the integration of all resources into future wholesale markets, and to promote international consistency in technical and safety standards.

7. **Strengthen investment protections in energy and infrastructure projects.** While there is often broad understanding of the benefits that inbound investment can bring to host countries and local communities, the importance of investment protections in developing markets is often overlooked by governments that are attempting to attract foreign investors. To this end, the business community would encourage the U.S. government to promote and participate in intra-regional dialogues that will enhance investment protections, as well as through trade agreements and investment treaties.

   It is important that any such agreements enhance the economic strength each country receives from the private sector's cross-border investments. These agreements must reject any effort to unwind supply chain investments in goods and services and should protect U.S. investments from non-discriminatory treatment, direct and indirect expropriation, under the minimum standard of treatment, including fair and equitable treatment, performance requirements and ensure free transfers. These obligations should be enforced via investor-state dispute settlement (ISDS) provisions, which provide for neutral arbiters to uphold these investment protections. Any such agreements must also ensure that all sectors are afforded the same level of protection.

8. **Ensure that U.S. trade policies and regulations do not undermine price competitiveness.** Some challenges that U.S. companies face internationally originate from domestic policies that have unintentionally harmed the American business community's prospects abroad. For example, the cumbersome export licensing and approval processes, steel and aluminum

tariffs that raise the construction costs of new or expanding LNG export facilities, China's retaliatory tariffs on U.S.-exported LNG as a result of the U.S.-China trade war, and uncertainty from the U.S. withdrawal from the Trans Pacific Partnership (TPP) – all of which hurt U.S. competitiveness because foreign buyers no longer view the United States as the most reliable or low-cost option. The business community applauds the efforts and improvements especially by the Federal Energy Regulatory Commission (FERC) to streamline the regulatory and approval process, and look forward to continued engagement with the business community in this area. We urge the U.S. government to end the Sec. 232 tariffs on steel and aluminum imports and to abstain from measures that will create uncertainty for investment and trade. The Chamber has been advocating for the removal of tariffs, as they raise costs for U.S. manufacturers, hurt American exporters, and put American jobs at risk.

9. **Clarify and revise the qualification requirements for U.S. companies.** Many companies are unable to take advantage of U.S. government initiatives due to stringent local content requirements that disqualify them as a U.S. company and their products as American goods. To better leverage opportunities in the Indo-Pacific, the business community urges that the government revise conditions to qualifying as a U.S. company and push to lift local content requirements in Indo-Pacific countries given the changing ways of doing business that rely more heavily on supply chains.

10. **Create an easily accessible portal to improve information-sharing of U.S. government initiatives related to the Indo-Pacific.** U.S. companies make decisions based on incomplete information and understanding about the types of U.S. government support at their disposal. There is a strong desire across the business community to see a better coordinated and marketed whole-of-government approach to international engagements, for example, by establishing a resource that acts as a single-window, point of contact, and source of information. The Department of Commerce should establish an Office of Global Infrastructure Projects within the International Trade Administration to track and package information on major project opportunities in key countries and disseminate this information through its national network to registered American firms. The business community looks forward to seeing a calendar of events and list of priority countries with opportunities for private sector input to be reflected.

11. **Organize U.S. embassy-led initiatives that allow for increased public-private dialogue**. To encourage information-sharing and coordination among the United States, host country, and like-minded countries' government and private sector representatives in the field, we would encourage a series of sector-specific events in the region. We appreciated recent government-led efforts such as the LNG workshop in Korea and the Gas Task Force in India. However, to encourage greater private sector participation, it is necessary to ensure that foreign governments are represented by the appropriate level officials.

    In addition to working-level meetings, U.S. companies benefit from being able to have open discussions with decision makers in both governments. Unfortunately, some existing strategic energy partnerships have been downgraded by the U.S. government, resulting in lower-level participation from foreign governments, and fewer participants from the private sector.

The Chamber is pleased to offer these suggestions and welcomes the opportunity to continue to provide input and counsel on the Indo-Pacific strategy. We strongly believe that given a level-playing field and appropriate policy outcomes, American companies, workers, and our economy—as well as our many partners in the region—will be able to reap long-term and sustainable benefits.

For any further questions or inquiries, please contact Executive Director for Asia, Esperanza Jelalian, at ejelalian@uschamber.com.