AmCham Moldova
fighting for your business

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To: Mr. Jacob J. LEW
Secretary
U.S. Department of the Treasury

Copy: Mr. John MCCAIN
U.S. Senator
United States Senate

Copy: Mr. John BARRASSO
Senator
United States Senate

Copy: Mr. Eric RUBIN
Deputy Assistant Secretary
U.S. Department of State
Bureau of European and Eurasian Affairs

Copy: L. Daniel MULLANEY
Assistant United States Trade Representative for Europe and the Middle East
Office of the United States Trade Representative

June 19, 2014, no. 41

Re: Double Taxation Avoidance Agreement between the United States of America and the Republic of Moldova

Dear Mr. Lew:

On behalf of the American Chamber of Commerce in Moldova (AmCham Moldova) and U.S. businesses in the Republic of Moldova, I am pleased to address this letter to you and to express our support of signing a Double Taxation Avoidance Agreement (DTAA) with the United States of America.

The American Chamber of Commerce in Moldova is the leading foreign business association in the Republic of Moldova. AmCham Moldova connects businesses and business leaders to share the common goal of bringing the entrepreneurial spirit and the cultures of Moldova and the United States closer together. AmCham Moldova's membership, currently representing approximately 100 members, is composed of a diverse spectrum of businesses, from large foreign investors to small goods and service providers that operate within Moldova, as well as Moldovan companies of all sizes that are pursuing trade with the United States.

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To date, the Republic of Moldova has signed 47 treaties with other countries to avoid double taxation but lacks a double taxation treaty with the United States of America, a strategic political and economic partner of Moldova. From the perspective of Moldova, the absence of such a treaty is a direct obstacle in expanding bilateral activities, and thus affects the development of economic relations between the two countries. Below, we outline the significant milestones between the U.S. and Moldova's economic partnership and the arguments in favor of signing a Double Taxation Avoidance Agreement between the United States of America and the Republic of Moldova.

I. Milestones of the U.S. - Moldova Economic Partnership

1. On June 19, 1992, Moldova and the United States signed the Investment Incentive Agreement to support U.S. private sector investment in the Republic of Moldova. This agreement offers additional guarantees/potential to existing investors and is a prerequisite for promoting economic cooperation and investment attraction.

2. Over the last 22 years of Moldova's independence, the United States of America has contributed to Moldova's development and democratization with more than $1.1 billion, including $262 million in financial support under the Millennium Challenge Corporation (MCC) Compact Agreement. The MCC Compact Agreement was signed after the Millennium Challenge Threshold Program systematically and thoroughly verified Moldova's economic, political and social improvements through international standards.

3. In October 2010, Moldova signed an agreement with the Overseas Private Investment Corporation (OPIC) to provide loan guarantees for U.S. investments in Moldova and creating new bridges for future cooperation between U.S. - Moldovan business communities.

4. In 2012, the Republic of Moldova was excluded under the Jackson-Vanik Amendment by U.S. public authorities. By the end of 2012, U.S. Congress accepted the cancellation of the Jackson-Vanik Amendment for Moldova, with the approval of Bill H.R. 6156. Since then, Moldova has been permanently excluded from the scope of Jackson–Vanik, and therefore, obtained a permanent normal trade regime with the United States. Removal of this amendment creates the conditions necessary for the recovery of economic relations between Moldova and the U.S., including U.S. market promotion of Moldovan products, attraction of U.S. investments, obtaining state loans and loan guarantees for Moldova, etc.

II. Arguments for Signing a Double Taxation Avoidance Agreement

1. American businesses in Moldova continuously urge Moldovan public authorities to initiate the negotiations of signing the Double Taxation Avoidance Convention to substitute the outdated 1973 U.S. - U.S.S.R. Tax Treaty, which is not considered in force by Moldovan public authorities.

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The outdated treaty is characterized by enforceable limitations, even by 1970's standards. (Please find in Annex 1 to this letter, the study performed by PwC Moldova entitled "General Overview of the USA – USSR DTAA, in Case It Would Be Applied by Moldova through Succession").

2. The importance of signing the double taxation convention is mentioned in the recommendations of the Organization for Economic Cooperation and Development's (OECD) Model Convention on income and capital taxes[1], which supports the need to eliminate double taxation to facilitate the free movement of goods, services, capital and people.

3. An important aspect of tax treaties is establishing an agreement between two countries on common definitions of income source, residency and a permanent establishment to subject companies to source country taxes. Other important goals include reduction of source country withholding rates on passive income (such as interest, dividends and royalties), elimination of double taxation, prevention of tax evasion with respect to taxes on income and capital gains, tax administration cooperation, and a mechanism for resolving tax disputes between the two treaty countries.

   A DTAA provides certainty to businesses on the taxing rights of the two contracting countries; assists investors to better assess their potential tax liabilities on economic activities; and provides an added incentive for U.S. companies to invest in the Republic of Moldova as well as for Moldovan companies to do business overseas.

4. Although bilateral trade between the United States and the Republic of Moldova has not been a continuous ascent, we saw a positive trend in 2012. More details on the development of bilateral trade and comparative analysis of bilateral trade with the United States can be found in the table below. Bilateral trade with the U.S. for 2012 is estimated at nearly $109 million USD according to the National Bureau of Statistics of Moldova or almost $64 million USD according to data presented by U.S. Census Bureau.

Table 1: Evolution of bilateral trade between USA and Moldova, US dollars, millions

Year	***Source***	***2001***	***2002***	***2003***	***2004***	***2005***	***2006***	***2007***	***2008***	***2009***	***2010***	***2011***	***2012***
Moldova	***US Data***	*104*	*70*	*68*	*89*	*90*	*67*	*76*	*78*	*35*	*50*	*55*	*64*
	Moldovan Data	*53*	*83*	*68*	*72*	*78*	*52*	*62*	*108*	*57*	*84*	*105*	*109*

5. On December 31, 2012, U.S. investment in the Republic of Moldova constituted about $103 million of the total balance of $3.533 billion of foreign direct investment for the same period. There may be a slight downward trend in the weight of U.S. investments in the total of foreign direct investments in Moldova.

[1] According to Art. 79 of the Tax Code, the comments of the Model Convention for Double Taxation by the OECD are used for interpretation of international treaties by the Republic of Moldova and other states.

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Table 2: Rank of top investors in the Republic of Moldova, US dollars, millions

Rank	Country	FDI
1	Russian Federation	785
2	Netherlands	561
3	Cyprus	290
4	France	270
5	Spain	252
6	Germany	207
7	Romania	191
8	Italy	169
9	United Kingdom	123
10	**USA**	**104**

Source: International Monetary Fund, as of 12.31.2012

According to the data provided above, it may be concluded that the U.S. is the tenth largest investor in the Moldovan economy. Notwithstanding, according to AmCham, the presence of U.S. investments in Moldova is much greater than ~3% of the total amount of foreign direct investments, but taking into consideration the absence of a Double Taxation Avoidance Agreement, U.S. companies prefer to invest in domestic economy via other jurisdictions (Cyprus, Netherlands, etc.). The existence of a foreign tax credit mechanism may cover some tax risks, but does not cover other risks US investors may encounter in relation with a country with which there is not in place a DTAA.

6. The absence of a Double Taxation Avoidance Agreement makes the establishment of a sustainable bilateral channel of tax information exchange impossible. As a result, domestic lawmakers chose to sign a Model 2 Intergovernmental Agreement under the Foreign Account Tax Compliance Act (FATCA). Under Model 2 of FATCA, mandatory reporting of U.S. account holders' information will be sent individually by foreign financial institutions to the IRS rather than through a consolidated format, which creates additional pressure on financial / banking industries.

7. The United States offers a statutory remedy to offset the lack of a double taxation treaty in the form of a Foreign Tax Credit (FTC) which aims to decrease the fiscal burden of U.S. citizens and corporations working and doing business abroad. Nevertheless, this mechanism only partially addresses the problems associated with double taxation. Limitations of the Foreign Tax Credit include the following:

   a. There are limitations on creditability of the income taxes related to subsidies and the rules prescribing the technical taxpayer in certain situations. In addition, there are other restrictions on taking an FTC, such as disallowing the splitting of taxes from related income. (Section 903).

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b. FTC only applies with respect to federal income taxes or their equivalent, while a regular DTAA additionally covers additional types of taxes[2].

c. The FTC may be limited, based on the type of income (Passive vs. Active) and the foreign country's tax rate. Foreign income tax rates vary within each jurisdiction and there are limits as to how much foreign tax a U.S. company can offset. A company cannot take a foreign tax credit in excess of its corporate tax rate.[3]

d. FTC is not designed to prevent all forms of double taxation that can be remedied through a tax treaty. Additionally, FTC covers double taxation from a conflict of U.S. residence jurisdiction with the foreign source jurisdiction. FTC provides no relief from double taxation caused by overlapping claims.[4]

e. The existence of a FTC mechanism does not exercise enough power on U.S. investors to invest directly from the U.S. to Moldova as they look to avoid significant burdens on investment and cross-border services and payments, as well as avoid lack of transparent information exchange and obstacles to cooperate regarding tax and related issues, aspects which are safeguarded under a double taxation treaty.

I would also like to take this opportunity to express AmCham Moldova's interest in contributing further to any ongoing work U.S. public authorities may undertake with respect to negotiating a new Double Taxation Avoidance Agreement.

Thank you for your attention and please do not hesitate to contact our office for any additional information.

Sincerely,

Cristina Harea

President
American Chamber of Commerce in Moldova

[2] "What Foreign Taxes Qualify For The Foreign Tax Credit?" http://www.irs.gov/Individuals/International-Taxpayers/What-Foreign-Taxes-Qualify-For-The-Foreign-Tax-Credit%3F

[3] Internal Revenue Service Form 1118 – Corporations, Instructions

[4] McIntyre, Michael J. *International Tax Course Material, Part 5: Foreign Tax Credit, Chapter 18 Qualification for the Foreign Tax Credit, §18.01. General Rules Governing the Foreign Tax Credit*. Wayne State University, 2013. Web. <http://faculty.law.wayne.edu/McIntyre/Text/Classes/intl_class/Materials/INTL-2013_ch18-20.pdf>.