Congress of the United States
Washington, DC 20515

July 28, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Yellen,

As Members who care deeply about research and development, manufacturing, and jobs here in the United States, we are writing to express concern about the elimination of the foreign derived intangible income (FDII) deduction in the Administration's proposed FY 2022 budget.

Currently, FDII provides an important counterbalance to global intangible low-taxed income (GILTI) to keep successful research and development (R&D) in the U.S, create valuable intellectual property (IP) here, and even redomicile IP that is acquired or created overseas. FDII provides this parity with GILTI to discourage offshoring through a lower, 13.125% rate on high-return income, effectuated through a 37.5% deduction from income taxed at the 21% headline corporate rate. By eliminating the FDII deduction, and combined with the proposal to increase the corporate tax rate, the Administration's budget proposal would be detrimental to U.S. competitiveness and job growth.

FDII also supports innovation and investment. FDII encourages high-return advanced manufacturing to be performed in the U.S. Businesses often establish R&D centers and supply chains around where their high-return intellectual property is located. These activities create well-paying jobs. Moreover, bringing highly mobile intellectual property into the U.S. from low-tax jurisdictions provides the U.S. the primary right to tax (as opposed to only a secondary right if taxed under GILTI), boosting U.S. revenue.

While the Administration's budget proposes reinvesting revenue raised by FDII into an unspecified R&D spending incentive, we are concerned that any such incentive will not be able to keep American-developed IP at home or encourage companies to domesticate IP as well as FDII. Moreover, that trade-off conflates provisions that serve distinct purposes, both of which encourage domestic innovation.

Research incentives, while certainly valuable, serve as "input" measures—reducing the cost of research on the front-end, whether or not that research is successful. In contrast, FDII—in addition to providing parity with GILTI to discourage tax-motivated offshoring—serves a purpose that is complimentary to research incentives: it is a type of "output" measure that rewards successful research, leading to more investment in innovation.

IP boxes have been enacted in 19 of 37 OECD countries, so retaining FDII is critical for the U.S. to keep pace in the global innovation race. At the same time, we stand ready to work with the Administration on legislation to improve our competitive standing on R&D. Countries like China already permit businesses to deduct up to 200% of their R&D costs, and we should develop bipartisan solutions that complement FDII and promote U.S. innovation.

We know that when the businesses and workers in our districts have a level playing field, they can compete and win, even in an increasingly competitive global marketplace. We believe that the FDII regime provides our businesses and workers that level playing field and encourages businesses to expand their activity on U.S. soil. We urge the Administration to reconsider its elimination in order to preserve American IP, and the valuable economic activity that follows it, and protect our R&D and innovative jobs.

Sincerely,

Kevin Hern Member of Congress	Kevin Brady Member of Congress	Adrian Smith Member of Congress
Jodey C. Arrington Member of Congress	Vern Buchanan Member of Congress	Ron Estes Member of Congress
A. Drew Ferguson Member of Congress	Mike Kelly Member of Congress	Darin LaHood Member of Congress
Carol D. Miller Member of Congress	Devin Nunes Member of Congress	Tom Reed Member of Congress
Tom Rice Member of Congress	David Schweikert Member of Congress	Jason Smith Member of Congress

Lloyd Smucker
Member of Congress

Jackie Walorski
Member of Congress

Brad R. Wenstrup, D.P.M.
Member of Congress