

**DOING BUSINESS IN LATIN AMERICA: POSITIVE
TRENDS BUT SERIOUS CHALLENGES**

HEARING

BEFORE THE

SUBCOMMITTEE ON WESTERN HEMISPHERE, PEACE
CORPS, AND GLOBAL NARCOTICS AFFAIRS

OF THE

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DOING BUSINESS IN LATIN AMERICA: POSITIVE TRENDS BUT SERIOUS CHALLENGES

TUESDAY, JULY 31, 2012

U.S. SENATE,
SUBCOMMITTEE ON WESTERN HEMISPHERE,
PEACE CORPS AND GLOBAL NARCOTICS AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Robert Menendez (chairman of the subcommittee) presiding.

Present: Senators Menendez and Rubio.

OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY

Senator MENENDEZ. Good afternoon. This hearing of the Western Hemisphere Subcommittee will come to order.

Welcome to our hearing on the positive trends and serious challenges of doing business in Latin America. Our goal today is to examine ways that the U.S. Government can help promote American businesses and trade opportunities in the region, while also considering the challenges, including the impact of a growing Chinese foothold in the hemisphere, trade barriers to market access, and the impact of weak institutions and marginally democratic governments in some countries, on American investments.

It is my view that we have, obviously, been necessarily distracted by events in the Middle East and around the world and simply have not had enough emphasis on Latin America. But it is also my view that we ignore our own hemispheric neighborhood at our own peril. While most countries in Latin America have escaped the worst of today's global downturn, there are too many troubling signs in the hemisphere to ignore. Our Government has to aggressively engage in the region. Working with the private sector, it must leverage all available opportunities to increase trade, promote American companies, and create jobs in New Jersey, in Florida, and throughout the hemisphere.

During the last decade, changing economic policies, globalization, energy discoveries, and myriad other factors in Latin America have given rise to promising regional economies with robust exports and an expanding middle class. Not only has trade between the United States and Latin America expanded 46 percent since 2009, but there are other positive trends like relative political stability and mostly open international trade policies in the region that American companies should take advantage of in the near- to mid-term.

Elected civilian governments encourage foreign investment and foster economic growth. Brazil, Colombia, Chile, and Peru, for example, enjoy stable democracies favoring foreign capital and investment. With 56 million Latin American households joining a rapidly growing middle class over the last decade, consumers in these countries enjoy greater buying power and discretionary spending than ever before, and that is an opportunity for American industry.

And yet, as positive as these developments are, the region is not immune to the debilitating effects of a global recession. The International Monetary Fund recently lowered its economic growth forecast for Latin America and the Caribbean to 3.7 percent this year, down from 4.5 percent in 2011. A greater and unfortunately renewed concern is the weakening of democracies in the hemisphere by leaders who use their elected offices to grow their power by weakening democratic institutions, civil society, the rule of law, and independent media. Investors who fear instability are reluctant to place their trust and their resources in countries like Venezuela, Nicaragua, Bolivia, and Ecuador.

The ongoing constitutional crisis in El Salvador provides an example of the market responding to political instability. Last week, Fitch Ratings downgraded its economic outlook for the country from stable to negative.

And in Argentina, the government imposition of 1980s-style rules to limit market access, failure to pay past debts, and nationalization of assets without compensation has shocked investors. It will almost certainly take many years for that country to recoup the loss of market confidence resulting from these policies.

Looking at the broader geopolitical picture, China has taken note of the positive economic and political trends in the region and has seized the opportunity to find a foothold in the region while our primary attention has been on events in other regions around the world. Since 2000, China has made significant diplomatic and economic inroads in Latin America. Overall, Sino-Latin American trade has increased from \$12 billion in 2000 to over \$140 billion today, with China supplanting the United States as Brazil and Argentina's largest trade partner. The truth is that deals offered by China are often too good to pass up. In addition to offering unprecedented loan terms and investments, China's mercantilist policies are not conditioned on labor or environmental conditions, making them in many cases a more attractive partner than Western investors.

And that brings us to the purpose of this hearing. We are here to examine existing and future opportunities for American companies in Latin America. We are here to consider opportunities for the U.S. Government to promote American business and trade in the Western Hemisphere, and we are here with some of the leading experts on Latin American business and trade to help put both the positive trends and the challenges we face in the region in clear perspective so that we can move toward policies that maximize the positive trends and mitigate the challenges.

So I want to thank all of our panelists for being here, and let me turn to my distinguished colleague, the ranking member, Senator Rubio, for his opening statement.

**STATEMENT OF HON. MARCO RUBIO,
U.S. SENATOR FROM FLORIDA**

Senator RUBIO. Thank you. Mr. Chairman, thanks for holding this important hearing as well.

Just a couple housekeeping items. First, I would ask for unanimous consent that this letter by Senator Lugar be entered into the record. It regards to the Government of Ecuador's mischaracterization of a June 29 United States Trade Representative's report on the operation of the Andean Trade Promotion and Drug Eradication Act.

Senator MENENDEZ. Without objection, so included.
[The letter of Senator Lugar follows:]

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, July 18, 2012.

Ambassador RON KIRK,
*U.S. Trade Representative,
Executive Office of the President,
Washington, DC.*

DEAR AMBASSADOR KIRK: I am writing to express my concerns regarding the government of Ecuador's mischaracterization of a June 29th United States Trade Representative's (USTR) report on the operation of the Andean Trade Promotion Drug Eradication Act (ATPDEA). In order to maintain their eligibility for U.S. Trade Preferences, the Ecuadoran government is alleging that the USTR report supports Ecuador's refusal to comply with court orders issued by an international arbitral tribunal regarding a ruling that specifies that the Ecuadoran government was wrong to accuse Chevron of being responsible for environmental and social harms in the Oriente region of Ecuador, when in fact the USTR report states the opposite.

According to reports, Ecuador has violated several orders and awards issued by an international arbitral tribunal, convened under the United States-Ecuador Bilateral Investment Treaty (BIT) to consider false claims made against Ecuador. The most recent violation was regarding a court award dated February 16, 2012. This award is binding against Ecuador.

To become designated as a beneficiary country, Ecuador had to meet various Andean Trade Preferences Act (ATPA) statutory criteria, including not failing to "act in good faith in recognizing as binding and enforcing arbitral awards in favor of [U.S. companies]" Since ATPA benefits are not an entitlement, a country is not guaranteed to maintain its status as a beneficiary country.

Senior Ecuadoran government officials have publicly announced that Ecuador will not comply with the court's awards. Ecuador's President called the arbitrations involving Chevron an "atrocious." Ecuador's Attorney General openly condemned the BIT Tribunal for assuming jurisdiction over Chevron's claims, saying that it could not "act as a tribunal that may review judgments issued by the Ecuadorian judicial system."

Ecuador has failed to comply with the court ordered awards promulgated by the BIT Tribunal. Ecuadoran courts and senior government officials have denounced the award and denied its binding quality. Had Ecuador engaged in such conduct prior to its designation as an ATPA beneficiary country, it would not have been eligible for that designation. Now that it has engaged in such conduct, please explain what the implications are for Ecuador to maintain its status as an ATPA beneficiary country.

I look forward to hearing your views.

RICHARD G. LUGAR,
U.S. Senator.

Senator RUBIO. And second, just so the folks on the panel know, I will need to leave probably around 2:30. There is an Intelligence Committee meeting. It should not take long, and if we have not concluded here, I will be back. But thank you all for being here. I appreciate your service, your continued service to our Nation.

Latin America obviously is a region of strategic importance to our country, and a prosperous and democratic and stable Western

Hemisphere is crucial to our own safety and our own prosperity. This importance is only going to continue to grow. For example, a recent report found that the Western Hemisphere will become almost totally self-sufficient in the next two decades when it comes to energy.

As I have said before, the last 3 decades have seen a very impressive expansion of political and economic freedoms in this hemisphere. With, of course, the sad exception of Cuba and a few resurgent authoritarian rulers, Latin American leaders recognize the legitimacy of free and fair elections, of promarket economic policies, and there is an unprecedented cooperation to curb transnational crime. We have seen this in nations such as Brazil, Colombia, Chile, and Mexico, to name a few. These countries have expanded the democratic space, and as a result their governmental institutions have been strengthened. These countries have opened markets. They have embraced competition and they have seen the rewards of free enterprise and of trade.

I urge the administration to take even bolder steps to consolidate our relations with similar democratic nations in the region. For example, in the absence of a hemispheric-wide free trade zone, the Trans-Pacific Partnership offers new opportunities to integrate the region to the global economy. I hope the administration will consider putting in place a mechanism to include as many Latin American countries as possible into the TPP's economic infrastructure.

For example, they could develop a fast track process to allow countries with which the United States has free trade agreements to join the TPP community once these negotiations are finalized. And at the same time, we can work on expanding opportunities in the region and we should also resolutely address the serious challenges that are plaguing the region. A working democracy and a functioning market economy depends heavily on a system of checks and balances where institutions are allowed to independently work their will within a country's constitutional framework.

In El Salvador, Argentina, Ecuador, Nicaragua, and Venezuela, we are seeing a disturbing reemergence of authoritarian elements in the legislative and the executive branches of government, eager to manipulate judicial institutions to serve their short-term political interests. According to the Heritage Foundation's 2012 Economic Freedom Index, only four Latin American countries—only four—Cuba, Ecuador, Venezuela, and Argentina—rank as economically repressed. Not surprisingly, these countries also share the dubious distinction of being led by either totalitarian or authoritarian leaders. If left unchecked, this trend will diminish any good intended efforts to help American businesses grow and invest in this region.

The U.S. response to this rising authoritarian challenge should be clear and it should be swift. An American foreign aid program or trade agreement is a seal of approval. It is a seal of approval of certain best practices and should only stay in place based on meeting certain good governance and legal protections.

I look forward to your testimony and I hope to learn more about the administration's policies to address the opportunities and the challenges to American businesses hoping to invest in trade in this, our region.

Thank you so much.

Senator MENENDEZ. Thank you, Senator, very much.

Let me turn to our first panel. We will hear from Mr. Francisco Sanchez, the Under Secretary for International Trade, the U.S. Department of Commerce, who will be joined by Matthew Rooney, the Deputy Assistant Secretary in the Bureau of Western Hemisphere Affairs for the U.S. Department of State. We look forward to your informed thoughts as representatives of two of the most prominent economic development and promotion agencies in the U.S. Government on the evolving role of the public sector in U.S. trade in Latin America and what, if any, tangible steps are being taken to protect and grow our historically strong trade ties within the region. I do not know if you will have it in your oral testimony. Your full written testimonies will be included in the record, and we ask you to summarize for about 5 minutes.

I am particularly concerned about some of the challenges aspects and want to explore those with you. If you do it orally in your testimony, fine. If not, we will pursue it in questions.

With that, let me recognize Secretary Sanchez.

STATEMENT OF HON. FRANCISCO SANCHEZ, UNDER SECRETARY FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Mr. SANCHEZ. Thank you, Chairman Menendez, Ranking Member Rubio, members of the subcommittee. I appreciate the opportunity to testify about the U.S. Department of Commerce's work to help American businesses thrive in Latin America.

Two years ago, President Obama launched the National Export Initiative and he set a goal of doubling exports by the end of 2014. The reasoning behind this was simple. Whenever more American products reach more markets, it strengthens American businesses and stronger businesses mean more American jobs.

Last year, U.S. exports reached a record \$2.1 trillion in total value, supporting 9.7 million American jobs, and Latin America was a key to the success. It was the destination of close to \$370 billion in U.S. goods which represents an increase of 54 percent since 2009.

And there is potential to do so much more. Latin America has a growing middle class, meaning more customers for U.S. products. Considerable growth is projected across the region. Brazil alone will spend billions on infrastructure development as it prepares to host the 2014 World Cup and the 2016 Olympics. And U.S. companies can and should play a big part in this growth. As President Obama has made clear, the future of the United States is closely linked to the future of our neighbors in Latin America. We are bound by a rich and shared history, cultural ties, and our proximity. And as we look to the future, it is critical that we strengthen these ties in a way that benefits all partners.

Please allow me, if you would, to mention just a few of the administration's efforts to strengthen regional integration.

Earlier this year, administration officials, including myself, and private sector partners from across the hemisphere participated in the Summit of the Americas in Colombia to create new pathways to prosperity. In June, President Obama announced that the

United States and its partners extended an invitation to Mexico to join the Trans-Pacific Partnership trade negotiations.

And at the U.S. Department of Commerce, we colead the U.S.-Brazil CEO Forum and we lead the U.S.-Brazil Commercial Dialogue. We do this in order to strengthen the \$74 billion bilateral trade relationship.

In our work with Mexico, we are focused on regulatory cooperation, intellectual property rights protection, and on making North American supply chains more efficient through enhanced border facilitation and infrastructure.

And of course, we work tirelessly to provide a level playing field so that U.S. businesses can compete.

Our Latin American trade agreements, which cover over 84 percent of our regional trade, do more than just eliminate tariffs. They provide transparency, predictability, and recourse where necessary. That is why the U.S.-Colombia Trade Agreement, which took effect in May, is so important. U.S. businesses now have unprecedented access to sell their goods in this important market. And the Commerce Department's Commercial Service stands ready to link U.S. businesses with opportunities across the region. Entrepreneurs can call our offices. They can visit our Web site and we will help them succeed in Latin America and in the entire global marketplace.

A couple of examples of our Commercial Service's work. In New Jersey, our Advocacy Center helped ACROW Corporation of America secure a \$15.5 million contract with the Government of Colombia to provide prefabricated modular steel bridges. And our Miami office recently provided counseling to Tragar Brothers, a Florida distributor of oil and gas equipment, helping them secure several sales to Petrobras and other Brazilian companies. Successes like this happen regularly, and the potential is there for even more.

As part of this work, the administration will continue to collaborate with Congress on critical trade and development issues. Let me take a moment to thank the Senate Finance Committee for reporting out a bill that would take care of some technical corrections on textiles to the US-CAFTA-DR Free Trade Agreement. It will also help maintain and create jobs across the United States and Latin America. So I hope that Congress will pass this bill very soon.

In the end, the goal of the United States and our Latin American partners is a shared prosperity that is built through partnership and guided by shared ideals and values.

I want to thank both of you for your leadership in this part of the world and for the opportunity to testify today. I look forward to working with you and other members of this committee as we move forward our commercial relationship with Latin America. Thank you.

[The prepared statement of Mr. Sanchez follows:]

PREPARED STATEMENT OF FRANCISCO J. SANCHEZ

INTRODUCTION

Chairman Menendez, Ranking Member Rubio, and members of the subcommittee, thank you for the opportunity to speak before you today about the Department of Commerce's work to help U.S. businesses succeed in Latin America.

U.S. EXPORTS LEAD TO JOBS AND OPPORTUNITIES

Two years ago, President Obama launched the National Export Initiative with an ambitious goal of doubling U.S. exports by the end of 2014. At the Department of Commerce, we work every day to help make this effort a success. Whenever more American goods and services reach more markets and more customers, it strengthens American businesses. And stronger businesses result in more American jobs.

In 2011, U.S. exports reached \$2.1 trillion in total value, an all-time record. These exports supported 9.7 million jobs, an increase of 1.2 million compared to 2009. As these numbers demonstrate, the work to boost U.S. exports is having an impact for families, businesses, and communities. We want to keep this momentum going by maximizing opportunities available to U.S. firms, large and small, in overseas markets. That work leads us to Latin America.

THE IMPORTANCE OF THE LATIN AMERICAN MARKET

As President Obama has made clear, the future of the United States is closely linked to the futures of our neighbors in Latin America. We are bound by a rich and shared history, cultural ties, and proximity. As we look to the future, it's critical that we strengthen these ties in a way that benefits all partners.

This is an important effort for U.S. businesses because the Latin American market is full of great opportunities. Proximity to our fast-growing neighbors is a clear advantage in the face of global competition. Looking simply at ocean shipping from, say, New Jersey ports, U.S. cargoes can reach Colombia in 9 days and Panama in 4 days. By contrast, a vessel leaving a New Jersey port can take 29 days to reach China and 35 days to reach Indonesia.

Last year, U.S. merchandise exports to Latin America totaled \$367 billion. This represents an increase of 54 percent since 2009, far greater than the 36 percent increase with the rest of the world. In one case, annual total merchandise trade with Mexico reached \$461 billion in 2011. In fact, \$1.3 billion in goods cross our shared border every day, almost double that of a decade earlier.

These numbers are clear: Latin America has been a key part of the U.S. export success story of recent years. Remarkably, there is potential for even more progress and growth.

COMMITMENT TO U.S.-LATIN AMERICA ENGAGEMENT

To maximize these opportunities, the President has been firmly committed to U.S. engagement with Latin America. Earlier this year, administration officials, including myself, joined public and private sector partners from across the hemisphere to participate in the CEO summit of the Americas in Cartagena, Colombia. The gathering provided a unique opportunity to strengthen old alliances, create new partnerships, and identify new pathways to prosperity.

Clearly, these partnerships are benefiting all sides, and we've got to continue to look for new ways to strengthen regional integration. One notable milestone occurred recently when President Obama announced that the United States and its partners extended an invitation to Mexico to join the Trans Pacific Partnership trade negotiations.

THE POTENTIAL OF THE LATIN AMERICAN MARKET

There are a number of factors that make Latin America an increasingly attractive place to do business. Over time, it has made a transition toward greater democracy, empowering its citizens with new opportunities to succeed.

As a result, over the past decade, millions of people have lifted themselves out of poverty and into the middle class. This amounts to half of all households in the region, and that number could grow to three-quarters within 20 years. Brazil, in particular, is projected to become a top-five global economy in the next 5 years. Countries like Colombia, Chile, Peru, Uruguay, and Panama, are also predicted to achieve considerable growth.

Allow me to just give a few examples of the incredible commercial opportunities in these countries. As I mentioned earlier, Brazil is projected to become a top-five economy in the future. Air transportation, telecommunications, oil and gas and mining are all strong growth sectors. It will spend billions on infrastructure development as it prepares to host the 2014 World Cup and the 2016 Olympics.

U.S. companies should play a big part in this growth. There are many unexplored opportunities. Northeast Brazil, for example, is the country's fastest growing region. Its nine states have a population of over 53 million, and four of these states will host World Cup matches. Yet, this area of Brazil has often been overlooked by U.S.

firms looking to invest or export. These are opportunities that businesses should seize.

Another example is Colombia. The U.S.-Colombia Trade Promotion Agreement took effect earlier this year on May 15. U.S. businesses now have unprecedented access to sell their goods in this important market. Colombia will spend at least \$26 billion in the next 4 years on extensive infrastructure projects that will require: project financing, public works subcontracting, logistics, construction equipment, air navigational and port security aids, railway construction, transportation equipment, security and defense items and services, and mass transit systems.

MEETING THE CHALLENGES TO DOING BUSINESS

While we are encouraged by these new market opportunities, we are mindful of the challenges facing U.S. companies doing business in the region. These include inadequate infrastructure, outdated customs procedures, corruption, nontariff barriers, challenges remaining in intellectual property rights protection and enforcement, and increasing competition from China, just to name a few. Commerce is actively engaged on projects and initiatives to improve the business climates in these markets, addressing these challenges on several fronts. For example:

We colead the U.S.-Brazil CEO Forum and lead the U.S.-Brazil Commercial Dialogue, which tackle trade barriers, share best practices, and help strengthen our \$74.3 billion bilateral trading relationship.

We work with Mexico (and Canada) on regulatory cooperation and intellectual property rights, and on making North American supply chains more efficient through enhanced border facilitation and infrastructure. Clearly, cooperating with our neighbors has helped to enhance the economic competitiveness of our three countries.

We work with Honduras, El Salvador, and Costa Rica under the auspices of Pathways to Prosperity to support border management reform in Central America.

PROMOTING THE BENEFITS OF TRADE AGREEMENTS

Our Latin American trade agreements, which cover over 70 percent of our regional trade, do more than just eliminate tariffs. U.S. and Latin American companies benefit from commitments that facilitate transparent rule-making, predictable legal frameworks, strong intellectual property rights protections, and regulatory certainty at home as well as in global markets. Our trade agreements, in a sense, provide a playbook for small companies about how to operate in these markets—they remove tariff and nontariff barriers, and provide transparency, predictability, and recourse.

At the Department of Commerce, we educate the business community, especially small businesses, on how to take advantage of these new market opportunities. In addition, we actively monitor our trading partners' compliance with our trade agreements and assist companies when they encounter obstacles to doing business.

LINKING U.S. BUSINESSES WITH BUYERS OVERSEAS AND ATTRACTING INVESTMENT BACK HOME

To help American businesses make the most of these opportunities, our Commercial Services staff—located in more than 100 U.S. cities and 73 countries—stands ready to link American goods and services with buyers overseas.

Our talented workforce has in-depth knowledge about the export process, markets, and sectors. Entrepreneurs can call our offices, or log onto our Website, and we'll help them succeed in the global marketplace. Our Miami office recently provided counseling to Traeger Brothers, a Florida distributor of oil and gas equipment, and helped them secure several export transactions to Petrobras and other Brazilian companies worth over \$87,000.

Our Albuquerque, NM, office recently provided extensive counseling to the MIOX Corporation, a small manufacturer of onsite water disinfectant generators, which led to an export sale to Mexico valued at \$3.5 million.

And in New Jersey, we have helped companies like the ACROW Corporation of America, a client of our Advocacy Center, to secure a \$15.5 million contract with the Government of Colombia to provide prefabricated modular steel bridges. ACROW competed against a British company, which received heavy advocacy from the British Embassy in Colombia, and ACROW believes our assistance was decisive for an open and transparent procurement process.

Successes like these are occurring regularly, and we will continue to work diligently to raise awareness, help businesses navigate through the export process, and ultimately link American-made goods with buyers overseas.

Our Commercial Services team is also on the front lines of the SelectUSA Initiative. Housed in the Commerce Department, it is the first coordinated U.S. Governmentwide effort to promote and support business investment in the United States. Brazil and Mexico are among SelectUSA's priority markets in fiscal year 2012 where U.S. and FCS personnel have engaged in proactive outreach to members of the international investor community promoting the United States as the premier destination for capital.

Foreign investment is key to the American economy. U.S. subsidiaries of foreign-owned firms maintain a stock foreign direct investment position in the United States of about \$2.3 trillion. These companies employ more than 5 million U.S. workers, which translates to more than \$400 billion in wages, and the goal of SelectUSA is to attract more investment.

Our team spreads the word about the desirable market conditions in the U.S. economy, including a hardworking and educated workforce, relatively low taxes and access to an incredible consumer base. Their work leads to increased investment, a stronger America, and ultimately a stronger region.

HELPING U.S. COMPANIES

I want to thank the Senate Finance Committee for reporting out a bill that would make technical corrections on textiles to the US-CAFTA-DR free trade agreement and will help maintain and create jobs across the United States and Latin America.

The correction on sewing thread alone will help support approximately 1,800 jobs in the United States, Central America, and the Dominican Republic. U.S. producers are poised to hire more employees once this package passes. Along with the AGOA Third Country Fabric provision, these urgent changes would build on two key U.S. trade initiatives that support trade, investment, and employment in Africa and the Western Hemisphere.

I urge the Senate to pass this bill immediately.

CONCLUSION

In the end, the goal of the United States and all our Latin American partners is shared prosperity that is built through partnership, and is guided by shared ideals and values. Latin America is home to some of the most dynamic markets in the world. There are incredible opportunities for U.S. businesses to be a part of this growth.

The administration is working to help businesses seize these opportunities by increasing engagement, fighting for a level playing-field, linking U.S. goods and services with overseas buyers, and promoting inward investment. These are all ingredients for success. I look forward to working with the members of this committee to help more American businesses succeed in Latin America, both today and for years to come.

Senator MENENDEZ. Thank you, Secretary Sanchez.
Secretary Rooney.

STATEMENT OF MATTHEW ROONEY, DEPUTY ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS, WESTERN HEMISPHERE BUREAU, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. ROONEY. Senator Menendez, Ranking Member Rubio, thank you very much for the opportunity to be here with you today to discuss the administration's efforts to promote the competitiveness of U.S. business in Latin America.

As Under Secretary Sanchez has already noted, the Western Hemisphere is a region of extraordinary opportunity for U.S. business. Sound macroeconomic management and investments in health and education by many governments in the region have facilitated an impressive economic expansion. Since 2002, the GDP of the region has more than tripled, rising to approximately \$5.5 trillion in 2011.

These developments and numerous others have lifted, as you have already noted, sir, millions of households into the middle

class. Rising U.S. exports to the region demonstrate that U.S. companies are already taking advantage of these opportunities.

That is not to say that the region is without its challenges. Some countries, such as Argentina and Venezuela, have chosen policies that result in high rates of inflation. Weakening global demand has caused commodity prices to come off their highs in recent months, highlighting the risk of overreliance on a single sector to drive growth. Sustaining robust economic expansion will require the region to transition away from commodity-led growth, driven primarily by demand from China to a more balanced model that is based on rising productivity. In this context, many countries in the Americas are coming to see anew the benefit of trading relationships with countries such as the United States with which they exchange a broader range of goods and services.

U.S. businesses also face challenges in taking advantage of the increasing opportunity in the region. For example, a lack of transparency in certain nations and a threat of expropriation can discourage investment.

Nevertheless, our highly competitive private sector is well positioned to overcome these and other barriers and the administration is working every day to help them. To help U.S. firms compete against Chinese and other state-owned enterprises, we are working with the Department of Commerce to provide better and more easily available information on business opportunities around the hemisphere, in particular through the Infrastructure Exports Initiative which focuses on promoting business opportunities for infrastructure projects in nine countries worldwide, including Brazil and Colombia in Latin America.

Last week, Secretary Clinton opened the Latin American IdEA partnership which we call La Idea, a business plan competition that will encourage U.S. small businesses to build new business partnerships with small businesses in Latin America.

La Idea is a piece of a larger initiative that President Obama launched as he was traveling to the Summit of the Americas in April to help small and medium-sized businesses navigate the complexities of international trade. We will link our extensive network of small business development centers with similar centers throughout the hemisphere to create the Small Business Network of the Americas. With over 2,000 centers in the hemisphere serving more than 2 million small and medium-sized businesses, linking these centers more closely together will provide small business owners with an on-ramp to the global economy. This effort builds further on several years of work under the Secretary of State's Pathways to Prosperity initiative in building and developing the small business development center model throughout Latin America.

We are focused on the fact that women in the region often face special obstacles to getting their businesses off the ground. This is why the President launched the Women's Entrepreneurship in the Americas initiative, WEAmericas, to promote access to training, finance, and markets for business women in the region.

Mr. Chairman, Mr. Ranking Member, our businesses have moved beyond just selling products to Latin America and the Caribbean. They are working hand in hand to build complete businesses from

supply chains to distribution networks, to retail partnership. Secretary Clinton's Economic Statecraft initiative challenges all of us at the Department to focus on shaping the policy environment so that these partnerships can thrive.

With this in mind, as Under Secretary Sanchez has already noted, we are collaborating more closely than ever with Canada and Mexico on economic issues such as regulatory cooperation and more efficient borders. We have set up a direct line for U.S. businesses to talk with our ambassadors and their teams in the countries throughout the hemisphere to get advice on navigating the political and economic landscape in each country.

As you already noted, gentlemen, the Americas hold tremendous strategic importance for the United States in terms of energy. In the coming years, the region will supply more and more of our imported energy as oil producers such as Canada, Brazil, and Colombia ramp up output and as Mexico, already a major producer, considers important reforms to enable an increase in production.

At the summit, a Colombian initiative called Connecting the Americas 2022, which seeks to enhance electrical interconnection across the hemisphere and which builds on the U.S. Energy and Climate Partnership of the Americas initiative from the last summit, will increase the availability of reliable and affordable electricity and accelerate development of renewable energy opening important new markets for U.S. exports and investment.

We believe that these close economic ties with our partners in the Western Hemisphere make us more competitive, and second only to the protection of American citizens living and traveling abroad, our top priority is ensuring that our businesses can pursue these opportunities that the region presents to create jobs and prosperity for the American people.

Mr. Chairman, Mr. Ranking Member, thank you again for the opportunity to be here today to discuss this important issue. I look forward to your questions and to working closely with this committee to promote U.S. economic interests throughout the hemisphere.

[The prepared statement of Mr. Rooney follows:]

PREPARED STATEMENT OF MATTHEW M. ROONEY

Chairman Menendez, Ranking Member Rubio, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the administration's efforts to promote the competitiveness of U.S. business in Latin America and the Caribbean.

The Western Hemisphere is a region of extraordinary opportunity for U.S. business. Sound macroeconomic management and investments in health and education by many governments in the region have facilitated an impressive economic expansion. Since 2002, the GDP of the region has more than tripled, rising to approximately \$5½ trillion in 2011. Average inflation rates in the region have hovered around 6 percent since 1997, a far cry from the days of hyperinflation and monetary crises that stifled investment and ate away at families' savings. In the last 10 years, fixed capital investment nearly quadrupled and governments' greater contributions to social safety nets helped mitigate the negative effects of the 2008–2009 financial crisis.

These developments and many others have paved the way for a 78-percent increase in the size of the middle class since 1990. The region now has 128 million middle-class households that have more disposable income to spend on education, health care services, cars, houses, consumer electronics, and other amenities that were previously out of reach. Rising U.S. exports to the region demonstrate that U.S. companies are already taking advantage of these opportunities, and the re-

gion's growing reservoir of consumer demand will underpin continued growth in trade and investment flows.

That is not to say, however, that the region is without challenges. Some countries, such as Argentina and Venezuela, continue to experience high rates of inflation. Weakening global demand has caused commodity prices to come off their highs in recent months, highlighting the risk of overreliance on a single sector to drive growth. Sustaining robust economic expansion will require the region to transition away from commodity-led growth, driven primarily by demand from China and other markets in Asia, to a more balanced economic approach based on productivity improvements. In this context, many countries in the Americas are taking another look at the benefit of maintaining diverse trading relationships with countries such as the United States with which they exchange a much broader range of goods and services.

Our businesses also face challenges in taking advantage of the increasing opportunity in the region. For example, the lack of transparency or a level playing field in certain nations, and the threat of expropriation or even nationalization greatly discourages investment. U.S. companies also tell us of the need to overcome or otherwise compensate for the high barriers to trade faced in Argentina. We have expressed our concern, both in bilateral and multilateral settings, over the nature and application of trade-restrictive measures which adversely affect imports into Argentina. We will also continue to urge the Argentine Government to normalize relations with all of its international creditors to improve Argentina's investment climate.

Nevertheless, our highly competitive private sector is well positioned to overcome these and other barriers and the administration is working every day to help them do that. To help U.S. firms compete against Chinese and other state-owned enterprises, we are working with Commerce to provide better and more easily available information on opportunities around the hemisphere. State and Commerce are leading the Infrastructure Exports Initiative, which focuses on promoting business opportunities for infrastructure projects in nine countries worldwide including Brazil and Colombia in Latin America. We will host a global conference that will discuss further how U.S. companies can compete for these projects more successfully.

As the President and Secretary Clinton have noted, our proximity to the region gives our businesses a leg up on competitors from other countries looking to trade with or invest in Latin America and the Caribbean. But it's not just geographic proximity that matters; it's also the deep cultural ties that exist between the people of the Americas. Last week Secretary Clinton underscored this point by opening the Latin-America IdEA Partnership (La Idea) business competition, which will serve as a platform to support U.S.-based diaspora groups who are investing in their communities of heritage in Latin America with the goal of building new business partnerships between U.S. and Latin American small and medium-sized entrepreneurs. This initiative builds on the Caribbean Idea Marketplace, a similar initiative already underway. The Secretary said it best, when she said that through these efforts "We're going to find the best ideas and help them grow into successful businesses that create value and jobs throughout the hemisphere."

La Idea is just one piece of a larger initiative that President Obama launched in Tampa, FL, en route to the Summit of the Americas. The addition of our new trade agreements with Colombia and Panama brings to fruition the vision of an unbroken chain of free trade agreements extending from the Arctic to Tierra del Fuego. Along with the benefits of new market access and growth that these agreements bring, we have a responsibility to help our small and medium-sized businesses navigate the complexities of international trade to be just as successful on the global stage as our largest companies. To this end the President proposed linking our extensive network of small business development centers with similar centers throughout the hemisphere to create the Small Business Network of the Americas. With over 2,000 centers in the hemisphere serving more than 2 million small and medium-sized businesses, linking these centers more closely together will provide our local business people with an on-ramp to the global economy. It can start with opportunities to connect our small business support centers and help individual small businesses make a new sale in Mexico or find a business partner in Brazil for example. But, as the Small Business Network of the Americas develops, doing business across borders will be within reach for more and more of our small and medium businesses. This effort builds on several years of work under Pathways to Prosperity in developing the small business development center model in Latin America. Mexico and El Salvador are leading the way in adapting this successful U.S. approach to small business promotion to the realities of Latin America.

On West Commerce Street in San Antonio, TX, there is a great little business called the Mariachi Connection. In 1995, Josie Benavidez started the business after

she had a difficult time finding a replacement string on a guitarron for her husband Rene, a music teacher in the local San Antonio schools. Rene eventually quit his teaching job to focus full time on building their new business selling Mariachi costumes, sheet music, dance shoes, and instruments. Since 1999, Rene and Josie have been getting business advice and training from the San Antonio Small Business Development Center which has helped them apply for loans and expand their online business to sell Mariachi products worldwide. The International Trade Center at the San Antonio SBDC also worked through the Mexican network of SBDCs to help the Benavidez family find the right suppliers and expand their sales to Mexico. This partnership between our SBDCs and Mexico's SBDCs is exactly the kind of team work the President talked about when he launched the Small Business Network of the Americas and it is exactly what we need to help our small businesses create jobs.

Josie is just one example of the entrepreneurial spirit of many women throughout the hemisphere. But, the fact of the matter is that women in the region often face significant barriers to getting their businesses off the ground, no matter how promising they might be. That is why the President launched the Women's Entrepreneurship in the Americas Initiative—or WEAmericas—to improve access to training, finance, and markets for businesswomen like Josie.

These stories illustrate the fact that our businesses have moved beyond just selling products to Latin America and the Caribbean, they are now working hand in hand to build complete businesses from supply chains to distribution networks to retail partnerships. This is one of the reasons Secretary Clinton has worked to focus our commercial diplomacy by emphasizing the importance of economic statecraft. She has elevated the role of economics across all elements of our foreign policy to more effectively compete in a world where influence is increasingly measured in economic terms rather than military might. Through her Economic Statecraft initiative, she has challenged all of us at the Department to put the concerns of U.S. business at the center of our thinking and to keep in mind that creating global business linkages is part of fostering our own economic growth.

To that end, we are collaborating more closely than ever with our neighbors in North America on economic issues such as regulatory cooperation and more efficient borders. We have made a downpayment on carrying out our jobs diplomacy by setting up a direct line for U.S. businesses to talk with our ambassadors in countries throughout the hemisphere to get advice on navigating the local political and economic landscape in each country. The inclusion of Mexico and Canada in discussions on the Trans-Pacific Partnership is a positive development as we increase our economic integration with the Asia-Pacific region. We have also engaged with our FTA partners in the hemisphere to develop a shared understanding of the opportunities and challenges posed by the economic developments in Asia and the broader Pacific.

The Americas also holds tremendous strategic importance for the United States in terms of energy. In coming years, the region will supply more and more of our imported energy as oil producers such as Canada, Brazil, and Colombia ramp up output and as Mexico, already a major energy producer, considers important reforms to increase its production. Building on the emergence of the Western Hemisphere as a leader in global energy production, the President came together in Cartagena with his counterparts to launch an initiative called Connecting the Americas 2022, which seeks to enhance electrical interconnection across the hemisphere. We believe that this initiative will, among other things, open broad new opportunities for investment in electrical generation and transmission and in grid management technology, all areas where U.S. businesses are highly competitive. It will also spread electrical power to the 31 million people across the region who currently lack access to electricity. Connect 2022 will build on the Energy and Climate Partnership of the Americas to increase the availability of reliable and affordable electricity. This means better schools and better education for children, consistent power for health clinics and hospitals, lower costs for businesses, and increased opportunity for economic development. It will also help create a business climate that accelerates development of renewable energy, as countries swap power with one another to more effectively utilize clean energy resources where they are available. Realizing the vision of hemisphere-wide electrical interconnection and increased access to electricity over the next decade will require government action and private sector investment—and work is already underway.

We are confident that even closer collaboration with our partners will help all of the nations of the Americas to compete more successfully on the global stage. We believe that these close economic ties with our partners in the Western Hemisphere make us more competitive in the global economy, and our top priority is ensuring that our businesses can pursue the opportunities that the region presents to create jobs and prosperity for the American people.

Mr. Chairman, Mr. Ranking Member, members of the committee, thank you again for the opportunity to be here today to discuss this important issue. I look forward to your questions and to working closely with this committee to promote U.S. economic interests in the Western Hemisphere.

Senator MENENDEZ. Well, let me thank both of you for your testimony.

Before I go to questions, let me ask unanimous consent to have a statement entered by Chevron with reference to their dispute with Ecuador in which Ecuador has failed to adhere to the arbitration award issued pursuant to the U.S.-Ecuador Bilateral Investment Treaty. Without objection, so ordered.

I appreciate both of your testimonies insofar as the positive aspects and the promise and the opportunity which I share. But promises and opportunity cannot be fulfilled if there are a series of challenges that make that investment largely dubious in terms of transparency, rule of law, arbitrary and capricious tax changes, intellectual property right challenges, and a series of issues.

So let me explore some of those challenges with you. Since you both aptly described the promise, let us talk about some of those challenges.

You know, property rights are incredibly important. If we are going to have American companies and citizens make investments in the region, you want to make sure that those property rights are ultimately upheld.

The State Department announced in June that the U.S. fiscal transparency waiver for Nicaragua and the \$3 million in bilateral aid attached to it would not be renewed this year. And given the blatant disregard for the democratic process exhibited by President Ortega during last October's elections, I am not surprised by that announcement.

I am, however, incredibly surprised to hear last week that the State Department would be renewing Nicaragua's property waiver, including the \$1.4 billion in multilateral loans that is tied to it.

So if we all agreed back in June that the Ortega government, which has joined with its ALPA partners to consistently criticize the United States and regularly abuses the democratic process to advance its own agenda at the expense of the Nicaraguan people, did not deserve the renewal of its transparency waiver, which includes \$3 million in bilateral aid, why would the State Department decide to renew the much more important property waiver and its \$1.4 billion in multilateral loans? Is that really a message that we want to send, one, to Nicaragua or for that fact, any other country backsliding in its democratic responsibilities and in its responsibilities for property rights?

Mr. ROONEY. Thank you, sir.

You are correct. The Secretary did renew the Nicaragua property waiver, which has been in place, if I am not mistaken, since section 527 was introduced in 1994. There was a broad analysis that took place in the process of deciding whether to renew that waiver, and I think one of the key factors was that the consultations that we have conducted during the course of the year on property issues resulted in the past year in a remarkable number—I think the number was 65—cases being resolved. I believe that was the largest number of cases that the Nicaraguans have resolved in any

year since. And so we felt that the property waiver should be renewed.

But we certainly share the concerns that you have expressed about the conditions of democracy in Nicaragua and will be watching carefully as we go through the coming year.

Senator MENENDEZ. Well, it seems to me with one hand we make a decision that clearly the transparency waiver was not there, but that is a minor amount relatively speaking, \$3 million, and then we let \$1.4 billion in multilateral loans proceed. And while I appreciate the number of cases that may have been resolved in a given period, we still have 337 pending cases that have not been resolved years later. So I am not quite sure that we send the right message.

Let me ask you about this. What about—in light of Ecuador's imposition of a wide range of safeguard duties against imports and with President Correa's failure to cooperate with the United States on narcotics trafficking and actually expelling the U.S. counter-narcotics unit from the coastal city of Manta where it was monitoring drug shipments headed north to the United States, is the administration seriously considering extending ATPA benefits to Ecuador?

Mr. ROONEY. Thank you, Senator.

As you know, the ATPA is a legislated program. Therefore, it is not ours to decide whether it should be extended, but rather the Congress'. That decision is sometime in the future. So we have not begun to consider it. We look forward to consulting with you and other Members of the Congress.

Senator MENENDEZ. Is the administration basically advocating for those extensions?

Mr. ROONEY. No, sir. We have not taken any position on that.

Senator MENENDEZ. You are not taking any position.

Mr. ROONEY. We are aware of the concerns that you have addressed.

Senator MENENDEZ. I would expect the administration would take a position that would say unless we have a different set of realities, the administration would be urging us not to extend it.

Mr. ROONEY. We have expressed to the Ecuadorians—and I believe they have heard that here on the Hill as well—that that is one of the considerations that will be—

Senator MENENDEZ. Here is my other big question, and Secretary Sanchez, I would like to hear from you, too, because you are supposed to be promoting, as you are, U.S. companies.

So we get into trade agreements and a whole host of those include international arbitration processes by which when there is a dispute, those international arbitration processes are supposed to be the final word. So we go through the international process of arbitration. Ecuador has that with Chevron. The Dominican Republic has it with Codasa. There is also about imaging equipment at the ports, incredibly important to make sure that those ports do not have products or concerns to the United States in terms of narcotics trafficking which is an issue in terms of the opportunity for someone to use those ports to bring a dirty bomb to the United States. You have Argentina refusing to pay for its bondholders.

So the question is if we are going to have the opportunities that you both so aptly described be fulfilled, you have to have a process

by which, when you make your investment and there is a dispute and you agree that the process to resolve that dispute, for example, is an international arbitration process and then the award comes down on behalf of an American company and the country will not abide by it, then those countries are sending a message to the international community, certainly to U.S. businesses, this is not a good place to invest in.

And second, what are we doing to get those countries to abide by their obligations both under treaties and in these arbitration awards?

Mr. SANCHEZ. Thank you, Mr. Chairman.

We share your concerns, particularly with Ecuador and Argentina. In the case of Ecuador, we share your concern that there seems to be a lack of commitment on the part of Ecuador to honor the international arbitration process in investor disputes. That clearly sends a chilling message to the investment community. I think part of what happens is when they pursue these policies, you see the impact in foreign direct investment. But we have raised this issue at very high levels with the Ecuadorian Government.

As it relates to ATPA, we are monitoring the situation, and as the Deputy Assistant Secretary said, it is the prerogative of Congress to extend ATPA or not. But before we take a position on it, we are going to continue to consult closely with the business community, with you, and with other Members of Congress, as well as to express our very deep concern to Ecuador with some of the policies they have taken.

With regard to Argentina, Argentina also is sending messages to both the investor and trade community that are at best confusing and at worst very chilling. Currently Argentina is ranked 113th out of 183 countries in the World Bank Ease of Doing Business Index. And at least part of that rather poor ranking has to do with some of the issues that you raise. In that country, we have raised these issues at the very highest levels. We have been in close consultation with our business community to understand how this is impacting them. We have also been in consultation with Argentinean businesses who are also adversely affected. They are not able to receive inputs that they need for their manufacturing or for their agricultural community that they would buy from American companies.

And finally, we are also collaborating and talking with other countries that are affected by Argentina's policies in the region with countries like Mexico, but also beyond the region with the EU. The EU recently started consultations to pursue a WTO dispute settlement case, and we requested and were granted third-party status in those consultations.

So we are approaching this in every way possible to make sure that countries with these policies that really are not conducive to commercial engagement understand the full impact of their actions.

Senator MENENDEZ. I am not confused by the Argentineans. I appreciate your diplomacy. The Argentineans send a very clear message. They have protectionist policies. They do not live up to their responsibilities to pay their debt to bondholders, and they are acting in ways that clearly send a message not of investment. I

hope that beyond consultation we will seriously consider filing a WTO case to address the concerns of American businesses.

Let me turn to Senator Rubio.

Senator RUBIO. Thank you, Mr. Chairman.

I want to begin just with Mexico in the aftermath of their election. The new administration—I think they take in December. Is that right?

Well, what is the general feeling from the American business community in terms of opportunities for investment and growth in Mexico?

One of the things I have been troubled by is, rightfully so, all the coverage that the violence and the drug problems there are getting, but there is also this emerging middle class and consumer class in Mexico that is being created. Not enough attention is being—there is good news in Mexico.

What is the view of the business community and American investment community about Mexico moving forward as this new administration comes in?

Mr. SANCHEZ. Thank you, Senator Rubio.

The business community, I believe, is very optimistic and we, too, are very optimistic. We start with a very good foundation with Mexico. Through NAFTA, our two-way trade has increased dramatically over the last 14–15 years. Recently, we and other TPP partners invited Mexico to join TPP, as you so aptly pointed out in your opening statement.

A lot of what we do, particularly the Department of Commerce, but also with assistance from the Department of State, is what I call blocking and tackling. It is not going to be front page news, but it has an impact on reducing barriers. So with Mexico in particular, we work very closely on regulatory cooperation. We try to harmonize regulations. We work closely with them on standards and in sectors where we could both benefit, and we have also more recently been working on trying to make sure we are maximizing efficiency particularly at the border for supply chain efficiency, making both countries more competitive vis-a-vis the world.

So I think the business community is very optimistic and we are going to continue to engage in ways that strengthen that commercial relationship.

Senator RUBIO. Just as an aside but I think related to Commerce—and I know it is a topic that is different, and I would hope we can look at it through the view of Commerce because I think it is related to Commerce. One of the things I always get when I meet with officials from the Mexican Government is the frustration that we have not developed a workable guest worker program akin to what they have with Canada or some other countries. And I do not expect you to have an answer for that today, but I think that does have a Commerce element to it which is pretty strong and that we should explore moving forward.

The second question I think is for both of you and it is about Paraguay who has been in the news recently for, obviously, some of their issues that have happened with the constitution. But it is a country that I am surprised there is not more engagement with. Maybe you could describe to me what the American business community's view toward Paraguay is. My meetings and conversations

with folks from there show a tremendous openness and quite frankly an invitation for American investment and a strengthening of our links and our relationships with Paraguay.

Mr. ROONEY. Thank you, Senator.

As you have noted, Paraguay has been through a tumultuous few weeks. We have been pleased at the reaction of the Organization of American States. We feel that their mission down there was constructive and we have a way forward toward their elections.

We have, as you may know, had a series of engagements over the last several years with Paraguay to try to seek a closer trading and economic relationship with that country. We, through USTR, have been working with them to make sure that they are getting the most out of the privileges that they enjoy under GSP. We have worked with them through an MOU that we signed a couple of years ago to try to help them improve their protections of intellectual property rights, which we see as not only of interest to U.S. exporters but also the key to an innovation-driven economic growth path for Paraguay. But we are certainly open to deepening those trade and economic relationships to the extent possible.

Mr. SANCHEZ. Senator, we support efforts by the American business community to engage commercially with Paraguay through our office in Buenos Aires and our commercial office stands ready to help American companies that are interested there.

On the policy side, we have worked closely with Paraguay on Pathways to Prosperity specifically in facilitating border facilitation for the more efficient and secure movement of goods, so I think there are opportunities there.

Of course, recent events make the business community somewhat nervous. The business community likes certainty. But I am hopeful that this is a short-term problem. And we will continue to work with any American business interested in commercial engagement there.

Senator RUBIO. Well, just as an aside, I would say that for the business community, they should actually be somewhat encouraged by what happened in Paraguay. It happened via a constitutional order. You did not have the army leaving its barracks and marching on the capital. You had the Senate conducting its rightful role. People may not like the outcome, but they basically followed the law and the way the law was created. And I think it actually is a case for certainty as opposed to one where the army was in the streets and people were being jailed. So I actually think people should be encouraged that the rule of law prevailed even if they may not like the outcome.

The last question is about El Salvador, and I am very concerned about that. As I said in my opening statement—and I know that the chairman—I think last week you met with some folks and I think you made your views on it very clear. And unfortunately, I was not able to make that meeting so I would hope to use this forum just to say that our foreign aid programs are a seal of approval. They are a stamp of approval. And I think that if you are going to give that kind of money and assistance to a country and its government, you have a right to insist on only wanting to give aid for countries that meet certain benchmarks.

I was relatively pleased with some of the progress being made in El Salvador and their cooperation with us on a number of things like Afghanistan and some of the regional bodies and then deeply disturbed recently by this unconstitutional action by the FMLN and their political coalition they put together in their national assembly to create this constitutional crisis. As you know, they now have two Supreme Courts, two sets of Supreme Court Judges.

Apart from how it endangers—and let me be clear. It does endanger the economic aid programs that we have, and I think moving forward, I want to be clear that I will make that an issue. I do not speak for anybody else other than to say that I do not think moving forward that we can continue to push forward on some of these aid programs if this is the kind of government and this is the kind of governmental actions that we are going to see.

But apart from the aid things, maybe you could describe briefly how the business community feels or may soon feel by a country that has certain leaders or so-called leaders that are putting together these kinds of coalitions to do these kinds of things. I imagine it is not good for business, but how bad is it, and if it plays and continues to play out, how troubling is that particularly as you see a country that has turned over the issue to an extra-national body to decide, one by the way dominated by Sandinistas who are not exactly the model of free enterprise and democracy?

Mr. SANCHEZ. Senator, you raise very valid concerns. The constitutional crisis in El Salvador is certainly of concern to us at the Department of Commerce and, I believe, to the business community. You will have a panel following us very soon that will be able to express directly how they feel.

But again, business seeks certainty, and the constitutional crisis does not promote certainty. It raises a lot of troubling questions.

On another point, we have been working closely with El Salvador to help them try to create a fertile business climate, and I believe that this runs contrary to that. So I hope that the Government of El Salvador can resolve this soon because it is in their interest to do so.

Mr. ROONEY. If I may, Senator. Thank you.

Mr. Sanchez, we certainly share those concerns and we have made clear those concerns directly to the Salvadorian Government in San Salvador. Ambassador Aponte has spoken to President Funes and other Salvadorian leaders recently to make clear, as you have noted, that a political solution to this crisis needs to be found that respects transparency, good governance, and separation of powers. We have been encouraged, as I think you have, in the last few days by a recent movement toward a political solution, but I think that Salvadorian leaders are clear that a solution that is not in accord with separation of powers and good governance does call into question our assistance programs.

Senator MENENDEZ. Thank you, Senator Rubio.

Let me just ask one or two more questions to you.

Mr. Secretary, you mentioned in your opening statement the CAFTA–DR perfecting legislation that I supported in the Finance Committee and had a colloquy with the majority leader on the floor today, and I believe that sometime later today or tomorrow, there

will be an effort to move those, along with AGOA and other elements.

But I do hope that you take the message back, as well as Secretary Rooney, that while I am all for creating economic opportunity and jobs in the DR and in the CAFTA region, as well as in the African countries, that we need to be concerned about creating jobs here in the United States. And it is totally unacceptable that a U.S. manufacturer has to pay a 13.5-percent tariff for the same imported cotton material that a foreign country under these trade agreements gets to send in for zero—zero. So how is it that an American manufacturer can compete? They cannot. And so in my own State, there are hundreds of jobs at stake. There are over 10,000 jobs.

So I hope the administration is going to work with us toward the cotton and wool trust funds which existed under the law, expired, and at least created the level playing field that you have mentioned you want in other respects for the hemispheric trade. We need that same level playing field here.

Is that something that we can get the administration to focus on?

Mr. SANCHEZ. The short answer is “Yes.”

Let me first thank you for your support for the US–CAFTA–DR fixes. That will help create jobs both in those nations and here. So it is very important. We appreciate your support.

I am well aware of the issue you raise. In my office, we have the Office of Textile and Apparel, OTEXA, and I look forward to working with you, your staff, and constituent companies to see how we could help them on this particular issue or any other issues that they have in supporting their manufacturing efforts.

Senator MENENDEZ. Let me ask you in a broad context about a concern I have here. I look at the Dominican Republic, just by way of example. They have in our international arbitration an award on Codasa which was building a road there, has U.S. investors in it, and they are not willing to fulfill the international arbitration decision which ruled in favor of the company.

We have another company with American investors that has a contract actually ratified by the Dominican Congress to do x ray of all of the cargo that goes through the ports, which have been problematic and for which in the past narcotics have been included in those cargo, and they do not want to live by that contract either.

You have some of the other countries that I have mentioned today with arbitration awards that have gone against them, and yet they do not want to live by that.

Well, what are we willing to do—maybe, Mr. Secretary, this might be more of your bailiwick. But what are we willing to do with our directors at the IDB, IMF, and other entities? Because it just seems to me that if you do not send a message that you cannot with impunity go ahead and violate those trade agreements and arbitration awards, which you agreed to as a process, and then still have us voting for you to get moneys for a variety of purposes, then you know what? If those countries can get away with that, they will. And that puts American companies at a tremendous disadvantage.

Mr. ROONEY. Thank you, Senator.

I think, without specific reference to the Dominican Republic, but in other cases we have in fact done that.

Senator MENENDEZ. Well, then I hope you are going to look at the Dominican Republic. We are happy to provide you with the information.

Mr. ROONEY. As the cases unfold, we certainly look at all those tools. In other cases we have voted against loans, for example, to Argentina as a policy matter in light of their increasingly protectionist policies. We withdrew Argentina's GSP benefits as a result of its failure to pay its arbitral awards in two cases involving U.S. companies that filed petitions with the U.S. Government. So those tools are certainly on the table, and as these cases unfold, we do not hesitate to use them.

Senator MENENDEZ. One last question. As part of its ascension to the TPP negotiations, Mexico recently issued guidelines that would allow finally for implementation of its NAFTA obligation to provide regulatory test data protection for innovative biopharmaceuticals, something that is very important in my State which is the medicine cabinet to the world. I believe this is an important step toward strengthening Mexico's IPR regime and to ensuring trade partners comply fully with their obligations.

I have been informed, however, that the Mexican Government does not intend to provide the protection for biologics but only small molecule medicines.

If this is indeed the Mexican Government's position, it is very troubling, as complying with its NAFTA obligation was one of the preconditions for its entry into TPP. Does the administration have a view regarding the appropriate scope of regulatory data protection under the terms of the NAFTA treaty and what the U.S. Government intends to do in terms of advocacy in this regard?

Mr. SANCHEZ. Yes. Thank you, Mr. Chairman.

We were pleased that Mexico issued a regulation. However, we are continuing to look closely at it. On its face, the regulation does not appear to exclude biologics, but we continue to work very closely with the industry and we will consult with the Mexican Government to express our strong interest in biologics not being excluded. I would say, though, at this point on its face, the regulation does not exclude biologics.

Senator MENENDEZ. And my concern—I understand when something is not excluded, it does not mean that it is included. And so I hope our advocacy would be to ensure that it is included because that would be part of Mexico's NAFTA obligations here, and if we are going to extend TPP, then we have got to make sure that as a foundation we have that which has already been agreed to with the United States to be fulfilled.

Mr. SANCHEZ. Our advocacy will be in very close consultation with our industry, as well as with you and your office.

Senator MENENDEZ. Thank you both very much for your testimony. We appreciate it and look forward to continuing to work with both of you.

Mr. SANCHEZ. Thank you, Mr. Chairman.

Senator MENENDEZ. As our two witnesses depart, let me call our second panel which shifts to the private sector and examine some of the barriers and obstacles to increasing trade presence in the

region. We are fortunate to have with us two excellent panelists: Eric Farnsworth, the vice president of the Council of the Americas; and Jodi Hanson Bond, the vice president of the Americas Division at the U.S. Chamber of Commerce.

So, we appreciate your presence. We ask you to summarize your testimony to about 5 minutes or so. Your full testimony is going to be included in the record. Since I am Cuban, it means that ladies go first. So Ms. Hanson Bond.

**STATEMENT OF JODI HANSON BOND, VICE PRESIDENT,
AMERICAS, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC**

Ms. BOND. Thank you, Chairman Menendez.

My name is Jodi Bond and I am vice president of the Americas at the U.S. Chamber of Commerce.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as State and local chambers and industry associations.

Thank you for the opportunity to speak to the subcommittee about some of the opportunities and challenges for the United States and its business community in the Americas today.

Let me begin by underscoring the strategic importance of the Americas to the United States. The Western Hemisphere accounts for over 44 percent of all U.S. goods exports, about \$650 billion all together, and 12 of our 20 free trade partners are from this hemisphere.

Nevertheless, widespread rule of law challenges, in particular, hold back the economic dynamism of the hemisphere. In light of this pressing problem, 2 years ago, the U.S. Chamber of Commerce established the Coalition for the Rule of Law in Global Markets, which has highlighted five factors—transparency, predictability, stability, accountability, and due process—that we believe are needed for a sound legal environment for business. We have found that where these five factors are present investment thrives, economies grow, jobs are created, and prosperity follows. Where they are absent corruption thrives, informality reigns, investment dollars flee, and tax revenues plummet.

One case in point is Argentina, a country that has enjoyed impressive growth over the last decade, but whose unorthodox economic policies have contributed to a continuing boom/bust cycle. Many of our member companies have been invested in Argentina for decades. There they find a rich culture, a highly skilled workforce, and an educated and cosmopolitan consumer. Yet, we are concerned about policies making it extremely difficult for them to do business; policies like nonautomatic import licenses and import/export balancing requirements which we believe to be WTO-inconsistent.

We have similar concerns about Ecuador where both the Departments of State and Commerce have noted weaknesses in the judicial system, concerns that we understand were echoed in a recent letter from Senator Lugar to U.S. Trade Representative Kirk. That weakness has at times been exploited to take advantage of foreign investors, including U.S. companies. Making matters worse, Ecuador has stated its intention to terminate the U.S.-Ecuador Bilateral

Investment Treaty and has denounced preexisting binding arbitral awards.

We are greatly concerned that if met with indifference by the international business community, this conduct sets a dangerous precedent for other countries. Indeed, a disturbing level of contagion has already been evident with governance lapses in the business environment seeming to go hand in hand with breakdowns in broader political governance as recently seen in El Salvador and Nicaragua, for example.

Further, we are alarmed by the rapid spread of illicit commerce in the region, a global scourge that by some accounts now equals 10 percent of global GDP. To address this issue, we need to work with our partners like Panama whose otherwise strategic geography unfortunately attracts the bad actors as well as the good.

Still, there are several things the United States should do to maintain a regional leadership presence. First, champion expanded Latin America presence in TPP. Next, reinforce cooperation with our North American partners, Mexico and Canada. And, promote regional priorities such as security, trade facilitation, and rule of law with our hemispheric partners.

More specifically, in the southern cone, the U.S. Chamber is advocating for an already ambitious agenda with Brazil to increase our substantial \$70 billion trading relationship. We believe the time is ripe for the United States and Brazil to explore a bilateral economic partnership agreement that not only includes traditional market access but new areas of economic and commercial cooperation in the areas of energy, infrastructure, and trilateral cooperation such as preference programs with poorer countries like Haiti. The Chamber's Brazil-U.S. Business Council has helped make such a partnership possible by working to resolve the irritants to our trade relationship on issues like ethanol, orange juice, spirits, GSP, and cotton, and it should be noted that we can do the same with the Government of Argentina with respect to its market access priorities on lemon and beef if Argentina engages in a constructive dialogue.

To conclude, Mr. Chairman, we are at a pivotal point in our relationships in the Western Hemisphere because the economic forecasts are strong and the region is in a growth mode. There is still ample opportunity for the United States to lead, but if we do not, it is certain that our partners are looking elsewhere because Latin America is not sitting still.

Thank you.

[The prepared statement of Ms. Bond follows:]

PREPARED STATEMENT OF JODI HANSON BOND

Thank you, Chairman Menendez, Ranking Member Rubio, and distinguished members of the Subcommittee on Western Hemisphere, Peace Corps and Global Narcotics Affairs. My name is Jodi Bond, and I am vice president for the Americas at the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as State and local chambers and industry associations.

I am pleased to speak today about doing business in Latin America, more specifically the opportunities and challenges that our member companies face in this hemisphere on a daily basis.

THE STRATEGIC IMPORTANCE OF THE AMERICAS

First, it is crucial to underscore the importance of Latin America to the United States of America. As our hemispheric neighbors, the countries of Latin America are strategically important, but they also represent a vital market for U.S. exporters and importers.

While many policymakers in Washington are focused on an Asian-pivot and look east for new trading partners, the reality is that in 2011 the nations of this hemisphere purchased 43.7 percent of U.S. goods exports—nearly as much as the United States exported to East Asia (24.9 percent) and Europe (22.2 percent) combined.¹

Furthermore, with the importance increasingly placed on the BRIC countries—Brazil, Russia, India, and China—it is easy to overlook the fact that the United States exports more to Mexico than to all the BRIC countries combined. Even in growth terms, the \$55 billion in additional U.S. export sales to Mexico over the past 2 years is identical to the combined growth in U.S. exports to the BRICs in that same period.²

What makes the markets in the Americas so strategic relative to other regions is that with the imminent implementation of the U.S.-Panama Trade Promotion Agreement, the United States will have free trade agreements with countries forming an unbroken chain from Canada to Chile. These 12 free trade partners not only share the U.S. perspective on the need for an open, rules-based multilateral trading system, but also account for 87 percent of U.S. goods exports to the hemisphere or more than 38 percent of U.S. total goods exports.

Overlaying these trade policy successes is a much-improved economic performance by many countries of the hemisphere. Broadly speaking, the region weathered the 2008–2009 global financial crisis better than many other regions, illustrating the success of macroeconomic reforms over recent decades. For 2012, the United Nation's Economic Commission on Latin American and the Caribbean (UN ECLAC) forecasts 3.7 percent growth for the region as a whole, following growth of 4.0 percent in 2011. Many individual countries have fared much better: Recent FTA partners Panama and Peru, for example, are forecast to grow 8.0 percent and 5.7 percent, respectively, in 2012. Meanwhile, Mexico, with 4.0 percent forecasted growth, is now luring back production previously lost to China, which through deeply integrated North American value chains is contributing to job creation here in the United States.

CHALLENGES PERSIST: THE NEED FOR LEGAL CERTAINTY

Notwithstanding that rosy picture, doing business in Latin America continues to present serious challenges. Most significantly, shortcomings related to rule of law are prevalent in a number of countries, resulting in a deficit of legal certainty for the business environment and collectively holding back the influence and dynamism of the region in global trade. To help address these concerns, the U.S. Chamber of Commerce has established a Coalition for the Rule of Law in Global Markets, which has noted five factors that determine the ability of any business to make good investment and operating decisions, and thereby have a reasonable expectation of returning a profit in any given market:

- (1) *Transparency*: Laws and regulations applied to business must be readily accessible and easily understood.
- (2) *Predictability*: Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.
- (3) *Stability*: The state's rationale for the regulation of business must be cohesive over time, establishing an institutional consistency across administrations, and free from arbitrary or retroactive amendment.
- (4) *Accountability*: Investors must be confident that the law will be upheld and applied equally to government as well as private actors.
- (5) *Due Process*: When disputes arise, they must be resolved in a fair, transparent, and predetermined process.

We've found that where these factors are present investment thrives, economies grow, jobs are created, and prosperity follows. Where they are absent, corruption thrives, informality reigns, investment dollars flee, and tax revenues plummet.

Argentina

A case in point is Argentina, a country that has enjoyed impressive growth over the last decade, yet whose long-term prospects are dimmed by policies that limit opportunities for further expansion, and appears to be heading for a repeat of the boom-bust cycle that has been a hallmark of the Argentine economy. In efforts to address macroeconomic challenges resulting at least in part from the country's self-imposed inability to access international capital markets, Argentina has engaged in

a systematic effort to reduce exports into and capital flows out of its market. The resulting series of byzantine and nontransparent regulatory measures make Argentina one of the most difficult places in the world for companies to do business even as they seek to contribute to Argentine job creation and growth. The informal manner in which these policies have been implemented contributes to an environment of increasing uncertainty for business. Moreover, the measures themselves in some cases—and certainly in their application—raise questions of compliance with international trade obligations, as well as of due process under domestic law.

- One such measure is Argentina’s February 2012 “Advance Import Affidavit” (Declaración Jurada Anticipada de Importación, or “DJAI”) requirement, which effectively requires companies to seek advance approval before they may import goods into Argentina.
- A related hurdle to trade is the nonautomatic import licensing regime that Argentina maintains on a wide variety of imported goods. WTO rules require members to process applications for these licenses within 60 days; a time limit that Argentina has consistently ignored.
- A third issue pertains to Argentina’s de facto trade balancing requirements, whereby companies have been required to balance their imports into Argentina with an equivalent level of exports.
- Other companies have been pressured to relocate manufacturing facilities to Argentina altogether as a prerequisite for continuing to do business there.
- We are also concerned with Argentina’s newly adopted patent examination guidelines, which appear to significantly restrict patent subject matter eligibility and appear to prohibit or severely restrict patenting of deserving inventions, such as polymorphs, new formulations, etc. These guidelines are not consistent with WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) standards and also raise significant concerns regarding incentives for innovation in Argentina.
- Finally, Argentina has flaunted contractual and treaty obligations through confiscation of private property and open disregard for binding international arbitration rulings, contributing further to the breakdown of legal certainty.

By all reports the majority of these steps have been taken in an atmosphere of coercion and behind an ever-present threat of retaliation against both companies and their individual executives. Most, if not all, of these measures appear to be inconsistent with either WTO rules and/or the U.S.-Argentina Bilateral Investment Treaty. In fact, the European Union has made a formal request for consultations with Argentina at the World Trade Organization, later joined by the United States and a number of other countries. The EU’s consultation request sets out a variety of potential WTO claims, including claims under Articles III (national treatment) and XI (elimination of quantitative restrictions) of the General Agreement on Tariffs and Trade 1994 (GATT); a claim under the WTO Agreement on Trade-Related Investment Measures; a series of claims under the WTO Agreement on Import Licensing Procedures; and individual claims under the WTO Agreement on Agriculture and the WTO Agreement on Safeguards.

At the very least, we believe that these policies do not exhibit behavior of a responsible global trading partner and a member of the G20, as the ranking member of this committee noted in a recently introduced resolution.

Ecuador

A second country that has raised grave rule of law concerns is Ecuador. As the U.S. Department of Commerce recently noted in its Doing Business in Ecuador report, “fundamental weaknesses in Ecuador’s judicial system and the rule of law are major challenges in doing business in Ecuador.” Further, the U.S. Department of State’s 2011 Investment Climate Statement on Ecuador identifies, “systemic weakness in the judicial system and its susceptibility to political or economic pressures constitutes important problems faced by U.S. companies investing in or trading with Ecuador.”

Specifically, as noted in a recent letter from the U.S. Chamber’s Senior Vice President for International Affairs, Myron Brilliant, to U.S. Trade Representative Ron Kirk, the Government of the Republic of Ecuador has not been acting in good faith in recognizing as binding and enforcing arbitral awards. Not only has Ecuador withdrawn from the World Bank’s Convention on the Settlement of Investment Disputes between States and Nationals of Other States and stated its intention to terminate the U.S.-Ecuador Bilateral Investment Treaty (BIT), it has also failed to comply with the preexisting order of an international arbitration tribunal convened under Article 6 of the U.S.-Ecuador BIT and administered by the Permanent Court of Arbitration in The Hague, “(whether by its judicial, legislative, or executive branches) to take all measures necessary to suspend or cause to be suspended the

enforcement and recognition within or without Ecuador” of the \$18.2 billion judgment by Ecuadoran courts against the Chevron Corporation. The Government of the Republic of Ecuador has flouted this and other BIT awards, with President Correa himself denouncing the panel’s findings.

We regret that both the judicial and executive branches of the Government of the Republic of Ecuador have publicly denounced the arbitration award and stand silently by while efforts are made to seek foreign enforcement of the judgment, most recently in Canada and Brazil, in direct violation of the international tribunal’s ruling award. Ecuador’s disregard for international standards of justice and its own treaty obligations not only represents a breach of its BIT obligations to the United States, but sends a negative message to the global business community contemplating making investments in Ecuador.

Contagion

These recent actions by Argentina and Ecuador—let’s not forget Venezuela and Bolivia too—set a dangerous precedent for other countries in the region and around the world. In fact, a disturbing level of contagion has already been evident around the hemisphere as these countries have undermined the rule of law with impunity. Frequently, these governance lapses in the business environment seem to go hand in hand with breakdowns in broader, political governance—as recently seen in El Salvador’s institutional crisis and Nicaragua’s Special Law 364, which deprives American companies being sued in pesticide litigation of basic due process rights.

Furthermore, we are alarmed by the rapid spread of illicit commerce in the region, a global scourge that by some reports now equals 10 percent of global GDP. This illegitimate traffic is a source of funding for transnational criminal organizations involved in narcotics and human slavery; is a source of substantial funding for terrorists; robs governments of tax revenues; undermines public health and safety objectives; and undercuts legitimate businesses, the formal sector, and its employment base. The corrupting influence of this trade reinforces a negative cycle that makes it still more difficult to combat, so it’s critical that we seize on opportunities to address the problem. One such is the implementation of the Panama free trade agreement, where we have an opportunity to build on that new partnership to strengthen collaborative efforts to halt illicit commerce through Panama’s critical global trade hub. The absence of effective efforts to curb illicit trade in and through Panama and its free trade zone, in spite some efforts by Panama’s customs service, is not only undermining Panama’s stated desire to become a trusted trade and financial hub bridging the Pacific economy to the Caribbean and Atlantic economies, but it is adversely implicating the rule of law, good governance and national security. No time should be wasted in encouraging progress on this front which would complement and reinforce bilateral efforts already underway to address other forms of illicit activity. Furthermore, we have found that many within the region recognize the importance of addressing this scourge given its undesirable effects.

WHAT’S NEXT?

These challenges to doing business in many of the countries, including with key trading partners; the relative strength of Latin America’s economies; and the impressive network of U.S. free trade partners in the region, mean simply that our work is not done. Our trade and investment ties can be deepened, our partnerships can be reinforced, and our shared values and interests reaffirmed.

The U.S. Chamber of Commerce serves as the Executive Secretariat to the Association of American Chambers of Commerce in Latin America and the Caribbean (AACCLA). Twenty-three American Chambers, or “AmChams,” in 21 countries make up this grouping that work together on a common policy agenda in support of U.S. economic engagement in the hemisphere. The U.S. Department of State through Secretary Clinton’s economic statecraft policy has explicitly recognized the AmCham network worldwide as a key to U.S. economic success. Here in the Americas, we are proud to serve the strongest network of AmChams anywhere in the world.

Our work with AACCLA and the AmChams supports and informs all of our shared policy goals in the hemisphere from market access and trade facilitation, to rule of law, enforcement of existing trade agreements, strong intellectual property protections, sustainability, and corporate social responsibility. Together, we fought for congressional approval of the free trade agreements with Colombia and Panama—as we did before for Chile, CAFTA–DR, and Peru—and together we are forging ahead to modernize customs processes, improve commercial infrastructure, and reinforce the rule of law throughout the hemisphere.

We do so in close collaboration with key partners in and out of government. For instance, we are currently working with the Inter-American Development Bank on, among other things, a trade facilitation project that will identify private sector-led

priorities for trade facilitation in Central America and the Dominican Republic. Likewise, we work closely with the U.S. Department of State to support and foster public-private dialogue, facilitating the Secretary's Global Business Conference in February, for instance.

Most recently, we had the opportunity to host the U.S. Department of State and delegations from 9 of the 12 U.S. free trade partner countries in the hemisphere for a discussion that set the scene for next steps among like-minded countries on subjects such as trade, workforce development, and rule of law. This included an important conversation about rationalizing the trade liberalization that has already taken place—what my colleague, Dr. José Raúl Perales, and others have described as the “spaghetti bowl of free-trade agreements.”³

What the dialogue made clear is that our partners in the hemisphere welcome U.S. leadership. But they are not going to wait for it. For instance, the Pacific Alliance, an accord signed by Chile, Colombia, Mexico, and Peru, plans to remove barriers not covered under existing bilateral free trade agreements, such as those relating to the movement of people, establishing a bloc that accounts for more than 35 percent of Latin America's GDP. Another example is the Integrated Latin American Market (MILA), an attempt to create the largest stock exchange in the South American Continent by creating a common regional stock exchange between Chile, Colombia, and Peru; and the Central American Electrical Interconnection System (SIEPAC), a planned interconnection of the power grids of six Central American nations.

Hemispherically, three forward-looking options are commonly discussed in trade policy circles: (1) linking the current trade agreements through the various chapters such as rules of origin; (2) bringing the rest of the hemisphere into the fold by negotiating free trade agreements with the other countries in the hemisphere; or, (3) completing what we view as the next generation trade agreement, the Trans-Pacific Partnership, with a workable accession model that will attract additional parties.

While the U.S. Chamber supports all of the aforementioned hemispheric initiatives, there are also a number of lower profile initiatives which offer this hemisphere significant opportunities for a competitive edge:

North America

The U.S. Chamber is pursuing parallel initiatives to achieve world-class land borders with Canada and Mexico as well as ensuring that both countries are parties to the next generation trade agreement, the Trans-Pacific Partnership (TPP). Through our U.S.-Mexico Leadership Initiative, the U.S. Chamber is bringing corporate statesmanship to the fore in the bilateral relationship with Mexico. With partners such as AmCham Canada and the Canadian Chamber of Commerce, the U.S. Chamber continues working to enhance the largest bilateral trading relationship in the world between Canada and the United States.

In both countries, the United States was able to secure important reforms in the process of TPP entry. For instance, we were encouraged by the passage of Canadian copyright legislation, which represents a step in the right direction toward a solid intellectual property regime in Canada. Likewise, the recent publication by Mexico's COFEPRIS of guidelines on regulatory data protection goes a long way to represent progress toward addressing longstanding concerns about IP protection in Mexico by the U.S. IP R&D-based pharmaceutical industry. We are optimistic about the opportunity to secure further gains and modernize those partnerships in the TPP negotiations.

Central America and the Caribbean

The U.S. Chamber is highlighting the success of the U.S.-Central America-Dominican Republic Free Trade Agreement (DR-CAFTA) while working to ensure that all parties are keeping their commitments. The Chamber is also promoting regional security and the rule of law, supporting preference programs, expanding the network of AmChams in the region through the creation of new AmChams in countries such as Barbados, promoting trade facilitation and customs modernization through a joint IADB-U.S. Chamber Trade Facilitation Advisory Group, and working within the law to constructively expand legitimate trade and travel with Cuba.

Andes

The U.S. Chamber continues to champion regional trade agreements, trade facilitation, security, and the rule of law through programming with key officials, along with trade coalition leadership. In the Andean region, we are increasingly seeking opportunities to promote member companies and facilitating government procurement opportunities in growing markets such as Colombia and Peru while combating protectionism in Ecuador and Venezuela.

Southern Cone

The U.S. Chamber is pursuing a more ambitious trade agenda with Brazil to increase an already substantial trading relationship of more than \$70 billion in goods in 2011.⁴ Through the Chamber-affiliated Brazil-U.S. Business Council—the leading advocate for the trade and investment relationship between the United States and Brazil—we have worked hard to reduce the irritants to our trade relationship, including on ethanol, orange juice, spirits, GSP, and cotton; still, we have much to do to enhance our prospective economic ties between our countries.

In this context, we believe the time is ripe for the U.S. and Brazil to begin exploring the idea of an encompassing Bilateral Economic Partnership Agreement that not only includes traditional market access, but also new areas of economic and commercial cooperation such as energy, infrastructure, and innovative trilateral cooperation mechanisms including trade preference harmonization for poorer countries in the hemisphere such as Haiti, technical assistance related to food and energy security, and disaster prevention and response.

In addition to our work on Argentina, where as we have with Brazil we stand ready to work with the government on its market access priorities for Argentine products such as lemon and beef, the U.S. Chamber is enhancing already strong partnerships with the administration in Chile, and we are alert to opportunities to expand U.S. trade relationships with Paraguay and Uruguay.

CONCLUSION

On all these fronts, U.S. Government leadership is key, and we greatly appreciate the efforts of this subcommittee, as well as the full committee, and particularly Chairman Menendez and Ranking Member Rubio. Working together, we believe that we are at a pivotal point in our relationships with the Western Hemisphere and that we have an opportunity to cement the partnerships that have been fostered by this committee for so long. If we fail to act, however, it is certain that our partners will be looking elsewhere. Latin America is not sitting still.

End Notes

¹U.S. Department of Commerce, TradeStats Express-National Trade Data, <http://tse.export.gov/TSE/TSEReports.aspx?DATA=NTD>.

²U.S. Department of Commerce, TradeStats Express-National Trade Data, <http://tse.export.gov/TSE/TSEReports.aspx?DATA=NTD>.

³Jose Raul Perales, "The Hemisphere's Spaghetti Bowl of Free-Trade Agreements," *Americas Quarterly*, April 30, 2012, <http://www.americasquarterly.org/perales>.

⁴U.S. Department of Commerce, U.S. Census Bureau/U.S. Bureau of Economic Analysis NEWS, February 10, 2012, <http://www.bea.gov/newsreleases/international/trade/2012/pdf/trad1211.pdf>.

Senator MENENDEZ. Thank you.
Mr. Farnsworth.

**STATEMENT OF ERIC FARNSWORTH, VICE PRESIDENT,
COUNCIL OF THE AMERICAS, WASHINGTON, DC**

Mr. FARNSWORTH. Thank you, Mr. Chairman. Good afternoon. It is a real privilege to be with you here today, and while it is not necessarily the focus of this particular hearing, I did want to thank you up front for your comments in the July 23rd Washington Post in support of regional democracy and human rights. And we also join you and the other members of the subcommittee in mourning the untimely and, indeed, tragic loss of Oswaldo Paya in Cuba.

As Cuba illustrates, challenges remain in the hemisphere. The good news is that long-term trends overall are positive. The region is coming into its own with sustained economic growth, poverty reduction, and an expanding middle class, democratic governance, and more confident engagement in international affairs. We have already heard a lot about that today. Economies have stabilized and strengthened due to concerted reform efforts.

At the same time, the past several years have presented a favorable external environment for Latin America's economies due in

large measure to China's rise and appetite for raw materials. This new reality has important economic, foreign policy, and commercial implications, including the conduct of business in the region. And I would like to focus my brief comments on this aspect today.

By exporting to China, much of the region was able to avoid recession during the recent global economic crisis. Rather than being a cause of economic disaster, Latin America has proven to be an engine of economic recovery. This is a positive and noteworthy change. Of course, growth across the region is now slowing as China decelerates, the United States struggles with tepid recovery, and Europe remains embroiled in its own financial crisis. At the same time, not all countries are alike. Those relying on commodities exports have done well and will continue to do so until they do not. In other words, nations that have become overly reliant on commodities will be negatively impacted by a slowdown if they have not use the recent years of solid growth to diversify into value-added production.

In the meantime, imports of cheaper manufactured products from China have inundated Latin America and the region is undergoing a process of deindustrialization whereby the percentage of manufactured products compared to primary goods is actually decreasing.

China's activities in Latin America on the investment side are also having an impact. In the first instance, much-promised investment has not yet materialized. Still, investment is flowing and it is rapidly increasing, particularly in those sectors including energy, mining, agriculture, and infrastructure where China feels the need to lock in access. Of particular interest is energy, and the trend is accelerating as proven energy reserves expand from Brazil's deep water to shale gas in Argentina to coal in Colombia.

What we are seeing in Latin America, as well as in Africa and East Asia, is that the Chinese investment model differs from others. In the first instance, the initial asset purchased by Chinese entities is generally underwritten by the Chinese Government, thereby allowing Chinese investors to outbid their Western counterparts as a matter of routine. Chinese entities often pay a premium beyond market values for their purchases in order to lock in assets. Indeed, the price that CNOOC just offered for Canada's Nexen, its biggest overseas energy deal, is at a 60-percent premium.

Once an investment is confirmed, Western investment values of job creation in the local economy, technology and management transfer, corporate governance, respect for labor rights, environmental protection, anticorruption, and corporate social responsibility are not necessarily priorities. This can unfairly put United States and other companies at a disadvantage by lowering the costs of Chinese production vis-a-vis the competition.

But there are larger implications as well. Efforts to promote labor and environmental reforms through sound business practices and formal trade agreements such as you have championed, Mr. Chairman, are undermined when Chinese businesses are not expected to operate under the same prevailing conditions. Multilateral lending agencies that promote financial reforms and good governance become less relevant if borrowing nations can receive

funds from China without conditionality. China's huge purchases of commodities and provision of credits on favorable terms allow regional leaders the political and economic flexibility to postpone reforms that would be consistent with open market, democratic governance, and the rule of law.

With this in mind, the United States must do a better job, I believe, contending for the region, and you have spoken about that in your opening statement. We need a more strategic approach.

In the first instance, the United States would do well to deepen further our economic relations with Canada and Mexico, nations that engage in common business practices with the United States and Europe, as partners in the promotion of a common agenda.

More broadly, we need to reactivate an ambitious economic and trade partnership agenda for the hemisphere. The Trans-Pacific Partnership is a meaningful start but needs to be reenvisioned as a strategic initiative for the Americas, not just Asia. It should be expanded to include Colombia and Panama at a minimum and over time explore the possibility of including other likeminded nations. A focus on energy partnership in the Americas would also be appropriate, as would a stronger focus on regional financial markets integration and activities that promote trade and investment generally, including rule of law.

The battle for the soul of Latin America continues, and the United States must engage in a positive, proactive manner to offer the region a vision for cooperation consistent with our values.

So, Mr. Chairman, I want to thank you again for the opportunity to testify before you this afternoon, and I look forward to your questions.

[The prepared statement of Mr. Farnsworth follows:]

PREPARED STATEMENT OF ERIC FARNSWORTH

Good afternoon, Mr. Chairman and members of the subcommittee. It is a privilege to be with you today. As you know, the Council of the Americas ("Council") is a leading policy voice on Latin America, the Caribbean, and Canada. For almost 50 years, our mandate has been to promote democracy, open markets, and the rule of law throughout the Americas. Thank you for the invitation to appear before you.

The headlines about Latin America routinely focus on threats to democracy along with violence and insecurity. These are certainly pressing issues. But the reality is that Latin America has changed significantly both politically and economically and, while challenges remain, overall trends are positive. On the whole, the region is coming into its own, with sustained economic growth, poverty reduction and an expanding middle class, democratic governance, and more confident engagement in international affairs. In large measure, economies have stabilized and strengthened due to concerted efforts to reform financial systems, manage inflation, reduce debt, and open them to trade and investment.

CHINA'S QUEST FOR COMMODITIES IS CHANGING ECONOMIC REALITIES IN THE AMERICAS

China's rise and its consequent impact on the global commodities trade has been a strong driver of this recent economic growth, particularly in the commodities exporting nations located primarily in South America, and it is here that I want to focus the weight of my comments. These nations were largely able to avoid recession during the global economic crisis which began in 2008 due to China's sustained commodities demand. In fact, China is now the top trade partner of Brazil, Chile, and Peru, and the second trade partner of Argentina. Rather than being a cause of global economic disaster as often happened in the past, Latin America, along with Asia, has proven to be an engine of economic recovery.

This is certainly a positive change. Of course, growth across the region is now slowing as China decelerates, the United States struggles with tepid recovery, and Europe remains embroiled in its own financial crisis. At the same time, not all coun-

tries are alike; Mexico and Central America do not have the same commodities export profile as South America does. Nonetheless, those relying on commodities exports have done well, although nations that have become overly reliant on commodities will be negatively impacted by China's slowdown unless they used the recent years of solid growth to diversify into value-added production. Efforts to address the skills gap between students graduating today and the demands of modern labor markets, implement policies designed to create a new climate for innovation, promote labor market flexibility, and encourage small and medium-sized businesses as an engine of job creation, among other initiatives, must be expanded, as the Council of the Americas identified in a report presented to governments at the Cartagena Summit of the Americas in April.

In the meantime, imports of cheaper manufactured products from China have inundated Latin America, and the region is undergoing a process of deindustrialization whereby the percentage of manufactured products compared to primary goods is decreasing. Parts of Latin America with strong links to China are actually moving down the value chain, rather than up. Brazil just signed an accord with China at the Rio+20 meeting which attempts to address the imbalances built in to that important emerging trade relationship. Conversely, the trade relationship that most Latin American nations have with the United States is much more evenly balanced, supporting, rather than potentially undermining, value-added production and broad-based economic development in the region.

China's activities in Latin America on the investment side are also having an impact. In the first instance, much of the promised investment has not yet materialized, leading to unmet expectations. Still, investment is flowing and it is rapidly increasing, particularly in those commodities sectors including energy, mining, and agriculture, where China feels the need to lock in access to the supplies which have sustained its economic takeoff. Of particular interest is energy, where China has been an active participant in Venezuelan, Ecuadorean, and other projects, for example. Chinese investment is accelerating as proven energy reserves expand rapidly and dramatically across the Americas, from the deep water off Brazil to shale gas in Argentina. This is a global phenomenon and China's energy interest in the Americas is not limited to Latin America; just last week, for example, CNOOC announced its biggest overseas energy deal, agreeing to purchase Canada's Nexen energy company for over \$15 billion.

This theme will only become more pronounced in coming years. As China's authoritarian rulers seek political legitimacy not from the ballot box but rather from sustained economic growth and an improving quality of life for its 1.4 billion citizens, while maintaining a multitrillion dollar hard currency war chest, continued access to the raw materials worldwide that fuel production is seen in Beijing as a national security issue. Investments are made accordingly, with implications for doing business in the Americas.

ALL INVESTMENTS ARE NOT MADE EQUAL

The Chinese model of investment differs from others. In the first instance, the initial asset purchase by Chinese entities is frequently underwritten by the Chinese Government, thereby allowing Chinese investors to outbid their Western counterparts as a matter of routine. Chinese entities often pay a premium above market value for their purchases, in order to lock in assets. Indeed, the price offered for Nexen is a 60-percent premium.

Once an investment is confirmed, Western investment values of job creation on the local economy, technology and management transfer, corporate governance, respect for labor rights, environmental protection, anti-corruption, and corporate social responsibility are not necessarily priorities. This can unfairly put U.S. and other companies at a disadvantage by lowering the costs of Chinese production vis-a-vis the competition.

But there are larger implications here, as well. Since the end of the cold war, Latin America has advanced significantly to promote democratic governance. Progress has been uneven to be sure, but it is unquestionably in the U.S. interest to promote this path. Open market democracies that broadly share values tend to make the best long-term partners of the United States in the promotion of shared interests. China's entry into the Americas has complicated this effort, not just in the conduct of business but also in the conduct of foreign policy.

For example, efforts to promote labor and environmental reforms through sound business practices and formal trade agreements are undermined when nations sign agreements with China that do not include similar provisions, and Chinese businesses are not expected to operate under the same prevailing conditions. Multilateral lending agencies like the World Bank, IMF, and Inter-American Development

Bank that promote financial reforms and good governance become less relevant if borrowing nations can receive funds from China without conditionality. China's huge purchases of commodities and the provision of credits on favorable terms allows regional leaders the flexibility to postpone necessary economic and policy reforms consistent with open market, democratic governance, or to take actions that harm the investment climate.

A COMPETITIVE COMMERCIAL ENVIRONMENT CALLS FOR A MORE STRATEGIC APPROACH

China's interest in the Americas will only grow. This means that the United States must do a better job contending for the region. We need a more strategic approach.

In the first instance, the United States would do well to deepen further our economic relations with Canada and Mexico, nations that engage in common business practices with the United States and Europe, as partners in the promotion of a common agenda that share common values. Mexico, for example, is resisting the protectionist temptation to which others in the region are succumbing, and has been a clear voice for open markets even in the face of market turbulence.

More broadly, we need to reactivate an ambitious economic and trade partnership agenda for the hemisphere. The Trans-Pacific Partnership is a meaningful start, but needs to be reenvisioned as a strategic initiative for the Americas, not just Asia. It should be expanded right away to include Colombia and Panama at a minimum, and, over time, explore the possibility of including like-minded non-Pacific coast nations in Latin America. Other initiatives to improve the regional business climate would include stronger emphasis on energy partnership in the Americas, and efforts to promote regional financial markets integration as well as the rule of law. From a bilateral perspective, a dual tax treaty with Brazil would be one of the most effective things we could do to promote trade and investment with Latin America's largest market.

The battle for the soul of Latin America continues, and the United States must engage in a positive, proactive manner to offer the region a vision for cooperation consistent with our values. China's entrance into the Americas has changed the game. A reenergized approach to the region is required.

Senator MENENDEZ. Well, thank you both for your testimony. I appreciate it. You have sort of squared off different sections of this issue. So let me pursue it in that regard.

Ms. Hanson, was the Chamber at the Summit of the Americas, and if so, what were your takeaways from the Summit of the Americas as it relates to business executives in terms of their advocacy, their views, their concerns within the hemisphere?

Ms. BOND. Thank you, Mr. Chairman.

Yes, the U.S. Chamber was present. And, in fact, leading up to the Summit of the Americas, the U.S. Chamber was asked by the OAS to provide private sector recommendations to the summit, and to do so, we put together a survey to identify the priorities in the hemisphere of our companies to give some feedback. We are happy to say that the results were provided to each member of the Presidential delegations that were at the summit and I would be happy to submit a copy of these findings for the record.

The key findings were that the obstacles were primarily in the areas, in the short term, focused on the rule of law, and in the long term, the state of the education system within the hemisphere.

That said, where the CEO summit is concerned, I think it was a complete success. It really filled that space for hemispheric interaction between the private sector and regional governments. And we would be proud to work with the OAS, the IADB, and the U.S. Government to ensure that this space continues.

Senator MENENDEZ. So in that regard, was the interaction with the private sector in Latin America, with the governments of Latin America, with the Chamber's interaction in this initiative?

Ms. BOND. Correct. Actually our CEO, Tom Donohue, was at the summit and we had several other hemispheric CEOs. We took a delegation of about 15 CEOs from U.S. companies and other countries did as well. Canada and all of Latin America were represented as well at the summit with about 400 business leaders with the opportunity to interact with the different heads of state and ministers.

Senator MENENDEZ. The reason I asked that question is because I wonder whether there is an opportunity to make the private sector within Latin America an advocate for some of these transparency, rule of law issues that we as a government would want to see by getting the private sector to be an advocate within their countries for opening up the doors to greater investment and trade. Do you believe there is an opportunity for that to be realized?

Ms. BOND. Absolutely. As I referred to in my testimony, we established the Coalition for the Rule of Law to focus on the areas where we have had experience where these countries can actually do better to attract investment. And yet, through our network of American Chambers of Commerce in Latin America, of which there are 23 in this hemisphere, we have the opportunity to message and be a voice on rule-of-law issues with those local AmChams.

Senator MENENDEZ. Let me ask you, Mr. Farnsworth. You talked a lot about China, and it is a concern certainly to me. It seems to me that the Chinese are clearly, in one of its priorities, after Latin American mineral resources. And within the context of seeking those resources, I understand their enormous appetite for them. But how much are the Chinese exporting to Latin America? You mentioned a little bit of that. Are there specific trade sectors in which find ourselves in very severe competition with them in the hemisphere?

Mr. FARNSWORTH. Yes, it is a really good question.

The first thing to understand is what China is doing in Latin America is very consistent with what China is doing with the rest of the world, in Africa and East Asia. And in fact, they are relatively late to the game in Latin America. Their presence there has really only been, in the modern era anyway, less than 10 years since the first visit of Hu Jintao in 2004. Since that time, the engagement has dramatically increased. But even today, U.S. exports and trade with the region still outnumber the amount of trade that China is doing with the region by a factor of 4 to 1. So we have to keep it in perspective. It is still relatively small, but it is certainly growing and it is becoming much more of a competitive factor.

Clearly China's interest is in the commodities of Latin America. And again, it is very consistent with their global outreach. They see this as consistent with their national growth strategy which is very consistent with the need to keep the political legitimacy of the Communist Party and the rulers in Beijing. And to the extent that that growth depends on inputs of commodities globally, they are going to look wherever they can to find those commodities, and that is what they are doing in Latin America.

So at one level—I do not mean to oversimplify it, but they do not really care what is going on in Latin America per se. They care about what Latin America can sell to them, and in return what

the Chinese have done is what they have done in other parts of the world. It is a classic mercantilist strategy. You bring in the resources from outside, you add value, and you sell them back to the countries in question or, in China's case, globally.

And in fact, what we are seeing is this is actually impacting Latin America's development in a negative way because while the producers of natural resources and agriculture and mining and energy are doing quite well and that has really underwritten Latin America's recent economic growth, the manufacturers in Latin America are telling a different story particularly in Brazil, particularly in countries that are well along the way to development because their competition is directly from Chinese manufacturers. And so the story is a little bit more complicated, but one can, I think, clearly say that what the Chinese are doing is more of a traditional mercantilist model.

They are beginning to understand the negative impact that that is having in Latin America in terms of development, in terms of their political position, in terms of what it means with relations in terms of the United States. But that is an evolutionary process. Again, they have really only been involved in the region for a short period of time, and it will be interesting to see how that evolves over time.

One other quick thing I would add is that the Latin American governments are not unaware of this. In fact, at the Rio Plus 20 meeting in June just last month, Brazil and China signed an agreement, an economic cooperation agreement, which was specifically designed to try to bring more into balance the trade relationship so that without reducing the sale of commodities to China, nonetheless, the Brazilians are now going to try to increase the sale of manufactured products to China. And that is the real growth area that they are trying to develop.

Senator MENENDEZ. Let me just pursue one more thing on China. China has made some rather large loans, for example, to Brazil and Venezuela particularly in their energy sectors. Do you have any sense of whether those loans are being repaid in oil, and if so, then does that give China an advantage in setting the price for oil it is receiving and placing American companies at a disadvantage?

Mr. FARNSWORTH. Yes, again, very good and important question.

The short answer is it depends on which country. Venezuela and Ecuador, yes, it is in petroleum products. Argentina, it is more in terms of agriculture. It just depends on what the country has that China wants. But in the energy sector, what we have seen is large loans that will be paid back over time in energy. Generally those contracts are written so that the price of the energy is at market prices, and so from that perspective, because the energy market globally will rebalance and readjust, it is not that China is taking additional energy off the market. It is the same amount of energy, and they are going to use energy no matter where they get it from. So at a certain level, it is not being anticompetitive with U.S. companies.

It does have several implications, though. One is that it allows countries like Venezuela to frontload a lot of populist spending. So what we have seen, for example, is the government in Caracas is

now amping up or juicing the Venezuelan economy in advance of the October elections. This is something that without a lot of disposable income, if you want to put it that way, they would be unable to do. So it does have certainly political implications, No. 1.

And No. 2 is what it means is it commits the Venezuelan or Ecuadorian or other populations to a relationship with China for the longer term that if conditions in their own countries happen to change, they are still committed to those for the long term. So it is almost like that old TV commercial from the 1970s. "You can pay me now or pay me later." It does not matter. The Chinese are not going to care what sort of government is in power, whether it is democratic or authoritarian or whatever. They want to get paid back in energy. So what the governments now are committing to do is they are committing their populations to wealth transfer down the road in advance of that payment up front.

And then the final thing I would say is to the extent that it allows the Chinese Government to, shall we say, get preferential consideration for their companies in bidding for specific energy projects whether they be in Venezuela or Ecuador or somewhere else, that would have an anticompetitive feature in terms of United States companies and frankly other companies internationally.

So it is a multifaceted thing, but I think the thing to really remember is that by giving a lot of money to the region without a lot of conditionality, what the Chinese presence is doing in the region is really enabling governments who might not want to pursue the path or the course that the United States and other Western economies might otherwise like to see or encourage, that gives the flexibility for some of those other leaders to pursue a different course.

Senator MENENDEZ. In doing so, it increases the possibility that issues in countries—Venezuela, for example—involving democracy, transparency, freedom of the press can be perpetuated.

Mr. FARNSWORTH. Yes, absolutely.

Senator MENENDEZ. And that continues to be a challenge to the United States.

Let me ask you one final set of questions. I put it to both of you. Even though Ms. Hanson focused on it, I would like to hear both of your perspectives. You talked about those five elements of transparency, predictability, accountability, due process, and I forget the fifth one. But they are all, in essence, to some degree within the rule-of-law process.

If you had two or three actions that you would like to see the U.S. Government pursue so that all of those principles would be a broader reality in the hemisphere so that we would have greater investment opportunities to be realized, what would you want to see the U.S. Government do in pursuit of that?

Mr. FARNSWORTH. Well, sure, thank you, Mr. Chairman, again for the opportunity.

I think there are several things.

First of all, we want to encourage positive actions by ensuring that a strong relationship with the United States brings rewards. So in the context of trade agreements or activities, whether it is through CAFTA-DR, which we have talked about, NAFTA, some of the other trade agreements, to ensure that those are working for

the people, not just of the United States and also of the region, but to make sure that these are developing the economies in a way, including our own certainly, I think that is very positive. So you have to have benefits to being a friend of the United States. I think that is point No. 1.

I think point No 2, there are a number of tools that we have. We talked a little bit about it in the first panel. Some have been applied to certain countries and some have yet to be applied. I think we need to do a better job understanding what tools we really have available because this is a globalized environment and ultimately countries do not respond to the United States necessarily in the same way as when we were the only actor in the Western Hemisphere or the primary actor in the Western Hemisphere. And again, this is where China is changing the example.

But I do think there are instances whereby a country, for example, Ecuador, which has been talked about, may be in breach of international investment obligations, and I think at that point the United States is well within our rights to have a look at unilateral preferences that we may have granted over time, whether it be trade or investment or access to loans at the IFI's or MCC assistance, not necessarily for Ecuador because they do not have a program. But the point being that we have a number of programs that we can take a look at and certainly ATPA and GSP preferences are part of that. So one has to take a look at those aspects. So you certainly have a carrot and a stick.

I think we need to focus a lot on—the piece that I do not think we have done a great job on is focusing on carrots in terms of really working with the Mexico's and the Colombia's and the Peru's and the Chile's of the world to try to build out that broader economic agenda. And I would really encourage that as a real priority for us.

Ms. BOND. Thank you very much, Mr. Chairman.

I do believe we do concur with Eric that we need to strengthen the United States ability to have some say in these regions by the fact that we need to enforce our trade agreements and we need to ensure that there is reason for other countries to be trading with the United States. We need to have the opportunity to be able to convey with messaging what it is that U.S. businesses provide to these countries when they are doing business overseas, that there is the opportunity to strengthen these two-way ties because the fact of the matter is, U.S. companies are the businesses that any country should want to be doing business in their country. The fact is that U.S. companies localize like none other. We create partnerships on the ground in countries where we do business.

In fact, I referenced the OAS study in which we gave some private sector inputs to—over 90 percent of the U.S. companies that we surveyed do some form of corporate social responsibility. The fact is that localization in these markets is part of a long-term business strategy for growth, and we would love it if the U.S. Government could work with us more fastidiously to message that out to these governments, that there is more promise and opportunity that comes from doing business with U.S. businesses.

Further, we would also like to strengthen international arbitration organizations. I outlined some of this in my testimony and

would like to further call attention to what we are doing with regard to our work through the Coalition for the Rule of Law.

And then also, we would like to build out the private sector mechanisms with which we communicate with governments using our AmCham network as the basis to be communicating these fundamental elements of engagement in these countries with regard to rule of law. I think that we have made some strides with economic statecraft to the degree that we have many U.S. ambassadors who are conducting calls with the business community. We have had some test pilot calls and we would like to see more of that messaging occur with our embassies overseas and our AmChams.

Senator MENENDEZ. Thank you both for your answers and your testimony.

I agree with you, Mr. Farnsworth, that carrots could be enhanced and we should. I have a sense, however, that we have a reticence, when we have exhausted the carrots, not to use the stick, and that is problematic because carrots do not come in unlimited supplies. And so in that balance, I am afraid that sometimes—I do not know why—we seem to have a reticence to pursue the authorities that we have and the leverages that we have in different ways that I hope to pursue more aggressively through the committee in terms of understanding and getting the Government to be focused on that.

And then I do think that to the extent that we are spending money in the hemisphere, rule-of-law programs and efforts to strengthen the rule of law is incredibly important because at the end of the day, you can have all the investments in the world, but if your investments are arbitrarily and capriciously taken, if you have the equivalent of our IRS changing, after major investments are made, tax treatment of those investments, if you have international arbitration awards that still cannot be honored, then you have an environment in which all the potential does not get realized either for American companies or, for that fact, the citizens of the hemisphere who would benefit from those investments in all the ways that Ms. Hanson has spoken about and we believe also exist.

So I look forward to continuing this conversation with both of you and others in the days ahead.

With the thanks of the committee, this hearing will have the record open for another 2 days. Anyone who wishes to submit a question—I would urge our panelists to answer them as expeditiously as possible.

And with that, this hearing is adjourned.

[Whereupon, at 3:25 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF CHEVRON CORPORATION SUBMITTED BY EDWARD B. SCOTT,
VICE PRESIDENT AND GENERAL COUNSEL, CHEVRON UPSTREAM AND GAS

Chevron Corporation (“Chevron”) appreciates the opportunity to submit the following statement for consideration by the Senate Committee on Foreign Relations Subcommittee on the Western Hemisphere, Peace Corps, and Global Narcotics Affairs on the challenges posed by doing business in Latin America.

Chevron’s perspectives on the issue of doing business in Latin America are informed by our global reach, with interests in over 100 countries, including Latin

America. We are a leading international oil company, based in San Ramon, California, and with major operations and investments in the world's most important and politically diverse oil and gas producing regions. We also have extensive international investments in refining, fuels and lubricants. Other interests range from chemical production and mining to energy research. Further, we operate power facilities and are the world's largest producer of geothermal energy.

Investment protection through Bilateral Investment Treaties (BITs) is an important tool to help ensure investment protection to U.S. economic interests overseas. These protections are vital to protect U.S. interests abroad, presenting real impacts to the economy and energy security, both globally and domestically.

Investment protection is an issue with real-world implications. A substantial portion of Chevron's overseas investments are made in countries without high-quality investment protection agreements with the United States, even as many of these countries pursue investment agreements with other trading partners. Sustained progress toward a comprehensive investment protection regime is necessary to both reduce the risk associated with overseas investments and to ensure that U.S. companies are not disadvantaged against foreign competitors whose investments are protected by such agreements. High-quality investment protection agreements, along with measures to promote good governance and the rule of law, are indispensable to provide a level playing field for U.S. companies operating abroad. They ensure that we have the tools available should we be subject to expropriation or nationalization of our assets, and help ensure equitable solutions to legitimate disputes between investors and host governments.

Our comments in this statement, however, will focus on the significant and ongoing difficulties Chevron has faced in the Republic of Ecuador, including challenges brought on by Ecuador's failure to honor its Bilateral Investment Treaty obligations with the United States. These difficulties center on collusion by the Republic of Ecuador in a private lawsuit brought in Ecuador against Chevron rife with incontrovertible evidence of fraud that resulted in a fraudulent, \$18.2 billion legal judgment against Chevron. Chevron has been forced to bring an action under the U.S.-Ecuador Bilateral Investment Treaty ("BIT")—an instrument initially read by this very body's parent committee in 1993—to preserve its rights by obtaining an award staying enforcement of the fraudulent judgment. Ecuador, however, has ignored the award of the BIT tribunal ordering Ecuador to prevent enforcement of the fraudulent judgment. Due to its inaction, Ecuador has encouraged enforcement of the fraudulent judgment in direct contravention of the BIT tribunal's award. This committee should insist upon a strong U.S. response to Ecuador's failure to meet its obligations to the United States under the BIT.

THE CONSORTIUM IN ECUADOR

From the 1970s until the concession expired in 1992, a subsidiary of Texaco Inc., Texaco Petroleum Company ("TexPet"), participated with Ecuador's state-owned company Petroecuador in an oil-producing consortium in Ecuador. Since 1992, Petroecuador has been the sole operator in the former concession areas, and TexPet has had no further role in oil production in Ecuador. In 1995, TexPet and Ecuador agreed that TexPet would remediate specific consortium sites assigned by the government in proportion to TexPet's 37.5 percent minority ownership share of the consortium, and the Republic of Ecuador and Petroecuador granted TexPet an immediate release of all environmental liabilities arising out of the consortium operations that were not included in that scope of work. In 1998, after TexPet spent \$40 million to complete the work at the designated sites, and after numerous government inspectors tested and certified that the sites were properly remediated, the Republic of Ecuador granted TexPet and all related corporate entities a full and final release from any and all environmental liability on public lands arising from the consortium operations.

As a result of the 1995 and 1998 agreements, Petroecuador assumed all remaining liabilities arising out of the former consortium's operations. Petroecuador acknowledges that it has not cleaned up its share of the consortium operations, and in fact has continued operations in the former concession area with a widely acknowledged record of operational and environmental mismanagement, averaging some three oil spills per week since 2000.

THE LAGO AGRIO LITIGATION

In 2003, private plaintiffs' lawyers filed a lawsuit in Lago Agrio, Ecuador against Chevron—but not Petroecuador—seeking \$6 billion in damages for environmental impact to public lands. A court-appointed expert, Richard Cabrera, filed a report in April 2008 (the "Cabrera report") that suggested Chevron was liable for between \$7

and \$16 billion in damages, a number he increased in a supplemental report in November 2008 to \$27.3 billion. On February 14, 2011, relying heavily on the Cabrera report, the Ecuadorian court ruled against Chevron and ordered the company to pay \$18.2 billion in damages.

EVIDENCE OBTAINED THROUGH DISCOVERY SANCTIONED BY
U.S. COURTS DOCUMENTS FRAUD AGAINST CHEVRON

Chevron has long maintained that the lawsuit was politicized in Ecuador and that it was being denied due process. Events in the last few years have revealed a massive fraud being perpetrated on Chevron by the plaintiffs' lawyers, the Government of Ecuador, the plaintiffs' experts, the court-appointed damages expert, and even the Ecuadorian judge assigned to the case. The fraud includes the plaintiffs' lawyers' ghost-writing the supposedly "independent" Cabrera report, falsifying documents, fabricating evidence, and even drafting the court's judgment in their favor.

Throughout the case, the plaintiffs' lawyers made concerted efforts to conceal their fraud, including repeatedly lying about their involvement in drafting the Cabrera report, concealing documents that revealed the truth, creating bank accounts for secret payments to Cabrera, setting up separate e-mail accounts and using aliases to hide sensitive communications about their authorship of the Cabrera report and other matters, among other efforts.

Seven U.S. courts around the country have recognized the fraud occurring in Ecuador against Chevron. The District Court in the District of New Jersey, for instance, held that the plaintiffs' lawyers' actions could not constitute "anything but a fraud on the judicial proceeding." The Western District of North Carolina wrote that "what has blatantly occurred in this matter would in fact be considered fraud by any court." The District of New Mexico stated that the plaintiffs' lawyers have engaged in "corruption of the judicial process, fraud, attorney collusion with [Cabrera], inappropriate ex parte communications with the court, and fabrication of reports and evidence." The District for the Southern District of California further wrote that there is "ample evidence in the record that the Ecuadorian Plaintiffs secretly provided information to Mr. Cabrera, who was supposedly a neutral court-appointed expert, and colluded with Mr. Cabrera to make it look like the opinions were his own."

THE FRAUDULENT JUDGMENT AGAINST CHEVRON

Despite the evidence of fraud, in February 2011, the Ecuadorian court issued a judgment awarding the plaintiffs and their allies \$18.2 billion in damages. However, the *Lago Agrio* plaintiffs' own admissions and forensic evidence proves that it was the plaintiffs' representatives, rather than the trial judge, who drafted the *Lago Agrio* judgment. Internal communications from August 2008 and onward show the plaintiffs' representatives discussing their intent to "start the work with the new judges." The plaintiffs' representatives discussed "developing a judgment that will be enforceable in the U.S. and elsewhere" by becoming "involved in the preparation of the final submission and proposed judgment."

Moreover, forensic experts have testified that numerous passages in the judgment are contained verbatim in the plaintiffs' lawyers' internal documents, documents that were never filed in the proceeding, and cite data from the plaintiffs' lawyers' own private database, which was never submitted in the court record. The judgment throughout also incorporates plaintiffs' lawyers unique citation and punctuation styles.

Despite overwhelming evidence of fraud in the judgment, an intermediate appellate court affirmed the decision on January 3, 2012. On January 20, 2012, Chevron filed an appeal to Ecuador's National Court of Justice, the nation's highest court, where it remains pending even while plaintiffs seek enforcement of the judgment in third jurisdictions.

CHEVRON'S ARBITRAL AWARD UNDER THE U.S.-ECUADOR
BILATERAL INVESTMENT TREATY

In light of the tainted judicial process in Ecuador—which was glaringly obvious even before final judgment was rendered in February 2011—Chevron initiated an arbitration against Ecuador in September 2009 under the U.S.-Ecuador BIT. In the arbitration, Chevron submitted claims that Ecuador violated its obligations under settlement and release agreements with Chevron's subsidiary, obligations under the BIT, and obligations under other applicable international law by failing to accord fair and equitable treatment in the *Lago Agrio* litigation.

As the *Lago Agrio* trial reached its conclusion, Chevron perceived a serious risk that the court would issue a final judgment in plaintiffs' favor, and that the plain-

tiffs' lawyers would attempt to enforce the fraudulent judgment in countries throughout the world. In light of this risk, Chevron asked the BIT arbitration tribunal to award interim measures to preserve the status quo and prevent the arbitration from becoming an ineffective exercise. Specifically, Chevron asked the tribunal to instruct Ecuador to prevent any final judgment in the *Lago Agrio* litigation from becoming enforceable pending the conclusion of the arbitration in which the very conduct of that litigation was at issue.

On February 16, 2012, the BIT Tribunal issued an award directing Ecuador "(whether by its judicial, legislative, or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of" the *Lago Agrio* judgment, as well as the appellate judgments upholding it. The BIT Tribunal specified an obligation of result upon Ecuador: "in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by the Respondent [Ecuador] that would cause the said judgments to be enforceable against [Chevron]."

As anticipated, the plaintiffs' lawyers filed enforcement actions to collect upon the fraudulent judgment. They filed collection actions in Canada on May 30, 2012, and in Brazil on June 27, 2012. They have also suggested they will seek enforcement in 30 other countries, including in Venezuela or in Panama, where oil tankers pass through the Panama Canal.

ECUADOR'S DISREGARD OF THE ARBITRAL AWARD AGAINST IT

Despite the BIT Tribunal's award, Ecuador has failed to "act in good faith in recognizing as binding and enforcing" the award. It has not taken any measures, let alone "all measures necessary" to prevent the *Lago Agrio* judgment from becoming enforceable. In fact, the combined actions of Ecuador's judicial and executive branches have gone in the opposite direction, facilitating rather than suspending enforceability of the judgment.

Ecuador had multiple opportunities to take action consistent with its obligation under the BIT Tribunal's award, but it failed to take any of them. Among other steps, Ecuador could have declared, through an opinion by a government official or its courts, that enforcement of the *Lago Agrio* judgment is suspended, or it could have ordered through its courts or otherwise that the judgment is not enforceable under Ecuadorian law pending the outcome of the BIT arbitration. Moreover, now that the plaintiffs have initiated enforcement actions in Canada and Brazil, Ecuador could advise the courts in those countries that the judgment's enforcement must be considered suspended in light of the BIT Tribunal's award.

Ecuador has taken none of these or any other actions that would cause the *Lago Agrio* judgment to be suspended. On this basis alone, it must be concluded that Ecuador has failed to act in good faith to recognize as binding and to enforce the award of the arbitral tribunal. But Ecuador has not just passively allowed the plaintiffs to seek enforcement of the *Lago Agrio* judgment, it has actively facilitated that initiative. On two occasions, on February 17 and March 1, 2012, Ecuador's courts expressly denounced the BIT Tribunal's award, and in orders dated March 21 and 28, 2012, the appellate court granted the plaintiffs' request for a declaration that the appellate decision has the force of *res judicata*. These declarations contradict the arbitral tribunal's directive in its award that Ecuador take all measures necessary to suspend the enforcement and recognition of the *Lago Agrio* judgment and the affirmances of that judgment.

Finally, senior officials in the Government of Ecuador, including President Correa, have actively encouraged plaintiffs to seek enforcement of the *Lago Agrio* judgment by denouncing the arbitration tribunal. President Correa himself went so far as to call the arbitral proceeding a "monstrosity." In some countries such statements might be dismissed as empty political rhetoric. But in Ecuador, given the susceptibility of the judiciary to political influence (a fact acknowledged by the U.S. Department of State) statements by the President and other senior officials encouraging the court to take particular action cannot be so easily dismissed. Such statements are a blatant interference with the judicial process, which in this case, amounts to a breach of Ecuador's obligation to recognize and enforce the arbitral tribunal's interim award.

ECUADOR'S FAILURE TO MEET ITS OBLIGATIONS TO THE UNITED STATES UNDER THE BIT REQUIRES A STRONG U.S. RESPONSE

Ecuador's contempt for its obligations under the BIT poses a serious policy concern for the United States and demands a strong U.S. response. The United States should take aggressive action to emphasize the importance the United States attaches to our BIT partners respecting their obligations to the United States under

bilateral investment treaties. Without such action, the United States would signal to all our BIT partners that we do not take their responsibilities under the BIT seriously, potentially undermining the value of our network of bilateral investment treaties throughout the world.

The administration has already taken some modest action. In a June 29, 2012, report on the operation of the Andean Trade Preference Act (“ATPA”), the administration noted its concerns with Ecuador’s commitment to its BIT obligations resulting from the BIT Tribunal’s award to Chevron. A key criterion for eligibility to receive preferences under the ATPA is that beneficiary countries must “act in good faith in recognizing as binding or enforcing an arbitral award” in favor of U.S. investors. In light of this criterion, the administration stated that it will be closely monitoring Ecuador’s compliance with U.S. preference program requirements.

CONCLUSION

The past several years has seen several countries embrace more modern trade liberalization policies essential to compete in the today’s global marketplace. This is evidenced by the number of Free Trade Agreements now in place, each with investment chapters similar to BITs and serving to bolster U.S. investors’ confidence and the corresponding U.S. job creating exports to support those investments. The investment rules outlined by these Free Trade Agreements and the U.S. Bilateral Investment Treaty program are vital tools in the broader USG effort to ensure a level playing field for U.S. investors operating overseas. Failure to enforce these rules undermines their effectiveness and puts U.S. overseas operations at risk. We encourage the subcommittee to highlight the importance of the BIT program and to ensure that the USG takes all measures to ensure that countries abide by their treaty obligations. Thank you for considering Chevron’s views on these important matters.

PREPARED STATEMENT OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE (ECAT)

The Emergency Committee for American Trade (ECAT) welcomes today’s hearing and the subcommittee’s examination of U.S. commercial and business relations with Latin America. Founded in 1967, ECAT is an organization of the heads of leading U.S. international business enterprises representing all major sectors of the American economy. Their annual worldwide sales exceed \$3.0 trillion and they employ more than 6.4 million persons. ECAT’s purpose is to promote economic growth through the expansion of international trade and investment. ECAT has been highly active on U.S.-Latin America trade and commercial relations since its founding, including by serving as Secretariat to the U.S. Business Coalition for Central America Trade, which supported the negotiation and implementation of the U.S.-Central America-Dominican Republic FTA (CAFTA-DR), as well as being a strong advocate for the North American Free Trade Agreement (NAFTA), the U.S.-Chile Free Trade Agreement (FTA) and the U.S.-Peru, U.S.-Colombia and U.S. Panama Trade Promotion Agreements (TPAs). ECAT has also been a strong supporter of a vibrant bilateral investment treaty program in Latin America, as well as of mutually beneficial trade preference programs, including the Caribbean Basin Initiative, the Caribbean Basin Trade Partnership Act and the Andean Trade Preference Act. ECAT presently serves as the Secretariat to the U.S. Business Coalition for TPP which represents U.S. agricultural producers, manufacturers, and service providers that seek a comprehensive, ambitious and high-standard outcome from the Trans-Pacific Partnership (TPP) negotiations, which already include Chile and Peru and will soon include Mexico.

Fostering greater business opportunities through international trade and investment are important priorities because they significantly improve the lives of the American people. Participation in international commerce not only sustains many American jobs, it raises the pay scales for millions of workers and saves the average American family thousands of dollars per year. Workers at companies engaged in global commerce earn, on average, almost one-fourth more than those working in U.S. firms only engaged domestically. International trade and investment also create new opportunities that help sustain and build jobs in the United States and boost higher rates of productivity, helping to promote economic growth in the U.S. market. Many of our companies seek the growth in markets overseas—which can generate 40, 50 and even 70 percent of our U.S. companies’ global revenues. And all Americans benefit from the lower prices, inflation, and interest rates that international trade helps generate. Expansionary international trade and investment policies are also important for the United States to continue to serve as the world’s

leading example for achieving economic success and prosperity through openness, free-market principles, the rule of law and economic engagement. The United States successful international engagement in Latin America is important economically and as part of broader American leadership and other national objectives in our hemisphere.

Expansion of U.S. trade and investment in the Western Hemisphere strongly contributes to the growth of the U.S. economy. About one-fifth of all U.S. trade is with the countries of Latin America. Two-way goods trade between the United States and Latin America grew more than 700 percent from \$107.1 billion in 1990 to more than \$762 billion in 2011. U.S. goods exports to the region equaled \$358.7 billion, representing nearly 25 percent of worldwide U.S. goods exports. The stock of U.S. investment in Latin America has more than doubled, from \$586 billion in 2000 to \$1.2 trillion in 2011.

This submission reviews three key aspects of the U.S. commercial relationship with Latin America: (1) opening markets through comprehensive trade agreements; (2) the Andean Trade Preference program in light of U.S.-Ecuadorian relations; and (3) other challenges in the business climate in Latin America.

I. COMPREHENSIVE TRADE AGREEMENTS PROMOTE IMPORTANT BENEFITS,
BUT MORE WORK IS NEEDED

A. *Existing FTAs/PAs in Latin America*

The United States has engaged in a relatively active program to advance commercial relations with several countries in Latin America through comprehensive free trade and trade promotion agreements—so-called FTAs and TPAs. The United States has five agreements with 10 Latin American countries in force and an additional agreement, with Panama, expected to be implemented shortly. Chile and Peru have been actively participating in the TPP negotiations, and Mexico has been invited to join those negotiations.

LATIN AMERICAN COUNTRIES WITH AN FTA/PA IN FORCE WITH THE UNITED STATES

	Entry into force
Mexico (NAFTA)	1994
Chile	2004
El Salvador (CAFTA)	March 1, 2006
Honduras (CAFTA)	April 1, 2006
Nicaragua (CAFTA)	April 1, 2006
Guatemala (CAFTA)	July 1, 2006
Dominican Republic (CAFTA)	March 1, 2007
Costa Rica (CAFTA)	January 1, 2009
Peru	February 1, 2009
Colombia	May 15, 2012

U.S. FTAs/TPAs in Latin America represent more than half of the total U.S. FTA/TPA countries. Each of these FTAs/TPAs has provided important benefits to U.S. businesses. Overall, U.S. trade with the nine countries with which the United States has had FTAs in force for more than 1 year has expanded significantly after the entry-into-force of those agreements:

- U.S. goods exports to Mexico grew between 1993 and 2008, from \$41.6 billion to \$151.2 billion. Following the recent economic downturn, U.S. goods exports to Mexico grew from \$128.9 billion in 2009 to \$197.5 billion in 2011. With respect to services, U.S. services trade with Mexico has increased from \$19.2 billion in 1994 to \$39.6 billion in 2011.
- U.S. goods exports to Chile increased by 348 percent between 2003 and 2008, increasing from \$2.7 billion to \$12.1 billion. Following the recent economic downturn, U.S. goods exports to Chile increased from \$9.4 billion in 2009 to \$15.9 billion in 2011, nearly six times higher than the pre-FTA level. With respect to services, U.S. services trade with Chile has increased from \$1.65 billion in 2003 to \$3.75 billion in 2010.
- U.S. goods exports to the six CAFTA–DR countries grew nearly 30 percent between 2006 and 2008 to approximately \$25.4 billion. Following the recent economic downturn, U.S. exports grew from \$20 billion in 2009 to \$30.2 billion in 2011.
- In just the first year after the U.S.-Peru TPA's entry-into-force, U.S. exports to Peru increased from \$6.8 billion to \$8.3 billion.

U.S. services trade with Latin America has grown from \$63.3 billion to \$105.7 billion from 2005 to 2010 (although services data are only available for a small number of Latin American countries).¹

More broadly, the implementation of FTAs/TPAs provides a wide range of benefits that improves the ability of U.S. firms in every sector of the U.S. economy to improve their business relations with these countries, creating important commercial opportunities for the benefit of U.S. farmers, manufacturers, service providers and their workers. Some of the key benefits that these FTAs/TPAs provide include the following:

- Making U.S. farm and manufactured goods more cost competitive by cutting tariffs and redtape.
- Eliminating a wide range of nontariff barriers to U.S. agricultural, goods and services exports and sales.
- Eliminating barriers to and protecting U.S. investment overseas, both of which are vital to bring and sell goods and services in foreign markets.
- Eliminating barriers to U.S. participation in overseas procurement markets that provide important new business opportunities for a wide range of U.S. industries.
- Protecting copyrights, patents, trademarks, and trade secrets for the benefit of a wide range of U.S. food and agricultural, manufacturing, medical, technological, scientific and artistic industries.
- Improving transparency and anticorruption rules so that U.S. industries can compete on a more-level playing field.
- Providing binding dispute settlement to ensure full implementation of each country's commitments.

B. Improving U.S. FTAs/TPAs in Latin America

While FTAs/TPAs have provided important benefits, the United States needs to move forward in a number of ways.

1. *Ensure Implementation of Existing FTAs/TPAs.* Once an agreement is negotiated, it must be implemented by each party and enter into force. In this regard, ECAT strongly supports the full implementation and entry-into-force of the U.S.-Panama TPA.

Once the agreement has entered into force, it is important that the United States ensure that its provisions continue to be fully implemented. The clearer and deeper commitments contained in U.S. FTAs/TPAs and their binding dispute settlement help ensure strong implementation processes.

2. *Modernize FTAs/TPAs.* While the United States has had its most active FTA/TPA negotiations in Latin America, there is still more work to be done in terms of modernizing the coverage of the existing FTAs/TPAs; connecting them together into a larger; more commercially meaningful unified market and expanding them to other potential FTA/TPA partners. The ongoing TPP negotiations aim to accomplish several of these objectives by linking agreements with Chile, Peru, and soon Mexico with a larger Asia-Pacific agreement that will also tackle such important new issues as supply-and-production chain connectivity and cross-border data flows and set a high bar on key issues, such as the protection of intellectual property and investment. These negotiations also seek to include other potential partners in the region to increase the coverage and connectivity of U.S. FTAs/TPAs. From ECAT's perspective, it is vital that the TPP negotiations continue apace, reach a comprehensive, high-standard and enforceable outcome in all key areas and provide for the entry of other major U.S. partners in Latin America that can meet the high-standards.

II. ANDEAN TRADE PREFERENCE ACT NOT WORKING TO IMPROVE U.S.-ECUADORIAN COMMERCIAL RELATIONSHIP

ECAT has been a strong supporter of U.S. preference programs with our Latin American neighbors, including the Generalized System of Preferences (GSP) that benefits many Latin American nations, the Caribbean Basin Initiative (CBI) as expanded by the Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Preference Act (ATPA). The GSP and CBI/CBTPA programs benefit numerous countries and are in force until September 30, 2019, and September 30, 2020, respectively.

While ATPA has produced important benefits since its creation in 1991, particularly in helping diversify the economies of Peru and Colombia, it is now a program that has only one beneficiary—Ecuador. Both Peru and Colombia have successfully

¹ Sources: U.S. Department of Commerce, Trade Stats Express (<http://tse.export.gov>); Bureau of Economic Analysis, (www.bea.gov).

graduated from ATPA with the entry-into-force of their trade agreements with the United States. Bolivia was removed as a beneficiary country on December 15, 2008, for failure to meet the counternarcotics eligibility criteria. As a result, Ecuador is the only beneficiary of this program.

ECAT is very concerned about several fundamental areas where Ecuador is not meeting the ATPA eligibility requirements. In particular, ECAT is concerned with Ecuador's systemic problems with regard to the basic rule of law and failure to protect intellectual property. Overall, ECAT is very concerned about continued breaches of the basic rule of law that are occurring in Ecuador, particularly with respect to foreign investors and foreign investment, contrary to the ATPA eligibility requirements, most notably the prohibitions on eligibility in section 203(c)(2) to address circumstances where a country:

(2)(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—(i) any existing contract or agreement with . . . a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned . . .

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

19 U.S.C. 3202(c) (2) and (3).

U.S. and other foreign businesses continue to experience firsthand expropriation and the repudiation of contracts in the energy, construction and other industries that hurt U.S. industry and their workers. Not only is Ecuador taking such actions, it is simultaneously seeking to terminate the U.S.-Ecuador Bilateral Investment Treaty (BIT) that is essential to provide an independent and neutral forum to review Ecuador's actions.

More broadly, there is a lack of governance that spans the Ecuadorian economy. ECAT is concerned about continued breaches of the basic rule of law that are occurring in Ecuador, particularly with respect to foreign investors and foreign investment. As found by the State Department in its annual human rights report on Ecuador released in April 2011, there are concerns with "corruption and the denial of due process within [Ecuador's] judicial system."

U.S. businesses have also continued to see Ecuador's repudiation of its legal obligations to U.S. investors and a politicization of the judicial system. The rating given to Ecuador by Transparency International on its annual Corruption Perception Index² and the 2012 World Bank Governance Indicators rating³ both reinforce this deteriorating rule of law situation, with the World Bank's rating declining further in recent years.

Ecuador's treatment of Chevron Corporation also raises serious concerns with its eligibility under the ATPA, particularly the requirement that beneficiary countries respect arbitral awards. On February 16, 2012, the arbitration tribunal hearing Chevron's investor-state claims against Ecuador issued its "Second Interim Award on Interim Measures" in which it directed Ecuador to "take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the judgments" in the so-called *Lago Agrio* litigation, in which Chevron is the principal defendant. Despite this clear direction, which expressly applied to all parts of the Ecuadorian State "whether by its judicial, legislative or executive branches," Ecuador's courts have denounced the BIT and have granted Ecuadorian plaintiffs' request to give the Ecuadorian appellate decision the force of res judicata. These statements and decisions flatly contradict the arbitral tribunal's Second Interim Award. There is a high level of concern that the Ecuadorian Government may continue taking steps to permit enforcement of the tainted *Lago Agrio* judgment.

²Transparency International, Corruption Perception Index 2011, accessed at: <http://api.transparency.org/cpi2011/results/>.

³World Bank, Aggregate Governance Indicators (1996–2010), accessed at:http://info.worldbank.org/governance/wgi/sc_chart.asp.

Given these basic gaps in the rule of law and its treatment of arbitral awards, ECAT urges that Ecuador be removed from eligibility for the ATPA program and that the ATPA program be allowed to lapse.

III. ADDRESSING OTHER BUSINESS CHALLENGES IN LATIN AMERICA

Another key area of focus is addressing U.S. business challenges with Brazil and Argentina.

A. Argentina

Argentina maintains very high tariffs on many import categories, as well as substantial nontariff barriers that significantly impede U.S. business activities in Argentina's market. Most notably, in 2011, Argentina increased its use of nonautomatic import licensing and other policies to pursue an import-substitution policy (requiring either exports or the use of local content in products manufactured in Argentina in return for the ability to import products into Argentina). Hundreds of goods also need an import license. On the basis of these procedures, imports are systematically delayed or refused entry on nontransparent grounds. As of February 2012, Argentina also requires importers to submit a sworn customs and excise statement in advance of importing goods, which has delayed imports while awaiting government approval. In March 2012, the United States and several other WTO members raised concerns over the WTO-compatibility of Argentina's actions. The European Union requested WTO consultations with Argentina on these practices in May 2012. The United States requested to join these WTO consultations on June 11, 2012.

Also of substantial concern is Argentina's treatment of investors and arbitration awards, which resulted in Argentina's suspension from GSP in March 2012.

B. Brazil

There are numerous areas where there could be improvement in the U.S.-Brazil economic and commercial relationship. In particular, ECAT would like to see Brazil move forward on key international commitments and negotiations, starting with:

- Joining the World Trade Organization (WTO) Information Technology Agreement (ITA) and Government Procurement Agreement (GPA).
- Beginning Bilateral Investment Treaty (BIT) negotiations to provide a more stable and attractive environment for foreign investment.
- Negotiating a Bilateral Tax Treaty.

Several ongoing disputes remain in the U.S.-Brazil trading relationship, with U.S. concerns including the existence of major nontariff barriers, such as license, registration and similar barriers; domestic preferences and localization requirements including on oil and gas equipment; tax incentives for domestic information technology; nontransparent and discriminatory government procurement practices; unscientific barriers to agricultural trade; and investment and other barriers. There are also significant concerns over Brazil's record on the protection of intellectual property rights.

CONCLUSION

ECAT welcomes the opportunity to provide these comments and welcomes working with the Subcommittee to advance a strong and beneficial commercial relationship in Latin America.

RESPONSES OF DEPUTY ASSISTANT SECRETARY MATTHEW ROONEY TO QUESTIONS SUBMITTED BY SENATOR ROBERT MENENDEZ

Question. After the State Department announced that it would not renew the U.S. fiscal-transparency waiver for Nicaragua, and the \$3 million in bilateral aid attached to it, the Department contradicted its own position, extending Nicaragua's property waiver, including \$1.4 billion in multilateral loans tied to that waiver. What kind of a message are we sending when you make a sound decision highlighting the lack of transparency only to undercut your stance by approving \$1.4 billion in loans to a nontransparent government? You cited a number of unnamed factors that went into this questionable decision.

- Can you provide the American taxpayer and the Senate with a more logical explanation of your decision to extend the property waiver and \$1.4 billion in loans to Nicaragua?

Answer. We believe that encouraging Nicaragua's long-term development as a democratic, prosperous, and stable partner is our overarching national interest. At

the same time, we want to support Americans whose property has been expropriated and resolve those cases as quickly as possible. With these goals in mind, we analyzed the issues cited in your question under applicable legislation.

The decision regarding the issuance of the property waiver to Nicaragua was made on the basis of the fundamental U.S. national interest in seeing our citizens indemnified. The Government of Nicaragua made progress in resolving U.S. citizen property claims during the 2011–2012 waiver year, settling 65 U.S. citizen claims belonging to 31 U.S. citizens registered with the Embassy. This is the highest total number of resolved claims since the beginning of President Ortega’s administration in 2006. We believe that granting the property waiver for Nicaragua will encourage its government to continue resolving U.S. citizen claims in the future. We appreciate your concerns about the international lending that Nicaragua receives, but would note that the United States does not have the voting weight in institutions like the Inter-American Development Bank to block loans. Under the circumstances, we believe that IDB and other multilateral loans that support development projects that are in our and the Nicaraguan peoples’ interest, meet these institutions’ high standards, and provide sufficient development impact, also promote our broader objectives in Nicaragua. Moreover, the Inter-American Development Bank has successfully tightened the conditionality of loans to encourage greater transparency, and we will use this leverage to push for greater transparency in sectors impacted by future loans.

Granting the waiver will also allow us to continue engagement with Nicaragua on other issues of strategic interest, including trade and investment under the Central America-Dominican Republic Free Trade Agreement, our economic and social development assistance programs aimed at improving the lives of the Nicaraguan people, and our joint efforts to combat narcotrafficking.

We have not waived fiscal transparency restrictions because we remain concerned that the Nicaraguan Government has not demonstrated progress in pursuing transparent governance. We are working to ensure that the Nicaraguan Government understands the benefits, not just in terms of U.S. assistance but in terms of improved governance in the interest of the Nicaraguan people, of a more transparent budgetary management approach.

Question. Does the administration believe that Andean Trade Preference Act privileges should be extended for Ecuador in light of ongoing investment disputes between American companies, Ecuador’s breach of the BIT, and lack of cooperation on narcotics trafficking?

Answer. The administration has not yet taken a position on whether it supports an extension of the Andean Trade Preference Act (ATPA) program beyond July 2013, as that will depend on Ecuador’s performance in a number of areas we are monitoring.

Extension of Ecuador’s benefits under ATPA is a congressional prerogative. The administration will continue to monitor developments concerning Ecuador to ensure that it is complying with the ATPA eligibility criteria and will continue to work with Congress on issues relevant to the operation of the program.

Question. Semptra Energy is a U.S. energy company with infrastructure investments here in the United States and in Mexico—investments that provide jobs and energy security in both countries. A Semptra LNG facility in Ensenada has unfortunately been subject to years of harassment by local courts, politicians, and the police. We understand that the State Department has worked in cooperation with Semptra to address these ongoing problems.

- Can you describe the steps that the State Department has taken to help this American company that is trying to help both the people of Mexico and the United States find energy security?

Answer. Energia Costa Azul (ECA), which comprises a liquefied natural gas (LNG) terminal near Ensenada, Mexico, is a wholly owned subsidiary of Semptra Energy. Individuals purporting to represent local landowners have enlisted the support of state and local officials in Baja California, including the Mayor of Ensenada, in advancing allegations that the plant violated land acquisition and environmental rules and that it is improperly sited. On the basis of these allegations, the Mayor of Ensenada attempted to close the plant in February 2011. At that time, then-U.S. Ambassador to Mexico, Carlos Pascual, contacted then-Mexican Secretary of Government, Francisco Blake Mora, on this issue and federal and state authorities intervened to stop potentially dangerous disruptions to the terminal’s operations. The plant remained in operation and is still operating today.

Sempra maintains that all of its activities were carried out in strict accordance with Mexican law. However, ECA opponents continue to seek monetary awards from Sempra in Mexican courts.

The U.S. Government continues to monitor the situation and maintains contact with Sempra Energy. Ambassador E. Anthony Wayne met Sempra Mexico's chief executive officer on August 3 to discuss the situation. The company has not asked us for any intervention or support recently, but we stand ready to be helpful as requested.

RESPONSES OF UNDER SECRETARY FRANCISCO SANCHEZ TO QUESTIONS SUBMITTED
BY SENATOR JEANNE SHAHEEN

Question. The ongoing failure to pay past debts by the Government of Argentina remains a significant concern, especially as Argentina is a current member of the Group of 20 nations. Argentina's unwillingness to live up to its responsibilities to pay current bondholders undermines the credibility of the global marketplace.

In my home State of New Hampshire, the Republic of Argentina has refused to settle debts owed by Caja Nacional de Ahorra Y Seguro (CAJA) to the TIG Insurance Company (TIG). I have written a number of letters to the Argentinian authorities urging them to settle these outstanding debts. The legitimacy of TIG's claim was validated by two final U.S. District Court judgments in 2001 and 2002, and the company has subsequently made five settlement offers to which the Argentine Government has never responded.

- Will you continue to emphasize the importance of resolving outstanding debt issues between the Argentinian Government and American debt holders? What are we doing to encourage Argentina to settle these debts in a fair and efficient matter?

Answer. The United States believes that it is in the mutual interest of Argentina and the United States that Argentina resolve its longstanding overdue obligations to all its creditors. Normalizing its relations with all of its international creditors will help improve Argentina's investment climate and its access to international capital markets.

The U.S. Government is working on resolving these issues on every level. In Cannes last year, President Obama discussed with President Fernandez de Kirchner the need for Argentina to normalize its relationship with the international financial and investment community, and he urged Argentina to clear arrears to U.S. Government agencies in full and as soon as possible. Senior administration officials have used every opportunity to reinforce the President's message.

The Department of Commerce has supported U.S. Government efforts to encourage Argentina to meet its obligations to its creditors. Most recently, in May 2012, Under Secretary Sanchez raised this issue with Vice President of Argentina Amado Boudou and Ambassador Jorge Arguello and expressed the importance of Argentina's action on the debt and trade issues affecting the bilateral relationship.

Additionally, on March 26, 2012, the White House announced President Obama's decision to suspend Argentina's eligibility for the Generalized System of Preferences (GSP) program. The suspension of Argentina's GSP eligibility is based on a finding that the Argentine Government is not in compliance with the statutory GSP eligibility criteria set by Congress. Specifically, the Argentine Government has failed to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of two U.S. companies rendered under the United States-Argentine bilateral investment treaty and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Clearing its Paris Club arrears, honoring final International Centre for Settlement of Investment Disputes (ICSID) awards, and settling remaining issues with bondholders would send a strong signal that Argentina wants to pursue a positive bilateral relationship.

Question. The European Union recently started consultations to pursue a WTO dispute with Argentina.

- What actions—if any—is the U.S. Government considering with respect to similar WTO actions against Argentina? What more can we do to urge Argentina to meet its responsibilities inherent to members of the WTO?

Answer. Argentina granted the U.S. request to participate in the EU's consultations with Argentina as a third party in Geneva July 11–12, pursuant to the EU's request for consultations. We requested to participate in order to have a better understanding of Argentina's various import licensing measures.

On August 21, 2012, the United States also requested consultations with Argentina concerning certain trade restrictive measures. If these consultations fail to resolve this matter, we would consider whether the United States should proceed to request the establishment of a WTO dispute settlement panel.

The measures affect U.S. exporters broadly, and companies across various sectors support the initiation of dispute settlement proceedings. The measures at issue include import licensing requirements for goods imported into Argentina that have the effect of restricting imports from the United States. Argentina often requires importers to agree to undertake trade balancing commitments in exchange for authorization to import goods under these licensing measures.

Prior to requesting consultations, the United States had expressed serious concerns, both bilaterally to the Government of Argentina and in various fora of the WTO, about measures maintained by Argentina that appear to restrict imports.

RESPONSES OF UNDER SECRETARY FRANCISCO SANCHEZ TO QUESTIONS SUBMITTED
BY SENATOR ROBERT MENEDEZ

Question. The protection of labor rights and the environment are fundamental tenants of prosperity here in the United States and overseas. Can you tell us how the administration plans to address the important issues of labor and environmental protection in the Trans-Pacific Partnership? If there is resistance to robust environmental and labor protections in this agreement, how is the administration working to address these issues?

Answer. The Obama administration is committed to a free trade agreement (FTA) model that recognizes the interests of workers and places them on an equal footing with commercial interests. Much progress has been made in recent years to ensure good labor laws and better enforcement of those laws by our trading partners. The Trans-Pacific Partnership (TPP) provides the opportunity to continue that progress and strengthen our efforts to ensure that all workers benefit from expanded trade. Strong labor provisions are a priority for the Obama administration. We are working with the other TPP parties to develop a robust labor chapter that ensures protection in law of internationally recognized labor rights, including the International Labor Organization's fundamental labor rights, ensures effective enforcement of labor laws, and provides the means to hold the TPP parties accountable.

The Obama administration has also made it a top priority to include robust trade-related environmental provisions in the TPP and to build upon previous FTAs to ensure strong environmental obligations, enforcement of these obligations, and to place these on equal footing with commercial obligations in the agreement. The administration also views the TPP as an opportunity to seek innovative environmental commitments in key areas related to trade, such as conservation of wildlife, forests and fisheries. We have made concrete proposals in this area and are working very hard with the other TPP parties to develop robust environmental provisions.

Question. Innovative health products and services protect the health of Americans and our friends abroad while promoting economic growth by supporting innovative companies and high quality jobs. How is the administration working to protect IPR for innovative health products, including data protection for biopharmaceuticals, in the Trans-Pacific Partnership? Are you going to ensure that our TPP partners provide robust protections to enable our companies to invest in new lifesaving products like biopharmaceuticals? Have new TPP partners, including Mexico, assured you that they will protect intellectual property for health products?

Answer. The administration sees biologic drugs as are a vital area of pharmaceutical innovation, now and in the future. Our goal for the Trans-Pacific Partnership is to seek 21st century Intellectual Property standards that stand alongside current U.S. trade agreements in the region, such as the U.S.-Korea Trade Agreement. Mexico and Canada have assured us that they understand the high level of ambition of the TPP for intellectual property rights. We are currently reviewing stakeholder submissions elaborating on concerns in both markets, including concerns related to biologic drugs, to inform our further engagement through the TPP negotiations.

Question. The administration submitted a request to the WTO on 7 June 2012 to join EU consultations with Argentina on "measures imposed by Argentina on the importation of goods." Have you begun these consultations, and if so, can you provide examples of any specific progress made with Argentina on the WTO which would protect American exports from unfair and illegal trade restrictions in Argentina? Will the administration submit an independent request to the WTO to address trade issues with Argentina?

Answer. Argentina granted the U.S. request to participate in the EU's consultations with Argentina as a third party in Geneva July 11–12, pursuant to the EU's request for consultations. We requested to participate in order to have a better understanding of Argentina's various import licensing measures.

On August 21, 2012, the United States also submitted its own request for consultations with Argentina concerning certain trade restrictive measures. These consultations have not yet been held. If consultations fail to resolve this matter, we would consider whether the United States should proceed to request the establishment of a WTO dispute settlement panel.

Question. Does the administration believe that Andean Trade Preference Act privileges should be extended for Ecuador in light of ongoing investment disputes between American companies, Ecuador's breach of the BIT, and lack of cooperation on narcotics trafficking?

Answer. The administration has not yet taken a position on whether it supports an extension of the Andean Trade Preference Act (ATPA) program beyond July 2013. Ecuador is the only remaining beneficiary of the ATPA.

While it is the responsibility of Congress to consider whether to reauthorize the ATPA program, the administration will continue to monitor developments concerning Ecuador to ensure that it is complying with the ATPA eligibility criteria and will continue to work with Congress on issues relevant to the operation of the program.

RESPONSES OF DEPUTY ASSISTANT SECRETARY MATTHEW ROONEY TO QUESTIONS
SUBMITTED BY SENATOR MARCO RUBIO

Question. In September 2011, Assistant Treasury Secretary Marisa Lago assured the Congress that the United States would oppose most World Bank and Inter-American Development Bank loans to Argentina and urge other countries to do the same. The administration was responding to congressional concerns that Argentina has consistently ignored U.S. court judgments against it and failed to pay what it owes American investors. Unfortunately, the United States does not have sufficient voting power in those institutions to block loans on its own, and the loans continue to flow to Argentina.

- Do you agree that the United States should continue to oppose multilateral loans to Argentina until Argentina fully honors its commitments to American investors?
- In addition to oppose multilateral loans to Argentina, what other measures has the administration taken to persuade Argentina to fully honor its commitments to American investors under international law?
- What steps is the administration taking to persuade other countries to join the United States in opposing multilateral loans to Argentina?

Answer. The Department of State has worked closely with agencies across the U.S. Government to encourage the Government of Argentina to clear its debts to U.S. taxpayers and other Paris Club creditors, honor final awards of International Centre for Settlement of Investment Disputes (ICSID) arbitration panels, and resolve remaining issues with private bondholders as soon as possible.

In September 2011, the Department of the Treasury initiated a policy to oppose all future lending to Argentina by the IDB and World Bank, with the exception of loans for programs targeting the very poor. The U.S. representatives at the multilateral development banks have engaged with other board members on our voting stance and have seen a growing number of them taking similar positions.

In March 2012, the administration suspended Argentina's eligibility for the Generalized System of Preferences (GSP) program. The suspension of Argentina's GSP eligibility is based on a finding that the Argentine Government has failed to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of two U.S. companies rendered under the United States-Argentine bilateral investment treaty and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

The Department of State strongly supports these appropriate steps, and in our bilateral discussions, including at the highest levels, we repeatedly raise our concerns about Argentina's failure to fulfill its obligations to U.S. creditors. We will continue to urge Argentina to resolve these issues.