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ADVANCING U.S. BUSINESS INVESTMENT AND TRADE IN THE AMERICAS

HEARING

BEFORE THE

SUBCOMMITTEE ON
THE WESTERN HEMISPHERE

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

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ADVANCING U.S. BUSINESS INVESTMENT AND TRADE IN THE AMERICAS

THURSDAY, JUNE 7, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:19 p.m., in room 2172, Rayburn House Office Building, Hon. Paul Cook (chairman of the subcommittee) presiding.

Mr. COOK. A quorum being present, the subcommittee will come to order.

I would like to now recognize myself for an opening statement.

The Western Hemisphere possesses tremendous opportunities for further economic growth and U.S. business engagement. The United States already has significant economic interests in Latin America and the Caribbean and is the largest single source of foreign investment for many countries.

We are also the top trading partner for most countries in the region and have free trade agreements with eleven countries and bilateral investment treaties and international investment agreements with 19 countries in the region. Yet we are seeing hedging in the region from some countries that don't always play by the rules, which undermines U.S. economic interest.

China has significantly increased its outreach to Latin America and the Caribbean, offering less stringent investment conditions and pledging $250 billion in investment over the next decade. However, it accounted for just 1.1 percent of foreign direct investment in Latin America and the Caribbean in 2016 compared with the United States investment of 20 percent.

I am particularly interested in the future of U.S. economic engagement with the Pacific alliance countries of Chile, Colombia, Mexico, and Peru. These countries adhere to market-oriented policies, and taken together, they represent 39 percent of Latin America's gross domestic product, offering U.S. businesses huge opportunities for greater investment in trade.

Chile, Colombia, and Peru are among the world's most open economies with almost no restrictions on foreign ownership. Half of the 32 economies in the region also implemented at least one regulatory reform in the last year alone, making it easier for the U.S. companies to do business. Notably, Argentina, Brazil, Colombia, and Mexico have made serious energy reforms, opening their sectors to investors, making it easier to do business.

The Northern Triangle countries have also taken steps to attract foreign investment by creating special economic zones and working to integrate their markets. And the Caribbean, the Dominican Republic, and Jamaica took actions last year to improve their business climates as well.

Ecuador now has new political leadership and has announced its intention to advance more market-oriented policies and address rule of law, press freedom, and regulatory framework issues. I think there is potential for change in Ecuador and—as Ecuador, El Salvador and Panama all use the U.S. dollar.

American businesses have obviously some unique investment opportunities in the region. Colombia was recently invited to join the Organization for Economic Cooperation and Development, OECD, and other Latin American countries are interested in joining the OECD as well, which may motivate further reforms.

While all these opportunities seem promising for the region, countries continue to face rampant corruption and impunity; high levels of crime and violence; inconsistent application of the law, with some laws and policies changing from week to week; burdensome regulatory frameworks; unclear tax structures; a lack of transparency and accountability in government processes; and central banking systems that make U.S. business investment difficult.

Limited digitization and technological innovation, preferences for cash payments over credit, labor regulations and high levels of unemployment, and foreign restrictions on foreign equity ownership also increase U.S. investment challenges.

I have heard from multiple U.S. companies who want to expand their presence, create more jobs in the region, which will lower migration to the United States and invest in communities where they operate. However, these investment challenges have made some U.S. businesses think twice about long-term investment.

Presidential elections in Colombia, Mexico, and Brazil in the coming weeks and month may also shift political priorities, presenting additional obstacles to increased U.S. investment in the region and providing tremendous opportunities.

I want to close by recalling the 57 points in the Lima Commitment that countries agreed to at the Summit of the Americas in April to reinforce democratic governance and anticorruption measures. It is my view that U.S. businesses play a critical role in raising standards in the region.

And in my conversation with regional leaders at the summit, it was clear to me that countries see the United States as their partner of choice. I believe that our Government State Department could be doing more to advance U.S. business engagement in the Americas. And I look forward to hearing from our witnesses on these issues.

With that, I will turn to our ranking member for his opening statements.

[The prepared statement of Mr. Cook follows:]

Chairman Paul Cook
Opening Statement
Foreign Affairs Committee's Subcommittee on the Western Hemisphere
"Advancing U.S. Business Investment and Trade in the Americas"
Thursday, June 7, 2018 in Rayburn Room 2172

The Western Hemisphere possesses tremendous opportunities for further economic growth and U.S. business engagement. The United States already has significant economic interests in Latin America and the Caribbean and is the largest single source of foreign investment for many countries. We are also the top trading partner for most countries in the region and have free trade agreements with 11 countries and bilateral investment treaties and international investment agreements with 19 countries in the region. Yet, we are seeing hedging in the region from some countries that don't always play by the rules, which undermines U.S. economic interests. China has significantly increased its outreach to Latin America and the Caribbean, offering less-stringent investment conditions and pledging $250 billion in investment over the next decade. However, it accounted for just 1.1 percent of foreign direct investment in Latin America and the Caribbean in 2016 compared with United States investment at 20 percent.

I'm particularly interested in the future of U.S. economic engagement with the Pacific Alliance countries of Chile, Colombia, Mexico, and Peru. These countries adhere to market-oriented policies, and taken together, they represent 39 percent of Latin America's gross domestic product, offering U.S. businesses huge opportunities for greater investment and trade. Chile, Colombia, and Peru are among the world's most open economies with almost no restrictions on foreign ownership. Half of the 32 economies in the region also implemented at least one regulatory reform in the last year alone, making it easier for U.S. companies to do business. Notably, Argentina, Brazil, Colombia, and Mexico have made serious energy reforms, opening their sectors to investors making it easier to do business.

The Northern Triangle countries have also taken steps to attract foreign investment by creating special economic zones and working to integrate their markets. In the Caribbean, the Dominican Republic and Jamaica took actions last year to improve their business climates as well. Ecuador now has new political leadership and has announced its intention to advance more market-oriented policies and address rule of law, press freedom, and regulatory framework issues. I think there is potential for change in Ecuador, and as Ecuador, El Salvador and Panama all use the U.S. dollar, American businesses have some unique investment opportunities in the region. Colombia was recently invited to join the Organisation for Economic Co-operation and Development (OECD), and other Latin American countries are interested in joining the OECD as well, which may motivate further reforms.

While all these opportunities seem promising for the region, countries continue to face rampant corruption and impunity; high levels of crime and violence; inconsistent application of the law (with some laws and policies changing from week to week); burdensome regulatory frameworks; unclear tax structures; a lack of transparency and accountability in government processes; and central banking systems that make U.S. business investment difficult. Limited digitization and technological innovation, preferences for cash payments over credit, labor regulations and high levels of unemployment, and restrictions on foreign equity ownership also increase U.S. investment challenges.

I've heard from multiple U.S. companies who want to expand their presence, create more jobs in the region (which would lower migration to the United States), and invest in communities where they operate. However, these investment challenges have made some U.S. businesses think twice about long-term investment. The presidential elections in Colombia, Mexico, and Brazil in the coming weeks and months may also shift political priorities, presenting additional obstacles to increased U.S. investment in the region or providing tremendous opportunities.

I want to close by recalling the 57 points in the Lima Commitment that countries agreed to at the Summit of the Americas in April to reinforce democratic governance and anti-corruption measures. It is my view that U.S. businesses play a critical role in raising standards in the region, and in my conversations with regional leaders at the Summit, it was clear to me that countries see the United States as their partner of choice. I believe that our government and the State Department could be doing more to advance U.S. business engagement in the Americas, and I look forward to hearing from our witnesses on these issues. With that, I turn to Ranking Member Sires for his opening remarks.

###

Mr. SIRES. Thank you, Mr. Chairman, for holding this important hearing, and thank you to all our witnesses for joining us today.

Today, we are here to talk about opportunities and challenges for American businesses around the Western Hemisphere. I have long said that the U.S. can and should be doing more to enhance engagement with our friends in the Western Hemisphere. Deepening our economic ties is one of the best ways to improve relations, create jobs, and bring us closer to our neighbors.

We should work together to make sure that the United States is the preferred partner of choice of our allies. A large part of that engagement is making sure that all companies invested in the hemisphere are playing by the same rules. Ensuring rule of law, consistency, and stability is key to having a climate that forces economic growth and creates jobs.

American businesses can help strengthen democratic values by promoting best practices for labor rights, environmental standards, and transparency in financial management. That is just one of the reasons so many in the region have been working to promote anticorruption initiatives like the CICIG and the MACCIH around the region.

These anticorruption efforts promote transparency and stability, two key ingredients to economic development. Unfortunately, we see politically motivated attacks against these efforts every day, weakening anticorruption institutions only to hinder economic growth and prevent job growth.

It is this economic growth and security that can also tackle the root causes of migration, preventing families from fleeing their homes in dangerous conditions in search of a better life. Sadly, corruption and security issues aren't the only obstacle to advancing U.S. investment and trade in the Americas.

Both the rhetoric and the decisions made by the Trump administration are putting U.S. businesses and jobs at risk. Bombastic comments insulting our friends and allies does nothing but make U.S. seem like an untrustworthy partner. Imposing punishment tariff raises the cost of doing business for everyday Americans and drives uncertainty and instability.

While China is investing billions and building inroads throughout Latin America, the President is busy punishing our friends to play to his political base. He is practically driving the rest of the world into the arms of the Chinese. At every turn, the President threatens to end agreements or blow up trade negotiations. This is no way to protect American jobs, American families, or American interests.

I am eager to hear from the witnesses how they feel the administration's recent actions and their impacts on U.S. businesses abroad. I look forward to hearing what Congress can do to promote American investment and best practices around the region. Thank you, and I yield back the balance of my time.

Mr. COOK. Thank you, sir.

Before I recognize you to provide your testimony, I am going to explain the lighting system in front of you. You each have 5 minutes to present your oral statement. When you begin, the light will turn green. When you have a minute left, the light will turn yellow.

And when your time is expired, the light will turn red. I ask that you conclude your testimony once the red light comes on.

By the way, I used to dream about strange things. Now I dream about these lights at night. And I am sure you do too after all the testimonies that you have done.

Anyway, after our witnesses testify, members will have 5 minutes to ask questions. I urge my colleagues to stick to the 5-minute rule to ensure that all members get the opportunity to ask questions.

Our first witness to testify will be Mr. Eric Farnsworth, the vice president of the Council of the Americas. Prior to this, Mr. Farnsworth worked at the U.S. Department of State, in the Office of the U.S. Trade Representative, and was appointed as the senior adviser to the White House Special Envoy for the Americas.

Our second witness to testify is Mr. Neil Herrington, the senior vice president for the Americas at the U.S. Chamber of Commerce. Mr. Herrington also serves as executive vice president of the Association of American Chambers of Commerce in Latin America and the Caribbean, the acronym AACCLA. If you can pronounce that one, you get extra points. Prior to joining the chamber, Mr. Herrington worked at the State of California Office of Trade and Investment, the U.S. Trade Representative, Raytheon, and General Motors.

And our last witness to testify will be Ms. Kellie Meiman Hock, a managing partner at McLarty Associates. Prior to this, Ms. Hock worked at the Office of U.S. Trade Representative, served as a Foreign Service officer with the U.S. Department of State. She is also a member of the Council on Foreign Relations and the Inter-American Dialogue.

Mr. Farnsworth, you are now recognized.

STATEMENT OF MR. ERIC FARNSWORTH, VICE PRESIDENT, AMERICAS SOCIETY/COUNCIL OF THE AMERICAS

Mr. FARNSWORTH. Mr. Chairman, thank you very much. Good afternoon to you, Mr. Ranking Member, and members. And before I start with my testimony, may I congratulate you on your opening statements. Those were powerful, and we look forward to responding to some of the questions that you have put out there already.

It is a privilege to appear before you again in this subcommittee. The news that the Trump administration has decided to move forward with steel and aluminum tariffs on Canada and Mexico, as well as Europe, with the possibility of additional future tariffs, coupled with cancellation of U.S. participation in the Trans-Pacific Partnership and an aggressive effort to reformulate and recast NAFTA have roiled hemispheric trade and economic relations.

These actions have introduced a significant element of uncertainty into the trade and investment calculus, along with a normal and anticipated emerging market risks in Latin America and the Caribbean basin. And increasing uncertainty is, to be blunt, bad for business.

As the United States retrenches, others are quick to fill the void with China in the lead. China would still be a major presence in the Americas, of course, as it is in other emerging markets globally, even under a more traditional U.S. approach to trade. But Washington's recent actions are accelerating preexisting trends. We may soon reach an inflection making impossible a return to the status quo ante.

Within this framework, absent a policy shift, there are, nonetheless, any number of things that can be done to advance U.S. commercial interests in the hemisphere to the extent that we are inclined to prioritize them. The first is simply to be present.

The Vice President's announcement Monday that he will soon travel to the region for the third time in less than a year is very welcome news. And effective commercial diplomacy also requires that the United States have diplomats and senior officials in place to promote our interests day-to-day, including the Assistant Secretary of State for the Western Hemisphere. Personnel are policy, and it is difficult to have an effective policy or to advocate for U.S. business without strong people in place.

Second, we should refrain from affirmatively taking steps that would actually reduce the regional U.S. business presence. A perfect example is the ongoing effort to excise investor State dispute settlement provisions within NAFTA, which would cause U.S. energy and other investors to reevaluate their investment plans going forward.

Rule of law remains imperfect in Mexico, as it does across much of the region, and investors will be less likely to commit significant additional resources without greater judicial certainty. But Mexico's hydrocarbon reserves will remain, thus opening the door wider to greater sectoral investment from China, Russia, and other extraregional actors.

The same is true with other provisions being pushed by the United States in ongoing NAFTA negotiations, including dispute resolution, government procurement, and the 5-year sunset clause.

Third, as the region develops alternatives to the United States, we have to contend more actively for regional commerce. Competition is fierce and we must, as a result, compete. But unless Washington is willing to engage with the region broadly on the basis of true partnership, we will lose ground to others with a different approach.

I also believe that we need to get a better handle on how our scarce aid resources are spent. Indeed, we should increase rather than decrease foreign assistance, and we should use such assistance to prioritize trade facilitation and business climate reforms.

Working with Latin American and Caribbean partners to address insufficient infrastructure, weak rule of law and anticorruption, inadequate workforce development, and deteriorating personal security, among others, would help create conditions attractive for greater U.S. commercial engagement and sales.

Finally, we face a challenge from China and other nations who use development finance more effectively than current authorities allow the United States to do. We need to up our game in this area. Prompt passage of the bill to act, for example, establishing an enlarged and enhanced U.S. international development finance corporation would help address this, and there are other good ideas out there as well.

Mr. Chairman and members, thank you again for the invitation to appear before you on the subcommittee today, and I look forward to having the opportunity to answer your questions.

[The prepared statement of Mr. Farnsworth follows:]

COUNCIL OF THE Americas

ADVANCING U.S. BUSINESS INVESTMENT AND TRADE IN THE AMERICAS

HEARING BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON THE WESTERN HEMISPHERE
JUNE 7, 2018

ERIC FARNSWORTH
VICE PRESIDENT
COUNCIL OF THE AMERICAS

*** As Prepared for Delivery ***

Good afternoon, Mr. Chairman, Mr. Ranking Member, and Members. It is a privilege to appear before you again. I am pleased to offer testimony on ways to advance U.S. business investment and trade interests in the Americas. Thank you for the opportunity to join this timely and important hearing.

The Prevailing Circumstances of Hemispheric Trade and Investment Relations

The news from last week that the Trump Administration has decided to move forward with steel and aluminum tariffs on Canada and Mexico as well as Europe, with the possibility of additional future tariffs, coupled with cancellation of U.S. participation in the Trans-Pacific Partnership and an aggressive effort to reformulate and recast NAFTA, have roiled hemispheric trade and economic relations. Where once the United States was unquestionably the leader in promoting open markets and investment climate reforms across the hemisphere, Washington has now become a disruptor.

These actions have introduced a significant element of uncertainty into the trade and investment calculus along with normal and anticipated emerging market risks in Latin America and the Caribbean Basin. And increasing uncertainty is, to be blunt, bad for business. With rising costs, patterns of trade shift, including sourcing and fully integrated supply chains that drive production. Meanwhile, investments are delayed or not made at all, and productivity lags.

As the United States retrenches, others are quick to fill the void, with China in the lead. China would still be a major presence in the Americas, of course, as it is in other emerging markets globally, even under a more traditional U.S. approach to trade. But Washington's recent actions are accelerating pre-existing trends to the point where we may soon reach an inflection point making impossible a return to the *status quo ante*. This would be a self-generated and unnecessary strategic setback for U.S. interests in the Western Hemisphere.

Specific Near-Term Actions to Consider

Within this framework, absent a policy shift, there are nonetheless any number of things that can be done to advance U.S. commercial interests in the hemisphere to the extent we are inclined to prioritize them.

The first is to be present, and Vice President Pence's announcement Monday that he will soon travel for the third time to Latin America in less than a year is welcome news. We also applaud Secretary of State Mike Pompeo's presence at the OAS General Assembly this week and the leadership of UN Ambassador Nikki Haley on Venezuela. Such efforts must be sustained. Effective commercial diplomacy also requires that the United States have diplomats and senior officials in place to conduct day-to-day activities including the promotion of U.S. business. To name one example, we are just five months away from the mid-term elections and still have no Senate-confirmed Assistant Secretary of State for the Western Hemisphere, although I understand an outstanding candidate has been identified. Personnel are policy, and it's difficult to have an effective policy without the right people in place to develop and implement it.

Second, we should refrain from affirmatively taking steps that would actually *reduce* the U.S. investment presence in Latin America and the Caribbean. A perfect example is the ongoing effort to excise investor-state dispute settlement provisions from NAFTA, which would cause U.S. energy and other investors to re-evaluate their investment plans going forward, particularly if the incoming president of Mexico, whoever may be elected on July 1, seeks to rein in energy sector reforms implemented by the outgoing government. Rule of law remains imperfect in Mexico, as it does across much of the region, and investors will be less likely to commit significant additional resources without greater judicial certainty. But Mexico's hydrocarbon deposits will remain, thus opening the door wider to greater sectoral investment from China, Russia, and other extra-regional actors. The same is true with other provisions being pushed by the United States in ongoing NAFTA negotiations, including dispute resolution, government procurement, and a five-year sunset clause.

Third, as the region develops alternatives to the United States, we have to contend more actively for regional commerce. No longer is the United States the only game in town, if we ever were. Competition is fierce, and we must, as a result, compete. It's one thing to promote the United States as a preferred partner for the region—and indeed I believe that that is the case—but partnership requires sensitivity to the needs of others and a search for mutually-rewarding solutions on issues that matter most to us and also to them. China understands this, even if execution is not always perfect. But unless Washington is willing to engage with the region on the basis of true partnership, we will continue to lose ground to others with a different approach. A full push to return Venezuela to the democracy path is welcome, no doubt, but regional policy must also be based more broadly on seeking and consummating shared opportunity with regional partners and friends.

Finally, I believe that we need to get a better handle on how our scarce aid resources are spent. Indeed, we should increase rather than decrease foreign assistance. But no matter what levels of assistance are appropriated year to year, we should make every effort to prioritize trade facilitation and business climate reforms. Working with Latin American and Caribbean partners

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to address obstacles to U.S. trade and investment including insufficient infrastructure, weak rule of law, inadequate workforce development, and deteriorating personal security among others would go a long way to helping create conditions attractive for U.S. commercial engagement and sales. Over the past generation, the region took concrete steps to solidify the macro economy and, with the obvious exception of Venezuela and a handful of others, the region is far ahead of where it used to be. Nonetheless, inadequate efforts were made to reform the micro economy, which has proven to be the Achilles heel for regional development and where enhanced U.S. commercial diplomacy and assistance could usefully be directed.

Improved Development Finance is Key to Competitiveness

As well, we face a new challenge from China and other nations who are able to use development finance more effectively than current authorities allow the United States to do. U.S. efforts are limited in size, scope, and a diffusion of authorities across too many agencies. This is a perennial issue, which the prompt passage and implementation of the BUILD Act establishing a full-service, self-sustaining U.S. International Development Finance Corporation would help to address. Without streamlined and enhanced development finance activities it will be increasingly difficult for the United States to compete effectively in Latin America and the Caribbean, and we should give attention to this matter as a priority.

Mr. Chairman, thank you again for the invitation to appear before you and the Subcommittee today. I look forward to your questions.

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Mr. COOK. Thank you very much.

Mr. Herrington, you are now recognized.

STATEMENT OF MR. NEIL HERRINGTON, SENIOR VICE PRESIDENT FOR THE AMERICAS, U.S. CHAMBER OF COMMERCE

Mr. HERRINGTON. Mr. Chairman, thank you very much for the opportunity to be here today, Ranking Member Sires. I think I would echo Eric's comments. I think you both framed our discussion today very, very well as we move this conversation forward.

Among the multiple bilateral business councils and initiatives we operate, the chamber is proud to be home to the 50-year-old Association of American Chambers of Commerce of Latin America and the Caribbean, or ACCLA, that is the acronym. It is a mouthful.

As we discuss ways to improve the economic climate in the Americas for U.S. investment, it is no exaggeration to say that ACCLA is its face. The 24 AmChams across the hemisphere that comprise ACCLA's network boasts 20,000 member companies that collectively account for more than 80 percent of U.S. investment across the region.

For years, ACCLA member companies have identified weak rule of law as the number one challenge facing U.S. companies doing business in the region. In response, the chamber has been at the forefront of promoting adherence to rule of law as key to government's ability to increase investment in trade and help drive sustainable economic growth throughout the region.

To bring greater attention to the importance of rule of law, 5 years ago, the chamber's Americas Program developed the Global Business Rule of Law Dashboard. What was once a regional initiative today covers 70 markets around the world and tracks five core factors critical to business success: Transparency, predictability, stability, accountability, and due process.

We have found that where these factors are present, investment thrives, economies grow, jobs are created, and prosperity follows. Conversely, in markets where these factors are weak or absent, corruption thrives, informality reigns, investment dollars flee, and tax revenues plummet.

In December, we published the third edition of the Global Business Rule of Law Dashboard, and one of its key findings was that the Americas region is lagging significantly behind, earning the lowest average score of any region in the world.

In spite of this, there are reasons for optimism. The Odebrecht scandal, perhaps of its sheer audacity in scope, has had a silver lining. It has helped galvanize the attention of both the region's leaders and citizens on the need for urgent action. Issues of impunity are being addressed as the Latin American political and business class are being held accountable for the first time in recent memory.

As countries across the region carry out elections for new leaders, in 2018, we are also seeing hundreds of millions of citizens prioritize Canada's commitments to rule of law. And just 2 months ago, at the Summit of the Americas in Lima, the region's governments underscored the imperative of regional adherence to the rule of law by making democratic governance against corruption the overarching theme of the event, as you acknowledged, Mr. Chairman.

The chamber was proud to be in Lima serving as the U.S. Secretary for the Americas Business Dialogue, or ABD, an initiative that seeks to advance a high-level public/private dialogue on regional economic development.

Integral to this year's efforts were recommendations that ABD put forward to the regional heads of state demonstrating the private sector's commitment to promote transparency and integrity in business dealings throughout the region that included adoption of comprehensive corporate codes of conduct, regional implementation of good regulatory practices, and commitment to supporting permitting best practices certification for public officials.

While developments like these are encouraging, they are only a start. Many challenges remain. We remain deeply concerned about Venezuela where Maduro's tyrannical regime must be held accountable, as well as the growing crisis in Nicaragua, where the Ortega regime continues to flaunt the rule of law.

Areas like the Northern Triangle of Central America remain plagued by violence, insecurity, corruption, and threats to democracy. In short, when it comes to strengthening hemispheric adherence to rule of law, the stakes for the U.S. and all countries in the region are enormous.

Also imperative is the need for the U.S. to maintain its leadership in promoting a rules-based global trading system in our hemisphere that strengthens rule of law and provides a level playing field for American companies. We should not cede our leadership on trade in the region and instead need to expand our economic and commercial engagement. The stakes are too high to do otherwise.

One need look no farther than Canada and Mexico, which are the two largest markets for U.S. exports that together support more than 14 million U.S. jobs. That is why the status of NAFTA negotiations is of such great concern to the chamber and our member companies, and we have been very vocal about that.

Beyond the sheer enormity of the North American economic relationship, the outcome of NAFTA impacts U.S. policy across the Americas, which is home to 12 of the 20 FTA partner countries that the United States possesses and is a destination for close to 45 percent of U.S. exports.

Just like with rule of law, certainty in trade policy is key to success. We are facing uncertainty and potential division with allies at precisely the time when certainty and collaboration are required to confront a challenge to U.S. regional trade leadership from China. The chamber shares many of the administration's concerns with China's unfair trade practices and industrial policies. But that said, global, steel, and aluminum tariffs do little to address the real issue of China's overcapacity. Instead, they risk alienating some of our strongest global allies at precisely the moment when a coordinated global strategy to counteract China's trade and industrial policies is needed. The U.S. Government needs a robust strategy to help U.S. companies counter the growing economic influence in the region.

With this, I thank you again. Mr. Chairman, Ranking Member, members of the committee, I thank you very much for the opportunity to appear here today, and I look forward to taking your questions.

[The prepared statement of Mr. Herrington follows:]

Statement of the U.S. Chamber of Commerce

ON: Advancing U.S. Business Investment and Trade in the Americas

TO: U.S. House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere

BY: Neil Herrington
Senior Vice President, Americas
U.S. Chamber of Commerce

DATE: June 7, 2018

1615 H Street NW | Washington, DC | 20062

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

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. There are 117 American Chambers of Commerce (AmChams) abroad, 24 of these AmChams in 28 different countries, are members of the Chamber's Americas Program, and represent more than 20,000 companies and more than 80% of U.S. investment in the region. With councils in existence since 1976 and engagement with 32 countries in the region, the Americas Program has the breadth and depth to address the important trade and business issues and support long-term growth and development.

In addition to the AmChams, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Thank you for this opportunity to testify on the issue of advancing U.S. business investment in the Americas. My name is Neil Herrington, and I am the Senior Vice President for the Americas at the U.S. Chamber of Commerce (the "Chamber"). I am pleased to be here on behalf of the Chamber to discuss advancing U.S. business investment and trade in the Western Hemisphere.

Strategic Importance and Opportunities for the Americas

The subcommittee's hearing on advancing U.S. trade and investment in the region is timely and important. I was just in Peru for the VIII Summit of the Americas and the III CEO Summit as part of the Chamber's delegation to this important meeting of regional government, private sector, and civil society leaders to foster public-private collaboration to promote investment, facilitate trade, and boost sustainable development across the hemisphere.

The Summit of the Americas is one of the many reasons the spotlight is on the region, and it coincides with global investors taking note of bright spots where regional economies are introducing more market-friendly reforms. In December, Argentina will host the G20, marking the first time a South American country will host this gathering of advanced economies.

Under the leadership of President Mauricio Macri, Argentina is undertaking an ambitious economic reform agenda, and seeking expanded commercial engagement with the United States. Similarly, there are positive signs in Ecuador, where President Lenin Moreno has distanced himself from his predecessor and the "21st Century Socialism" model of the past decade. Colombia is a nation that has emerged from conflict and committed to a path of economic development rooted in enhanced regional integration. The landmark reform that opened Mexico's oil and gas sector to foreign investment for the first time in nearly 80 years provides an opportunity for greater levels of trade with the United States as part of an increasingly integrated North American energy market.

The region overall is also showing signs of a modest rebound after years of contraction precipitated by the collapse of commodity prices beginning in 2014. In its *2018 Macroeconomic Report for Latin America and the Caribbean*, the Inter-American Development Bank forecasts the region will grow at an average rate of 2.6% for the years 2018-2020, with several markets projected to exceed 4.0%.[1] While this rate of growth may not match the turnaround in other regions, what happens here in the Western Hemisphere is significant for American business. As an example of this, in 2017 the United States traded more than $1.4 trillion dollars' worth of goods with the countries of our region. In so doing, the United States exported more than five times the goods to the countries of the Western Hemisphere than it did to China.[2]

This robust relationship is thanks in large part to the network of trade and investment agreements the U.S. enjoys with hemispheric partners that creates frameworks for commercial relationships, provides clear rules for investors, and encourages the adherence to market-oriented policies in partner countries. With 12 of our 20 free trade agreement partners in the Americas, numerous

[1] Eduardo Cavallo and Andrew Powell, *A Mandate to Grow*, (Inter-American Development Bank, 2018), https://www.iadb.org/en/research-and-data/2018-latin-american-and-caribbean-macroeconomic-report.
[2] *U.S. Trade in Goods by Country*, (United States Census Bureau, 2017), https://www.census.gov/foreign-trade/balance/index.html

bilateral investment and tax treaty partners, and a Trade and Investment Framework Agreement (TIFA) with the Caribbean Community (CARICOM), it is little wonder that nearly half of all U.S. goods exports are bound for this region. Thus, continued growth and development of sound economic policies across the hemisphere is paramount for U.S. workers, farmers, and businesses.

This year, a record number of the hemisphere's citizens will also elect and inaugurate new leaders. It is estimated that more than 350 million people, roughly 80% of Latin America's population, will vote in a presidential election, including in Brazil, Colombia, and Mexico. The results of these elections will have implications for the United States and the degree to which these governments remain open to greater U.S. business investment and trade. Similarly, unrest in Nicaragua and uncertainty surrounding what lies ahead in Venezuela's ongoing economic and humanitarian crises could adversely impact neighboring countries and derail regional economic advancement.

It is in this environment that the Chamber, our bilateral business councils, and regional American Chambers of Commerce (AmChams) work to deepen relationships and expand commercial ties across the hemisphere.

Challenges to Advancing U.S. Trade and Investment

Despite positive developments in the region, doing business in Latin America continues to present challenges to advancing trade and investment, and I would like to highlight four areas where obstacles exist.

1. Rule of Law and the Need for Legal Certainty

Few factors rival the rule of law when identifying critical factors in a company's ability to do business profitably and maintain a sustainable business model over time.[3] However, shortcomings related to rule of law are prevalent in many countries, diminishing legal certainty and hindering the influence and dynamism of the region in global trade.

To help address these concerns, the Chamber established a Coalition for the Rule of Law in Global Markets, which articulated five essential factors necessary for businesses to make good investment and operating decisions, and thereby have a reasonable expectation of securing return on investment 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] Myron Brilliant, "Good Business Demands Good Governance," in *2013 Index of Economic Freedom* (The Heritage Foundation, 2013), 79-80.

3. **Stability**: A government'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 have found where these factors are present, investment thrives, economies grow, jobs are created, and prosperity follows. Conversely, in markets where these factors are weak or absent, corruption thrives, informality reigns, investment dollars flee, and tax revenues plummet. This issue was so fundamental to our AmChams and companies operating in the region that we developed a Rule of Law Dashboard in 2013 to educate policymakers on the close relationship between adherence to the rule of law and the ability to attract investment. Our December 2017 publication, which now encompasses 72 markets, regrettably shows that the rule of law remains a significant challenge for companies operating in the Western Hemisphere as the Americas earned the lowest average score of any region.[4]

Guatemala: Drawing on the results of the Dashboard, the Rule of Law Coalition designated Guatemala as a focus country for greater private sector engagement. Currently, Guatemala is ranked 58 on the index, placing the country in the bottom third of the Dashboard report. Given the long history of U.S. private sector collaboration with local partners on trade and investment to improve compliance standards and rule of law, the Coalition has engaged numerous partners, including the U.S. government and international organizations, to elevate the issues hindering greater progress in this area. The Coalition emphasizes the importance of Guatemala continuing to show progress in guaranteeing due process as a priority for investors. Part of the Coalition's work rests on highlighting the premium the business community places on the rule of law, particularly through the formalizing role of private sector actors with high compliance standards. Businesses play an under-recognized role in attracting other businesses and individual clients into the formal economy, and integrating the highest standards into formal supply chains.

Venezuela: Nowhere is the challenge to the rule of law more acute than in Venezuela, which ranked 70 of 72 on the Business Rule of Law Dashboard. The Trump administration is considering additional sanctions against the regime of Venezuelan President Nicolás Maduro following what a majority of Organization of American States (OAS) members believe to have been a sham re-election last month. While an increasingly tyrannical Maduro regime and its repression of ordinary Venezuelans must not go unanswered, U.S. officials are correct to take a cautious approach to enacting additional sanctions that avoids harming U.S. economic interests and exacerbating the misery of the Venezuelan people. The Chamber and AACCLA continue to believe the United States should pursue multilateral sanctions in lieu of unilateral punitive action

[4] Coalition for the Rule of Law in Global Markets, *Unlocking Growth and Prosperity, The Global Rule of Law and Business Dashboard 2017,* (U.S. Chamber of Commerce, 2017): 7, https://www.uschamber.com/sites/default/files/023368_ruleoflaw_report_fin.pdf

that targets Venezuela's petroleum and petrochemical sector and could lead to unintended consequences such as:

1. Worsening the country's profound economic and humanitarian crisis;
2. Providing the Maduro regime with the ability to sustain its rule by casting the United States as an "imperialist" scapegoat for Venezuela's ills; and,
3. Harming U.S. workers and businesses even as these unilateral measures fail to achieve their intended objective.[5]

The Trump administration is to be commended for seeking to establish consensus among key allies in the region that are party to the Lima Group. Together with like-minded governments throughout the Americas, the European Union and beyond, the U.S. should consider applying targeted sanctions on hundreds of Maduro regime members. Coordinated international action to seize assets, limit financial transactions and/or restrict travel of every member of the regime's illegitimate 545-member constituent assembly and key regime members would inflict significant personal cost on the individuals propping up the regime while sparing both the long-suffering Venezuelan populace and U.S. businesses direct harm.

2. Regulatory Frameworks

Navigating the maze of divergent, unnecessarily burdensome, and poorly designed regulatory frameworks is a top challenge for multinational companies operating all over the world and often prevents small and medium-size businesses from entering new markets. These challenges are also present in the Americas, where the Chamber works to promote good regulatory design comprised of internationally recognized best practices.

Data Privacy and Protection: Latin American countries are increasingly adopting new standards emulating European regulations since the EU's implementation of the General Data Protection Regulation (GDPR), which presents a fundamental shift in the protection of an individual's data and privacy. The EU is already exporting GDPR abroad, and many are pointing to it as the next global norm. For example, Brazil, Chile, Argentina, El Salvador, and Honduras are all currently using the GDPR as a template to create or update their privacy regulations. Through the Ibero-American Data Protection Network's recent conference in Chile, other markets including Colombia, Mexico, Peru, and Uruguay have taken a cue from the European measure and are considering discussed next steps.

The U.S. private sector opposes this approach as the policy is untested and there are significant concerns with implementation. Many countries want to adopt GDPR in order to ensure the EU deems them adequate, enabling data flows to and from the bloc. However, even if countries adapt their laws to be "GDPR-like," differences in culture, legal systems, and enforcement capabilities will ultimately create divergence. As more than 120 countries have data protection laws in place, the challenge now becomes ensuring interoperability and the movement of data between these differing privacy regimes.

[5] Jodi Hanson Bond, *How to Help Venezuela Out of Crisis and How Not To*, (U.S. Chamber of Commerce, 2017), https://www.uschamber.com/series/above-the-fold/how-help-venezuela-out-crisis-and-how-not

Like GDPR, many of these pending privacy regulations across Latin America include stipulations on international data transfers that could serve as significant barriers to digital trade. Not all of these regulations provide a list of countries whereby international data transfers are permitted, but those that do have not always included the United States as adequate to receive transfers. The shortcomings of such an 'adequacy' approach to privacy underscore the need for new, more flexible approaches to protecting privacy on a cross-border basis.

While privacy regimes can create regulatory challenges that impede digital trade, the motives are not always easily discernable to label them as clear attempts to obfuscate trade commitments. Many countries have cited privacy concerns as the basis for requiring foreign companies to store data within national borders. Yet, as studies have shown, forcing data to be stored locally does not have any incremental impact on increasing privacy. Instead, such policies increase risks to privacy and security by requiring storage of data in a single centralized location that is more vulnerable to outside intrusion. In these instances, privacy regulations become forced localization requirements and a traditional "trade" type problem.

Digital Economy: Latin America and the Caribbean is one of the fastest growing regions in terms of Internet adoption. In 2000, fewer than 5% of the region's population used the Internet. By 2015, half the region was online.

This growth presents tremendous opportunities for social and financial inclusion, digital services, and trade and economic growth in new and innovative ways as long as the right regulatory ecosystem is in place to support swift and secure movement of data.

The ability to move data across borders and access information is arguably as important to an economy as the movement of capital. Virtually no company, regardless of sector, can do business, let alone export goods or services, without the ability to move data and access information across borders. Too many obstacles to data flows are being erected across the hemisphere. Without a steadfast commitment to keeping data flowing across geographic borders, the region puts its own global competitiveness and economic growth at risk.

Many Latin American companies are increasingly looking to data localization and local content requirements in an effort to try to boost domestic competiveness. Requirements that force companies to manage, store, or otherwise process data locally, link market access or commercial benefits to investment in or use of local infrastructure and technology transfer are discriminatory in nature and draconian. They deter investment, delay innovation, and cut off consumers from the best digital products and services. Further, by protecting domestic champions, they ill-prepare them for competition outside of their home markets. Such efforts are often justified using economic development rationales that are shortsighted, unproductive, and ultimately serve to reinforce a path to dependency.

Trade Facilitation: Antiquated, burdensome, complex, and costly customs procedures make it difficult for business to compete by slowing delivery times and raising transaction costs. Modern approaches to customs that address this problem by raising *"de minimus"* thresholds, providing more efficient informal clearance procedures for low value shipments, and streamlining customs procedures will support supply chains that increase economic competitiveness.

Cybersecurity: Most governments in the region have, or have begun to develop, national cybersecurity strategies. While it is positive that they take this step, not all approaches are created equal. An ill-conceived strategy that diverges from international standards and best practices can lower cybersecurity standards, while negatively affecting trade and investment. A risk management-based approach such as the National Institute of Standards & Technology (NIST) Cybersecurity Framework, meanwhile, enables companies to assess and address the cyber risks inherent to their business – raising levels of cybersecurity, without erecting non-tariff barriers. Of more immediate concern is the growing trend of governments incorporating non-cyber related issues into national cyber strategies. Earlier this year, for example, the Central Bank of Brazil added data localization provisions to its proposed cybersecurity requirements for financial institutions._Governments around the world incorporating non-cyber related issues into their cyber strategies. Cyber strategies that incorporate issues such as data protection, control of online content, or national industrial policy distract and divert resources from the core objective and may create non-tariff barriers to trade.

Energy: Mexico is one of the nations modernizing its regulatory frameworks in energy that merits attention. The most notable reform has been the liberalization of Mexico's oil and gas sector. This sector was almost entirely closed to foreign investment until 2013, when President Peña Nieto and Congress passed a comprehensive energy reform that ended the 75-year monopoly of state-owned Pemex. The reform spurred a wave of new investment in exploration and production, services, and infrastructure that continues to grow. Mexico needs this investment. An International Energy Agency report, which outlines various scenarios to 2040, notes that without implementing these reforms, Mexico's gross domestic product would fall by 4% in 2040, resulting in a total cumulative loss of one trillion U.S. dollars in economic output.[6] U.S. companies will continue to play an important role in unleashing the country's energy potential to the benefit of both nations, further cementing North America as an energy superpower.

Similar changes have had a positive impact in Brazil, where the oil and gas industry is the country's most dynamic, owed in part to the numerous government measures undertaken to attract investment. Brazil has opened up the market access to oil fields, introduced a medium-term schedule of bidding rounds, and adopted regulatory changes to minimize local content requirements. Reforms are positively benefiting U.S. company operations in Brazil as American business has considerably increased operations in the country during three rounds of auction.

3. *Tax Burdens*

The U.S. private sector confronts two types of taxation issues when doing business in the region: double taxation and tax refund delays.

Double Taxation: Bilateral income tax treaties (BTTs) are another means of increasing legal certainty for U.S. investors with regard to the tax treatment of the activities in the U.S. and the partner country. While the U.S. has a number of tax treaties in force with regional markets, the

[6] *Mexico's Energy Outlook, World Energy Outlook Special Report,* (International Energy Agency, 2016), https://www.iea.org/publications/freepublications/publication/MexicoEnergyOutlook.pdf

support for the negotiation and implementation of additional agreements would help U.S. business advance investment and trade across the hemisphere. The BTT executed by the U.S. and Chile that is currently pending in the U.S. Senate remains a priority issue for AmCham Chile and Chamber member companies operating in Chile. U.S. investors in Colombia have also sought greater tax protections and called for a bilateral tax treaty to incentivize greater cross-border economic activity in both markets and help diversify sources and areas of investment.

Tax Refund Delays: U.S. businesses operating across the hemisphere continue to face long-standing challenges in recouping refunds of Value Added Tax (VAT) and Alternative Minimum Tax (AMT) they are legally owed. A number of regional markets have instituted VAT collection via withholdings by credit and debit card processors. While these policies were well-intended to mitigate tax evasion, they have inadvertently resulted in an over-collection of VAT and potentially inaccurate reporting of government revenue.

Similarly, some countries in the region have applied AMT rules in a way that essentially mandates a minimum taxable profit. The application of such tax frameworks harms local companies, runs contrary to local governments' goals of attracting U.S. and other foreign investment, and puts such investors in a position to request refunds from government institutions in the countries in which they operate. In some cases, there are well-defined mechanisms for requesting and issuing reimbursements, but this is not true in all countries. Furthermore, even where defined mechanisms exist, the delays in obtaining these refunds create significant cash-flow pressures on American businesses.

Tax refund issues are particularly notable in the Northern Triangle. For example, the AmCham in Honduras reported in 2017 that the Government of Honduras owed more than $60 million in tax refunds to 49 local and U.S. companies, including seven U.S. companies that were owed more than $34 million. The AmChams in El Salvador and Guatemala have similarly stated comparable amounts are owed to local and U.S. companies in their countries, and that requests for refunds are consistently met with unjustified delays or denials. While some of these laws are being updated, vigilance is required to ensure that all Northern Triangle governments establish and maintain refund policies supporting good corporate citizens like U.S. companies and setting powerful examples that help formalize and stimulate local economies.

4. The Role of China in the Region

While the trade and investment policies of the United States and our hemispheric partners have great impact on our ability to advance U.S. business investment and trade with the region, this subcommittee should not overlook the growing role of Chinese companies, often aided by the state, as competitors to the U.S. exporters and investors across the region. The UN's Economic Commission for Latin America and the Caribbean (ECLAC) estimates the region's trade with China increased more than 20 times between 2000 and 2013, skyrocketing during South America's commodities boom. These figures were recorded before President Xi Jinping ambitiously announced in 2015 that China would conduct $500 billion in trade within the region and pledged $250 billion of direct investment during the 2015-2019 period.[7]

[7] Megha Rajagopalan, *China's Xi woos Latin America with $250 billion investments*, (Reuters, January 7, 2015), http://reut.rs/1xTiBhY

In a decade, China has surpassed the United States to become the largest trade partner of Argentina, Brazil, Chile, Peru, and Uruguay, with much of its focus on investing in natural resources and infrastructure projects associated with resource extraction. Nations across the Americas, like most other regions of the world, actively encourage foreign direct investment in their markets as a means to attract capital, market access, technology, and skills transfer.

However, much of China's investment in the region has come in the form of lending for infrastructure through the China Development Bank and Export-Import Bank of China, often with limited transparency or requirement to adhere to investment standards. There is an ongoing risk for certain countries that should they become saddled with debt, they must repay China either by leasing the infrastructure back or through direct transfer of natural resources to China.

With the regional expansion of its flagship economic development program, the "Belt and Road Initiative (BRI)" earlier this year, China's role in the region will become even more pronounced as it finances increased connectivity between China and the Americas through infrastructure and transportation construction efforts. China's use of one-sided, state-supported trade, investment and financial policies and practices are increasing the challenges for American businesses to compete with their Chinese competitors across the hemisphere. As Chamber President and CEO Thomas Donohue noted last month during the 9th China Business Conference, the Chamber is concerned about the impact of China's state capitalism that "tilts the playing field and distorts markets around the world."[8].

<u>Public and Private Sector Collaboration to Strengthen the Investment Climate</u>

The Chamber is actively engaged with government leaders throughout the Americas to address the challenges that U.S. businesses face in the region. We carry out this work on a variety of fronts, including through our binational business councils that present policy recommendations to U.S. and partner governments as well as on a regional level through our partnership with the 24 American Chambers of Commerce in Latin America and the Caribbean that make up AACCLA.

I would like to highlight one of the Chamber's efforts to strengthen the business climate that exemplifies the power of public and private sector collaboration. Since the 2012 CEO Summit of the Americas, the U.S. Government and the U.S. Chamber have successfully partnered with the Inter-American Development Bank, to help build the Americas Business Dialogue (ABD), which aims to promote a high-level policy dialogue between the private and public sectors on the priorities, challenges, and opportunities for the region's development.

The ABD network has over 80 business associations and chambers of commerce from 34 of the nations of the Americas. Through these organizations, more than 300 companies and major business associations from throughout the region, including global players and small exporters

[8] Thomas J. Donohue, *Interesting Times for the U.S.-China Relationship*, (U.S. Chamber of Commerce, May 1, 2018). https://www.uschamber.com/series/above-the-fold/interesting-times-the-us-china-relationship

and service providers, participate in working groups that made 42 recommendations intended to strengthen the hemisphere.

Among the 42 recommendations in the ABD's 2018-2021 Action Plan for Growth in the Americas, the following seven priority actions that illustrate the private sector's commitment to promote transparency and integrity in the region:

1. Ensure that comprehensive corporate codes of conduct are in place that include effective implementation and a periodic compliance review.
2. Provide technical capacity building to support government implementation of a set of Good Regulatory Practices (GRPs), across the region.
3. Deliver technical and financial assistance to support regional development and implementation of a permitting best practices certification. Ensure its availability to governments and public servants.
4. Provide expertise, share best practices, and offer solutions in order to create policies that will expand the usage of digital payments in the region.
5. Host capacity-building workshops with regulatory bodies on the latest developments on FinTech, cyber security, and anti-money laundering systems/techniques.
6. Offer technical assistance and support implementation of pilot projects focused on Risk Management programs, Advanced Ruling Processes, and Single Window requirements and interoperability; these would position the region to be more competitive, facilitate trade and grow SMEs.
7. Provide information on existing and future skills needs, highlighting the importance of ethical business conduct. Offer a reliable pipeline of internship/apprenticeship opportunities in support of work-based training.

The regional business community stands behind these recommendations and believes these cross-cutting priority actions will benefit investment in multiple sectors by addressing many of the challenges the Chamber is highlighting today.

U.S. engagement – by both the U.S. government and the private sector – in regional partnerships such as the ABD will help promote U.S. investment and business principles and counter growing foreign competition in the Americas, in particular from countries that do not share the United States' commitment to global best practices and standards in the areas of transparency and anti-corruption.

Network of Free Trade Agreements Raises Regional Investment Standards

One of the most effective ways to advance U.S. business investment and trade in the Americas to date has been the negotiation and implementation of free trade agreements (FTAs). Trade agreements open up foreign markets to U.S. exporters and reduce barriers for those exports, protect U.S. interests, enhance the rule of law, and strengthen their intellectual property regimes in order to enhance predictability in a myriad of sectors including agriculture, health, technology, and other innovative industries in the FTA partner country.

The U.S. has FTAs in force with 20 countries, and 12 of those partners are in the Western Hemisphere: Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Peru. Total trade in goods with countries in our region surpasses a trillion dollars. This regional network of FTAs powers economic growth in the U.S. and secures significant benefits for American businesses by enhancing market access to some of the world's fastest growing economies. However, concerns about the future of the North American Free Trade Agreement (NAFTA) and its impact on other trade agreements and negotiations are introducing uncertainty into the region.

<u>NAFTA</u>: No trade agreement has proven more successful for the U.S. than the North American Free Trade Agreement (NAFTA). Trade with our two North American neighbors supports roughly 14 million U.S. jobs. Since NAFTA was enacted, U.S. trade with Canada and Mexico has quadrupled. The U.S. exported \$341.7 billion and \$276.7 billion worth of goods and services to Canada and Mexico, respectively, in 2017, making them the top two destinations in the world for U.S. exports. U.S. merchandise exports to Canada (population 36 million) have consistently been greater than or roughly the same as exports to the European Union (population over 500 million). In 2017, U.S. merchandise exports to Mexico (population 125 million) were nearly double those to China (population 1.4 billion)—the third largest national market for U.S. exports.

The current negotiations to modernize NAFTA have the potential to bring the agreement into the 21st century by taking account of technological, economic, and other changes in the U.S., North American, and global economies in recent years. For example, on digital commerce the negotiations provide an opportunity to create rules for firms in all sectors of the economy guaranteeing the freedom to move data across borders and prohibiting the forced localization of data. In the area of intellectual property, negotiators can work to secure strong protections for patents, copyrights and related rights, trademarks, designs, and trade secrets as well as strong enforcement tools. Other provisions relevant to trading in the 21st century include customs modernization, rules governing state-owned enterprise, competition policy, and regulatory and technical barriers to trade.

It is also important to strengthen and maintain NAFTA provisions that have already yielded real benefits for Americans, including the agreement's rules on investment and procurement. NAFTA's procurement provisions ensure U.S. companies are able to compete on a level playing field when offering their goods and services to the Canadian and Mexican governments. Under NAFTA, the governments of Canada and Mexico also agreed to rules that guarantee U.S. investments will not be subject to discriminatory treatment and will be compensated in the unlikely event of expropriation. Critically, these obligations are enforced through the Chapter 11 investor-state dispute settlement (ISDS) provisions, which provide for neutral arbiters to uphold these investment protections. In this regard, NAFTA should be modernized to ensure that all sectors, including financial services, as well as investment agreements are afforded the same level of protection and enforcement of these key protections.

Recommendations for Congressional Action

There are a number of actions Congress can take to advance opportunities for American businesses in the region. With external actors competing for influence in our hemisphere, the U.S. needs to find ways to expand our engagement with the region and demonstrate its leadership. Congress has a unique role in its oversight capacity to direct the interagency to take a more comprehensive approach to promoting U.S. economic interests abroad.

The Chamber highlights the following recommendations for Congress to review and support:

- **Restore Ex-Im Bank Operability:** The Chamber has consistently called for the restoration of the U.S. Export-Import Bank to its full breadth of operations to counter the aggressive trade finance operations of other countries' export credit agencies, which will afford U.S. companies to expand business in the region.

- **Support Promotion and Implementation of Bilateral Tax Treaties:** We ask the Committee to support U.S. industry efforts to secure bilateral tax treaties with key regional markets to eliminate needless additional costs for the U.S. business community. Reducing unnecessary burdens for American companies has direct benefits to the U.S. economy.

- **Support for Rule of Law Reforms in the Region:** We recommend that the committee maintain support for regional governments as they continue in their efforts to comply with obligations under investment treaties with the United States, including the obligation to respect international arbitration awards in favor of American companies.

- **Strengthen the Congressional Caucuses/Parliamentary Unions:** We encourage the Committee to continue outreach efforts with the hemisphere through the strengthening of country-specific caucuses, such as the Argentina, Brazil, and Mexico caucuses, as well as continued engagement through the parliamentary unions.

- **Expand support on U.S. Strategy for Engagement in Central America:** Through initiatives, such as the Alliance for Prosperity, which impacts El Salvador, Guatemala, and Honduras, the Chamber encourages the Committee to call for further efforts from the U.S. Department of State to remain engaged on this issue and increase their outreach with the country-specific AmChams. These AmChams stand ready to assist in our quest to generate a virtuous circle of jobs and economic development in the Northern Triangle that can help deliver long-term prosperity and security to the deserving peoples and businesses of the region.

- **Expand the United States-Caribbean Strategic Engagement:** The Chamber congratulates Congress on approving $4.3 million in funding to support energy diversification in the Caribbean and encourages Congress to continue to support the State Department, USAID, and OPIC as they explore opportunities in security and education throughout the Caribbean.

Conclusion

We look forward to working with the committee to advance a trade and investment agenda in the hemisphere and across the globe that supports the negotiation of trade and investment agreements that are fair and accountable, introduce legal certainty, and ensure a level playing field across the region capable of delivering meaningful opportunities for American workers, farmers and businesses.

Mr. COOK. Thank you, Mr. Herrington.

Ms. Meiman Hock, you are now recognized.

STATEMENT OF MS. KELLIE MEIMAN HOCK, MANAGING PARTNER, MCLARTY ASSOCIATES

Ms. MEIMAN HOCK. Thank you so much.

Mr. COOK. Did I pronounce that correctly?

Ms. MEIMAN HOCK. In Spanish, yes, Meiman Hock, but in English, Meiman Hock.

Mr. COOK. Anywhere in between so I don't offend anybody?

Ms. MEIMAN HOCK. It is all good. I answered it all.

Thank you, Mr. Chairman, thank you, Ranking Member Sires and the rest of the distinguished members of the subcommittee for inviting me to testify here today.

Economically, 14 million American jobs depend on trade with Canada and Mexico. By far, these are the largest export markets for the United States. Rather than offshoring to Asia, critical supply chains have remained in North Korea, enhancing our ability to compete.

Keeping State, Commerce, and USTR fully funded in appreciation of the importance of commercial diplomacy is a strategic imperative, particularly for small- and medium-sized enterprises. Ensuring that U.S. companies from traditional manufacturing to agriculture to services to high-tech can access markets, are fairly treated, can compete effectively for government contracts, and have their intellectual property protected are key aspects of commercial diplomacy.

The U.S. has long reinforced the need for transparency and commitment to rule of law. And countries' desire to attract U.S. investment has often motivated economic reform. Membership in the WTO, achieving a free trade agreement, or OECD accession have provided further motivation to improve investment climate.

However, we find ourselves at a moment today where U.S. credibility to speak on the importance of compliance with WTO and FTA commitments is at an all-time low. Positing that Canada, our longtime ally in conflict after conflict, creates a national security threat to the United States due to its steel and aluminum sales here, particularly if you consider that the United States has a $2 billion surplus with Canada on those same items, is nothing short of incredible.

The equivalent charge against Mexico under section 232 is equally difficult to understand given our long history of collaboration on security, counternarcotics, and antiterrorism. The initiation of a national security investigation on autos last month further diminishes U.S. standing.

This action opens the door for our trading partners to limit U.S. exports of virtually anything in the name of national security. Global concern over food security leaves U.S. farmers at risk, to say nothing of U.S. technology companies in an era of digital warfare.

So, instead of successfully modernizing the NAFTA last week, the United States initiated a trade war, one which seems to have snatched the possibility of a successful NAFTA reboot from our grasp, at least for now.

Mexican and Canadian retaliation are already in train. U.S. farmers, ranchers, and factories depend on exports to Canada and Mexico, and they will suffer. Beyond the impact on NAFTA, our actions have sent a stark signal that the United States is no longer a reliable partner.

To be clear, concern over the misguided use of section 232 and unilateral trade actions should not be a partisan issue. If these were policies that actually helped the American farmer and worker succeed, you would see overwhelming support from both sides of the aisle. This is not the case.

My concern is that the United States is damaging its ability to forge new commercial agreements and to enforce existing ones through this behavior. Should the President decide to withdraw from NAFTA, the U.S. Government's ability to positively impact investor climate in the Americas will deteriorate further, leaving the field open for Chinese and other investors and further damaging U.S. credibility.

I would argue forcefully for regaining that credibility with the U.S. Congress standing up against the policies that are leading to a deterioration of U.S. alliances. This is how we can rebuild our ability to defend U.S. economic interests. In the meantime, however, as the chairman noted, we may leverage OECD accession to pursue U.S. business goals in the hemisphere, given the high number of countries that are currently pursuing membership.

The U.S. should insist applicants immediate the OECD's high standards through enactment of needed reforms prior to granting accession. Some opportunities to do so, if I may say, were missed in Colombia's case, given the haste to issue the OECD invitation in the waning weeks of the current administration. It will be important that we not repeat that mistake in the case of Argentina, Brazil, and Peru.

In my written testimony, I covered priority areas to be evaluated in OECD accessions, including tax, customs, and regulatory policy, as well as rule of law considerations. I would highlight that, across the region, and as Neil noted, we find renewed zeal for tackling corruption. At the same time, overregulation and poor implementation of these efforts can inadvertently stifle enterprise and destroy the formalizing role of U.S. companies with high compliance standards.

Central American countries are at a particularly critical moment in this anticorruption battle. My written testimony addresses some concerning activities in Guatemala despite progress being made there. U.S. and multilateral technical assistance is crucial to ensure collaboration with the private sector to expand formality and bring violators to justice.

In closing, I would stress the critical role that the U.S. Government can and should play to promote a level playing field and rule of law throughout the Americas. I would urge this committee to take affirmative steps to persuade the Trump administration to put American farmers, ranchers, and workers first, dissuading the administration from taking further unilateral positions on trade and investment that prevent the United States from opening overseas markets and promoting rule of law in the Americas and beyond.

I thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Meiman Hock follows:]

"Advancing U.S. Business Investment and Trade in the Americas"

Hearing Before the Subcommittee on the Western Hemisphere
Committee on Foreign Affairs
U.S. House of Representatives

Thursday June 7, 2018 at 2:00 pm

Written Testimony of Kellie Meiman Hock
Managing Partner, McLarty Associates

Chairman of the Committee on Foreign Affairs Congressman Ed Royce, Chairman of the Subcommitee on the Western Hemisphere Congressman Paul Cook, and distinguished members of the Committee:

Thank you for inviting me to testify at this hearing on advancing U.S. business interests in the Americas. From my service at the State Department and USTR to my current role collaborating closely with U.S. companies active throughout the hemisphere, I have worked this issue from various angles and applaud the Subcommittee for addressing this topic at this critical juncture.

Commercial advocacy by the State and Commerce Departments, as well as USTR, can make the difference between success and failure for U.S. companies trying to expand internationally, particularly in the case of small/medium sized enterprises (SMEs). These SMEs have been some of the biggest winners under the North America Free Trade Agreement (NAFTA). Canada and Mexico have become "test markets" for smaller U.S. companies seeking to go global one step at a time. Indeed, we have seen at our consulting firm, McLarty Associates, that as we have helped companies to internationalize the first step is almost always North America.

Economically, fourteen million American jobs depend on trade with Canada and Mexico, by far the largest export markets for the United States. Our North American partners buy more than $600 billion in U.S. manufactured goods every year, more than the next ten largest markets combined. Rather than offshoring to Asia, critical supply chains have been able to remain in North America, enhancing our country's ability to compete. U.S. services and technology companies found open markets in which to operate; indeed, the United States has a services surplus in North America of $88 billion. Comparing this strategy to that of nations like Brazil, where forced local content requirements and high tariffs have ruled the day, making manufactured exports uncompetitive and local prices on items like autos and computers astronomical, the wisdom of creating a competitiveness zone in North America seems clear.

Keeping State, Commerce, and USTR fully funded in appreciation of the importance of commercial diplomacy is a strategic imperative *vis a vis* U.S. interests in North America and the hemisphere. Ensuring that U.S. companies, from traditional manufacturing, to agriculture, to services and high-tech, can access markets, are fairly treated, can compete effectively for government contracts, and have their intellectual property protected are key aspects of commercial diplomacy. And we must protect America's cutting edge advanced manufacturing and technology jobs as much as we defend the more traditional sectors of the American economy.

The U.S. has long reinforced the need for transparency and commitment to rule of law, and countries' desire to attract U.S. investment often has motivated economic reforms. Membership in the World Trade Organization (WTO), achieving a free trade agreement (FTA), or OECD (Organization for Economic Cooperation and Development) accession have provided further motivation to improve investment climate.

However, we find ourselves at a moment where U.S. credibility to speak on the importance of compliance with WTO and FTA commitments is at an all-time low. Positing that Canada, our long-time ally in conflict after conflict, creates a national security threat to the United States due to its steel and aluminum sales to the United States – particularly when the United States has a bilateral trade surplus of $2 billion in these same products – is nothing short of incredible. The equivalent charge against Mexico under section 232 of the Trade Expansion Act of 1962 is equally difficult to understand in light of our long history of collaboration on security, counter-narcotics, and anti-terrorism efforts at the border.

The initiation of a national security investigation on auto/parts imports last month – the first such investigation of a fully finished good under the Cold War inspired Trade Expansion Act of 1962 – further diminishes U.S. standing in the international trade and investment community. This action opens the door for our trading partners to limit U.S. exports of virtually anything in the name of national security. Global concern over food security leaves U.S. farmers and their exports particularly at risk, to say nothing of U.S. technology companies in an era of digital warfare.

So instead of successfully modernizing the North American Free Trade Agreement (NAFTA) last week, the United States initiated a trade war – one which seems to have snatched the possibility of a successful NAFTA reboot from our grasp, at least for now. After a public comment period, Canada intends to impose retaliatory tariffs of US$12.8 billion on U.S. steel/aluminum tariffs as of July 1, while the timing of pledged Mexican retaliation on steel, aluminum, agricultural, and consumer goods is expected to be July 5. U.S. factories dependent on exports to Canada and Mexico will immediately suffer. U.S. farmers and ranchers, many of whom list Canada and Mexico as top export destinations, will get hit as well. Looking at the electoral map from the last election, it is hard to overlook that agricultural states in great measure supported the President.

In addition, North America's highly-integrated auto-sector supply chain, which has allowed the U.S. industry to compete effectively with global competitors for decades, is threatened by the most recent 232 filing on autos and auto parts. Beyond the impact on NAFTA, the U.S. failure to stick by our FTA partners in North America by opening a multi-front trade war sends a stark signal to all our hemispheric FTA partners that domestic political considerations outweigh treaty commitments. In other words, the United States is no longer a reliable partner.

To be clear, concern over the misguided use of Section 232 – in both the case of steel/aluminum and autos – is not a partisan issue. If these were policies that helped the American farmer and worker to succeed, you would see overwhelming support from both sides of the aisle -- not the case. Indeed, Republican leadership just last week reinforced the need to address the source of global overcapacity in steel and aluminum – China – not U.S. allies. My concern, pertinent to the topic of this hearing, is that the United States is damaging its ability to forge new commercial agreements and to enforce existing agreements through this behavior. Should the President decide to withdraw from NAFTA, the U.S. Government's ability to positively impact investor climate in the Americas will deteriorate further, leaving the field open for Chinese and other investors.

U.S. trading partners in the Americas look to the United States for leadership on trade and investment policy, technology, and transparency. Often, there are competing interests in-country, as local winners can benefit from relatively closed markets with non-transparent regulatory systems. Non-U.S. investors can also benefit from a lack of transparency, free from FCPA (Foreign Corrupt Practices Act) constraints. U.S. engagement can support an environment where rule of law and liberalizing economic reforms can flourish, and where existing law, regulation, and policy can be more consistently and transparently applied, to the benefit of U.S. investors. Unfortunately, in the current environment, the United States has waning credibility to promote this agenda using the WTO or our carefully constructed network of FTAs as a vehicle.

I would argue forcefully for our regaining that credibility, with the U.S. Congress standing up against the policies that are leading to a deterioration of U.S. alliances. This is how we can regain our ability to defend U.S. economic interests, deploying the institutions our country has championed and helped build in the post-World War II era. In the meantime, however, we may leverage the OECD to pursue U.S. business goals in the hemisphere, given the number of countries in the Americas pursuing membership.

Latin American countries are increasingly interested in joining the OECD, with Mexico, Chile, and Colombia already full members and Costa Rica in formal accession talks. Argentina, Brazil, and Peru, among others, are also pressing to join this prestigious club, whose membership is like an institutional "Good Housekeeping Seal of Approval" for investors worldwide. The OECD accession process can and should be a vehicle for productive policy discussions with regards to tax and investment policy, intellectual property protection, regulatory transparency, and rule of law. In support of this objective, the U.S. should insist that applicants meet the OECD's high standards through enactment of needed reforms prior to granting accession. Using this leverage during the accession process is key. Some opportunities to do so were lost in Colombia's case, given the haste to issue the OECD invitation in the waning weeks of the current administration. It will be important not to repeat this mistake in the evaluation of Argentina, Brazil, and Peru.

Many countries have put in hard work to better align their public policies with OECD standards and principles. Brazil has far to go on the road to accession but has been a partner to the OECD since 1996 when it joined its first OECD committee. While pending issues notably include tax policy, such as aligning Brazil's transfer pricing policies to OECD standards and simplifying the tax system, important strides have been made in recent years instituting structural reforms and combatting corruption. This clearly is a work in progress, but we hope and expect that Brazil's ongoing Car Wash investigation – now in its fourth year and still progressing given a strong institutional mandate and popular support – will mark a turning point in Brazil's battle against corruption and the culture of impunity that has enabled it to flourish for so long.

In Argentina, President Mauricio Macri has led a gradual but significant political and economic transformation since taking office in December 2015. His handling of the recent currency crisis reflects responsible stewardship of the economy in an effort to prevent repeating Argentina's historic patterns of boom-and-bust economic cycles. Despite significant progress made by the Macri Administration, challenges to doing business in the country remain. While senior Argentine political leadership has instituted important market-oriented reforms, there is still homework to do to better align implementation of public policy at the bureaucratic level to OECD standards, especially with regards to taxation and customs valuation.

This brings me to an important point. In recent years, we have seen a worrisome trend in several Latin American countries – including those aspiring to join the OECD – of tax authorities imposing steep tax assessments, penalties, and fines on companies in an apparent violation of OECD tax principles. Often the motivation is to try to compel domestic investment or close looming fiscal deficits. And when improper tax assessments are valued in the hundreds of millions, and sometimes billions of dollars, the situation creates tremendous business uncertainty and can take years to resolve in the courts.

Another topic relevant to OECD norms that has grown in importance is regulatory policy. The ability to successfully do business in – and trade with – countries is defined as much by a country's regulations, norms, and other technical requirements as by its laws. Transparency and inclusiveness in the consideration of regulations, rules, and other norms is critical to facilitating trade and creating an enabling environment for business.

Unfortunately, across Latin America, there is an emerging tendency toward enacting regulatory updates and reforms in a less than transparent fashion. Throughout the region, we find numerous examples of rushed or no comment periods for significant regulations that impact stakeholders and overall market access conditions. This contradicts the precepts of the WTO, FTAs, and the OECD. Ensuring that relevant stakeholders have the opportunity to comment comprehensively before official actions – be they called regulations, standards, norms, technical interpretations, etc. – are promulgated is critical to the success of any country's overall regulatory policy.

Ensuring regulatory predictability and transparency is central to shaping a positive investment climate. Countries should be encouraged to partner with the U.S. Government and with U.S. companies in this effort.

Across the region, renewed zeal for tacking corruption, informality, and weak rule of law is vitally important for fostering healthy economic development. At the same time, overregulation or poor implementation of the anticorruption drive can inadvertently stifle enterprise and destroy the formalizing role of U.S. companies with high compliance standards.

While not OECD candidates, Central American countries are at a particularly critical moment in this anti-corruption battle. Despite recent progress in Guatemala, for example, U.S. companies remain concerned that the Public Ministry and Tax Administration do not always follow international best practices for due process, at times pursuing criminal measures to extract administrative settlements. In this regard, U.S. and multilateral technical assistance, including the important work of the International Commission Against Impunity, is crucial for ensuring collaboration with the private sector to expand formality and bring violators to justice. In Guatemala and elsewhere, authorities should be encouraged to recognize the critical role of the U.S. private sector in expanding formalization and strengthening rule of law. This helps to draw supply chains into formalization, making supply chains across the Americas more competitive and ethically sound.

In closing, I would stress the critical role that the U.S. Government can and should play to promote a level playing field and rule of law throughout the Americas. I would urge this Committee to take affirmative steps to persuade the Trump Administration to put American farmers, ranchers and workers first, dissuading the Administration from taking unilateral positions on trade and investment policy that prevent the U.S. Government from opening overseas markets and promoting rule of law in the Americas and beyond.

Thank you again for the opportunity to testify today. I look forward to your questions.

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Mr. COOK. Thank you very much.

What I am going to do now is I am going to yield myself 5 minutes to ask questions.

By the way, Mr. Herrington, I don't know if you know it or not, but I used to be involved with the chamber of commerce, and it was always difficult to raise money. And I don't know if it is appropriate, if you want to sell raffle tickets for a copy of this hearing, that is something we used to do many years ago. But——

Mr. HERRINGTON. What are the rights on C-SPAN going for?

Mr. COOK. Anyway, as I said, I will yield myself 5 minutes.

And I want to raise an issue that I have been personally engaged on over the last several months.

I have encouraged the Peruvian governor—or government to resolve the claims of many of my constituents who have invested in Peruvian agrarian reform bonds, commonly known as land bonds. This issue directly impacts a large pension plan in San Bernardino County and thousands of my constituents.

It is my understanding that the Peruvian Government has suggested that it does not have an obligation to pay the debt now because it was issued over 50 years ago by a Communist regime, even though the Peruvian Supreme Court authorized the sale or transfer of these bonds on the secondary market and ruled in 2001 that the government must compensate bondholders in an amount equal to the current value.

So are you aware of any precedent or tentative international law that would excuse a government from its responsibility to pay debt if it were issued over 50 years ago or if it were initially only given to Peruvians but later authorized for secondary sale? And I will throw it open to the panel.

Ms. MEIMAN HOCK. Thank you, Mr. Chairman. I can take that question.

You know, I am not a lawyer, but I did conduct trade negotiations at USTR, and I know that there are very clear investment obligations under our free trade agreement with Peru. I also understand that, in the case that you have noted, there are numerous court decisions stating the contrary to the position that you are saying that the Peruvian Government has put forward.

And, I guess, I would harken back to my testimony and only urge that, in the consideration of OECD accession for Peru, which they are quite interested in, I understand, that this issue, as any issue that involves rule of law and transparency, be fully addressed before accession is taken place as opposed to after.

Mr. COOK. Yeah. I hope you can see where I am coming on this because, you know, my opening speech I talked about how important it is, trade, this and that, and then overseas investment. And this kind of sends a signal that is completely contrary. And, obviously, since I represent San Bernardino County, as does my colleague, this is something that we get questions about, and we are concerned about.

Anyone else want to comment on this? No?

Okay. With that, I am going to yield—my time is expired.

And the ranking member, you are now recognized.

Mr. SIRES. Thank you, Mr. Chairman.

You know, we have a very important election going on in Mexico. We have Lopez Obrador, who is up 20 to 25 points. He is more of a nationalist, and I think the fact that he is up 20, 25 points is a direct result of what—the rhetoric is coming out of the White House regarding trade, regarding people.

I don't know how—I just think it is not helpful. Once the election is over, how do you put this back together, because it is going to impact both countries. And China, to me, is just waiting in the wings. So it is just foolish to be at this place now. And it is nice to be a nationalist and beat up the United States, but then you have the rhetoric coming from both sides. So it is just a terrible situation.

Can you talk a little bit about that?

Mr. FARNSWORTH. Mr. Sires, thank you for that very important question. And, first, we have to see what the results actually are on July 1 before we declare the winner, but, yes, Mr. Lopez Obrador is ahead in the polls. And I think this would fundamentally change or potentially fundamentally change the relationship between the United States and Mexico.

I would say that I think many, if not most, Mexican citizens will vote for President based on similar things that we might vote for in terms of their own economic conditions, their own security conditions, their hope for a better life for their families. But I agree with you that the rhetoric coming from north of the border is not helpful in that context, absolutely right.

One of the things that has made over the years NAFTA so powerful is not just the fact that it ordered the majority of trade in North America investment, but it also created bumpers which allowed certain behaviors and beyond which certain behaviors were not allowed.

And it was very powerful in the context in the 1990s, for example, when Mexico ran into trouble with its peso crisis. And some of the instincts of the political class in Mexico that would have closed down the Mexican economy, which would have been exactly counterproductive, were prevented by NAFTA. And Mexico's economy remained open, and they came back to global capital markets much sooner than they had during the previous crisis in the 1980s.

I am reviewing that history because NAFTA is precisely the tool that one would look to in this circumstance if Mr. Lopez Obrador or anybody is elected in Mexico who might take a different view in terms of Mexico's relationship with the United States. The fact that we have a NAFTA that organizes trade and investment but also, in a general way, the bilateral relationship in a way that channels some of the conflicts into ways that can actually be resolved.

I think it would be a strategic mistake, therefore, to pull out of NAFTA not just because it would hurt the United States economically but also because it would challenge our ability to keep that relationship with Mexico within the bounds that we might find mutually beneficial.

So the question that you are raising, I think, is absolutely right, and I think we have to look at the tools that are available to us in the United States to help us build that relationship in a positive way and not pull back in a negative way.

Mr. HERRINGTON. You have raised a key question, Ranking Member Sires, that not enough people are talking about. I think that the prospect of Lopez Obrador Presidency, as Eric said, you know, polling is polling, but it is something I think we are watching carefully, as the U.S. business community, in terms of what the candidate says about his commitments.

At this point, you know, I think we are encouraged that, I think, his words on NAFTA have been relatively moderate. You know, a concern we have going forward is respect for ongoing reforms in Mexico in which many U.S. companies are deeply invested, specifically in telecommunications and energy. He has announced he will pursue a review process for that. We don't know what that entails, but we are watching carefully and consulting with his advisers.

I think in this space though in terms of—you ask an important question in terms of—and I think I want to answer this from the private sector role, you know, in terms of, irrespective of the two governments, we as a U.S. business community and the Mexican business community are 100 percent committed to this bilateral relationship.

As my boss, Tom Donahue, said, in Mexico—sorry, excuse me, in Lima, in talking about the bilateral relationship, failure is not an option. It is a $500 billion a year bilateral trade balance.

So we run the U.S./Mexico CEO dialogue in which we meet twice a year with CEOs and senior executives from a variety of companies to try and address the very issues in the bilateral relationship that are so imperative to keep the economic engine that is U.S./Mexico trade going.

Mr. SIRES. Thank you. My time is up. Thank you very much.

Mr. COOK. Thank you very much.

I would like to now recognize the gentleman from Florida, Mr. Rooney.

Mr. ROONEY. Thank you, Mr. Chairman.

I would like to ask for your help, all three of you, to the extent you can about a particularly egregious example of hostility to foreign direct investment in Guatemala and of judicial usurpation of the government's desire to promote economic growth.

Tahoe Resources has invested $1.7 billion in a mine in Guatemala, and some court down there has decided that the permits that it has are invalid due to indigenous people's hostilities, something which I am used to with Panama Canal debates here years ago.

This mine has had thousands of Guatemalan employees, and they have laid off a great number of them, and they are about to terminate 500 more right now. Even the Bank of Guatemala and Jimmy Morales are trying to get the court to act. I am going to call the court myself next week.

We sent a letter, our committee, the chairman did to President Morales, both urging him to support CICIG and Ivan Velasquez' work, as well as to implement the ILO conventions to give a more stable business environment and prevent bad things like this. So any advice you all might have, we would deeply appreciate.

I would like to read this in the record, too, the chairman's letter, if I could.

Mr. COOK. So ordered.

Ms. MEIMAN HOCK. Thank you so much, Congressman Rooney.

I mentioned Guatemala briefly in my remarks. I think that that is definitely a country where we have seen repeated challenges with respect to rule of law. I do believe that there are some good intentions in the Guatemalan Government to try to advance on that score.

But to your point, I think doubling down on both bilateral and multilateral efforts to do tech training and to really help our allies within the Guatemalan Government that see the benefit to addressing some of these challenges, we really need to build those folks up and give them the tools that they need to be sure that U.S. companies are able to favorably operate in the country and fairly, more importantly.

Thank you.

Mr. ROONEY. Thank you. Anybody else have any ideas?

Eric, I figured you would have some good ideas of how we can straighten out the court.

Mr. FARNSWORTH. Well, Ambassador Rooney, with a setup like that, I am not quite sure how to respond, but nonetheless, thank you for the question.

I will confess to you that I am not familiar with the merits of this particular issue, but as you have requested, I will be happy to take a look at it and see if there are ideas that will be coming forward and be happy to share that with you and your staff.

Mr. ROONEY. We would appreciate it, both you and the chamber because you all have important voices for business, so thank you very much.

I yield.

Mr. HERRINGTON. Oh. I am happy to answer that question, Congressman Rooney, if you want.

Mr. ROONEY. Sure.

Mr. HERRINGTON. So we wrote a later to President Morales last on this issue, in part and in general in covering the rule of law issues writ large in Guatemala but focused on this issue. I appreciated the letter that the committee sent to the chair and the ranking member's letter also to the President.

We have—you know, the ILO Convention 169 implementation in Guatemala, as the chair and the ranking member asserted, I think, is what we have really been pushing hard for on the Guatemalan Government. It is important. Really important within that is a—obviously a full respect for indigenous rights is imperative, but that there be within the convention a very robust consultative process that the private sector is able to participate in.

Mr. ROONEY. Thank you.

Mr. COOK. Thank you, sir.

I will now recognize the gentlewoman from California, Mrs. Torres.

Mrs. TORRES. Thank you, Mr. Chairman.

And thank you to our guests for being here, this very important issue that we are discussing today.

You know, I agree with my colleague that, although over the years there have been some conflicts with indigenous populations within Latin America, certainly what has happened with the land bonds in Peru is just one example of how people were taken advantage of and then, ultimately, now the government is trying to make right, but at the same time our constituents were impacted by the sale of these junk bonds. I hope that we are able to bring some relief to the firefighters, police officers, and truckers that I represent that have been impacted by that.

Mr. Herrington, because of those conflicts, I have been working on a bill here in Congress, Jobs for Tribes, which creates a unique opportunity for American Tribes to be able to work with indigenous populations of the Americas and trade in goods that they each either grow or make within their communities. What sort of opportunities do you see for Native American Tribes to invest in Latin America?

Mr. HERRINGTON. I apologize for not being familiar with the merits of the bill. However, you know, I will say, at the chamber, we are all about investment and commercial promotion between the U.S. and across the region. And anecdotally, I can tell you there is some really innovative things going on in ecotourism and other initiatives in primarily indigenous areas of the Americas.

While I am not a subject-matter expert at the chamber, we have a Native American affairs group that deals with Native American economic affairs, and we would be happy to come see you and talk about that.

Mrs. TORRES. I would love to follow up with you on that issue.

Mr. HERRINGTON. Okay.

Mrs. TORRES. It is something that I have been working on very closely. It is a bipartisan bill. It has enjoyed, you know, bipartisan support. And I would like to see where we can find areas that we can work together to help create jobs, not only in these areas where we are seeing the most impact in our immigration system but also in areas of the U.S. where we have seen that there is lack of opportunities for jobs.

So matching those together, I think, is important. USAID is investing in a lot of these communities. We have seen projects where we are eradicating coca, for example, and planting chocolate, cocoa. So how do we match those communities in South America, for example, the mining of silver and copper, and how can we match those indigenous communities with our Tribes here to create an environment of manufacturing of goods that could benefit, you know, both ends of the spectrum. So I do—would love to follow up with you on that issue.

Ms. Meiman, regarding CICIG, how do you see the Government of Guatemala moving forward, from your job's perspective? Because I know that it has had a major impact in U.S. companies that are investing there. How does U.S. companies—how are they able to compete fairly in a place where public corruption is rampant?

Ms. MEIMAN HOCK. No, it is a real challenge, and I would say, and I comment in my remarks, that U.S. companies obviously hold themselves to a very high ethical standard. You know, we have got a CPA, but beyond that, we just have a culture in our private sector that, you know, inherently, when we do invest, when our companies invest in foreign markets, be it Guatemala or wherever, typically that does kind of raise the tide in that market just from a rule of law transparency perspective.

One challenge that I have seen and that I think they are trying to grapple with in Guatemala right now is that being sure that, as large multinationals, U.S. multinationals, are doing business in some of these smaller markets, Central America, et cetera, that professionalizing impact that they have is appreciated and that it is allowed to flourish.

Because often, you know, obviously, if you are going to operate in a country, you are going to do partnerships and deals and contracts with local players who sometimes won't be at that same level.

And so, as you are, you know, as a U.S. company, putting your hand down to kind of, you know, raise that level to what would be expected for a U.S. multinational, there needs to be some latitude there, not a lack of enforcement, not any sort of ethical flexibility, but I think that there needs to be a construct that allows that to happen without the U.S. company running a risk of getting blamed, if you will.

And that is something I have seen, and it is something that I do worry about in the Central American context. But I do think again that it is something that, through the work that is being done bilaterally and multilaterally, it can definitely be addressed. Thank you for the question.

Mrs. TORRES. Thank you.

Thank you, Mr. Chairman. I yield back.

Mr. COOK. Thank you.

I would like to now recognize the gentlewoman from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman.

Given the tensions between our Nation and some of our neighbors with respect to increasing tariffs, this is such a timely and critical conversation. With respect to Canada, for example, President Trump has recently stated that Canadian steel and aluminum in Canada itself are now national security threats to the United States.

I am very concerned because I represent a district which is urban, suburban, and rural, and it is home to numerous steel mills, farms, and service industry-based companies, which in turn employ hundreds of thousands of my constituents.

I am concerned about the long-term employment and economic implications of imposing higher tariffs. There are reports upwards of 400,000 jobs would be lost across agricultural services and manufacturing and energy sectors if these tariffs are imposed.

The question for any of you to address, do you believe, as the President said, that Canada poses a national security risk to the United States? And do you agree with President Trudeau that President Trump's starting of a trade war with Canada is actually insulting?

Mr. FARNSWORTH. Congresswoman Kelly, if I can begin the dialogue here, in part because I am originally from Illinois and so——

Ms. KELLY. Good. You know what I think.

Mr. FARNSWORTH [continuing]. I wanted to have an opportunity to respond to your question. Yeah, exactly. But thank you for that important question.

In a word, no, Canada is not a national security threat to the United States. Canada is a strategic ally of the United States. Canada is a country with which we have trade disputes and have had trade disputes for years because our economy is fully integrated with Canada, and the more integrated you are the more disputes you are naturally going to have.

But what makes the relationship with Canada so strong is that we share values, including the rule of law. And so when we enter into trade disputes we have a process by which we can resolve them. And what the recent actions have done is gone outside of that process and begun to take unilateral actions in a way that, from my perspective, are unhelpful to the broader bilateral relationship. That is one side.

But the other side that you have pointed to quite accurately, in my view, is what will be the impact on the U.S. economy. Canada and strategic relations and NATO and border cooperation and all that in one basket; but the other basket, what is it going to mean for the United States and job creation in the United States?

And I am very sensitive to the idea that people in some parts of our country are hurting, and they do have questions about sustainability of jobs and industry, and that is a powerful and important issue, and we cannot ignore it. And I know that the members of this subcommittee do not.

But from my perspective, the way to address that is not to favor one or another sector that will have the implication of disadvantaging other sectors and where the negative implications of the action will actually be greater than the positive implications. And so there is a cost-benefit analysis. There is a balance, in my view, that has to be struck. And I think you are pointing to something that is very, very important.

Having said that, even if we were to pull back from the determination that was recently made that Canada is a strategic or national security threat, I should say, to the United States, we are doing damage to our relationship. And it is not going to be easy to restore that, even if today we were to decide that, in fact, Canada is not a national security threat to the United States, which it is not.

But my point is that as these bricks in the wall begin to build up, you begin to have an understanding from other countries that, in fact, they are questioning the reliability of the United States as a partner. And once that happens, they begin to look for other partners, and we are seeing that happen right now in Latin America and right now in Canada.

And the whole idea that China could replace the United States as a partner of choice in Latin America, to me, is astounding and, in my view, not accurate but nonetheless something that is absolutely happening right now.

Ms. KELLY. Thank you. I just wanted to, if you guys had comments and, as you are commenting, to think about this, how do you think these actions impact—I might have missed—you might have said it already, the NAFTA negotiations. That is the other piece.

Ms. MEIMAN HOCK. It absolutely puts a chill on the NAFTA negotiations. And beyond that, to have the one-two punch of then initiating another 232 national security investigation on autos, which in the history of not just the 232 statute, which comes from the Trade Expansion Act of 1962, but even going back to the national security exception in the GATT's post World War II time era, we have never done a 232 national security case on a completely finished good like autos in the history of the trade policy of this country.

And so to call our good allies—which if you buy into the argument that deficits matter, which I personally do not, but this administration does, we even have a $2 billion trade surplus, as I said, with Canada on these items. And then you extrapolate that into an item such as automobiles, which I think very clearly—and I will be fascinated to see the position of Secretary Mattis on this regard because he will have to weigh in, you know, I think that, at that point, we really are damaging our credibility as a negotiating partner to the extent that it is going to be very difficult to recuperate.

Ms. KELLY. Yeah. Ford is my biggest employer.

Mr. HERRINGTON. Yeah. You have the Chicago Assembly Plant, I believe, in your district?

Ms. KELLY. What?

Mr. HERRINGTON. You have the Chicago Assembly Plant in your district? Two.

So, on that note, and Kellie gave me the perfect segue, so if I could quote Tom Donahue on 232 for—now, this is obviously for autos and auto parts, the announcement of the commencement of a study. But I think he would okay me by saying the same thing——

Mr. COOK. Sir, your time is expired. Thank you.

I would like to now recognize the gentleman from New Jersey.

Mr. SMITH. Thank you, Chairman Cook, and appreciate you holding this very important hearing, and Ranking Member Sires.

I am chairing my own hearing so I can't stay. It is on Vietnam human rights.

With respect to Ecuador, I am concerned that American companies have often been treated unfairly by the Ecuadoran judicial system. For example, in the case of Merck, a U.S. pharmaceutical company, I understand there is a partial final award of the international arbitral tribunal that ruled Merck has been denied justice in the Ecuadorian legal system.

I wonder if you could tell us, any of our distinguished witnesses, what actions are being taken in Ecuador to ensure that the word of the arbitral tribunal is respected by the Ecuadoran judicial system and that no further steps are taken locally to enforce the justice denying rulings of the Ecuadoran courts? Mr. Herrington.

Mr. HERRINGTON. Yeah, I am happy to address that, Congressman.

You know, the legacy of the Correa regime, the previous regime in Ecuador, is troubling so say the least. There were very few protections for rule of law. Certainly many of our members, Merck being certainly one of them, were challenged deeply by some of the policies of that regime.

I would say that we are quite encouraged, frankly—and I know that the staff, the committee's staff took a trip to Ecuador last week, so I am interested in their thoughts eventually too after the hearing. We are encouraged with the steps, the commitments that President Lenin Moreno, the new President, has made in the areas of investor protections.

They have—Ecuador has certainly embraced the fact that its foreign direct investment is a key source of economic development. That is what we are seeing initially. But there is a long way to go. He has got a lot of legacy issues to clear up.

The arbitration issue that I think you accurately put your finger on is absolutely essential that if they are going to show progress and show that they are serious about making Ecuador a more attractive destination for foreign investment, that would be an excellent next step to take.

Mr. SMITH. I appreciate that.

Anyone else?

Mr. FARNSWORTH. Mr. Chairman, if I could just add very, very briefly, I concur that Ecuador is taking some very interesting under the new steps government, and we applaud that.

In this particular case, I think there is room for the United States to encourage Ecuador to live up to the terms of the bilateral investment treaty that Ecuador has with the United States and to live up to any sort of arbitral awards that may be made under that treaty. I think that is something that we would encourage frankly across the region. Once companies enter into arbitration with host governments, if there are judgments made, judgments need to be respected.

Mr. SMITH. I appreciate that very much, and thank you for your answers and for your advocacy. I yield back.

Mr. COOK. Thank you very much, Congressman Smith.

I am now going to turn it back to Congressman Sires. We had some time. I was trying to include this, do the balancing act. So I recognize the ranking member.

Mr. SIRES. Thank you, Mr. Chairman.

Mr. Herrington, can you just finish what you were—and I will ask you the question afterwards.

Thank you, Chairman.

Mr. HERRINGTON. I have to read back because I am going to quote my boss, so I better get it right. I think it is important to talk to, on section 232, this is specific to autos and the auto parts. Obviously, the announcement that the Department of Commerce would commence a study on applying 232 also to autos and auto parts.

My boss said just last week, to your question, Congresswoman: This isn't about national security. The administration has already signaled its true objective is to leverage this tariff threat in trade negotiations with Mexico, Canada, Japan, the European Union, and South Korea. These allies provide nearly all U.S. auto imports and are among America's closest partners. Neither they nor these imports endanger our national security in any way.

So I think that speaks for itself.

Mr. SIRES. You know, my office—I am from New Jersey. I get a lot of pharmaceutical companies in my office constantly complaining about Canada. So one of the things that I was happy about is at least we are raising the issue that there are some differences or discrepancies.

You know, where do you see, when they negotiate this NAFTA, that the pharmaceutical industry fits in? Because it is hurting New Jersey. And if the President can include that in his negotiations, I think the pharmaceutical industry in New Jersey would appreciate what the Canadians are doing. You might want to say a couple of things to the Canadians.

Ms. MEIMAN HOCK. Maybe I will just start quickly, if I may, Ranking Member Sires. I think—I have participated in a number of the NAFTA rounds, and I know there hasn't been a round for a while. But, you know, back when there was, the U.S. would try to raise intellectual property, would try to raise market access.

And the response, I think somewhat understandably, from Mexico and Canada was, why would we want to talk about intellectual property? That is something that is important to you, United States of America, when you have on the table a removal of investor-state dispute settlement, a government procurement policy that goes against our interests, counter seasonal, AD/CVD, sunset clause, all of the, as they are called, poison pill provisions that the United States has had on the table have really prevented us as a country, prevented our negotiators from getting to those items, like intellectual property rights protection, that are very much in the U.S. interest.

Mr. SIRES. It sounds like an excuse to me.

Ms. MEIMAN HOCK. It is, you know—it is an excuse that is too easy for them to make, I guess, would be my concern, you know?

Mr. SIRES. Yeah, that is what I think.

Mr. Herrington.

Mr. HERRINGTON. Yes. Thank you, Ranking Member Sires.

To your point, Canada does not have IP standards commensurate with its status as a developed economy nor as a hub of innovation, which it is. And its standards need to be certainly heightened because of that.

I think NAFTA—I think Kellie touched on a lot of the core here that we have these opportunities in the NAFTA space for offensive interest. And this is truly—along with a few other areas in the bilateral U.S./Canadian relationship, including dairy issues—some folks have certainly issues with the way Canada operates its dairy market—that the U.S. has legitimate offensive interests that are, frankly, being held hostage to these very unconventional proposals that the U.S. has put forward in government procurement, the sunset clause, the dispute resolution, suite of chapters 11, 19, and 20, et cetera, the rules of origin, obviously. So I would just leave it right there that the IP chapter actually hasn't really even been put on the table because of these issues.

Mr. SIRES. I have 52 seconds.

Mr. FARNSWORTH. I won't take that long. But if you bring the lens out a little bit further, one of the most powerful ways to help the United States address some of the legitimate concerns with China on intellectual property is to have a unified North America, and that is what NAFTA would allow us to do. If we were to come to agreement on intellectual property, as well as the other issues we have been talking about, that would give us a far wider and deeper platform from which to address some of the issues that we face with China.

Mr. SIRES. Thank you, Mr. Chairman, for the extra time.

Mr. COOK. At this time, I would like to recognize the gentleman from Florida, Mr. Yoho.

Mr. YOHO. Thank you, Mr. Chairman. I apologize for being late.

Thank you for being here and for your testimony. I chair the Asia and the Pacific Subcommittee on Foreign Affairs, along with being on this one, and I just find our relationships in the Western Hemisphere, we need to increase, and we need to show a strong force coming out of the United States—business, security, all those things. And I know the chairman here, he focuses on the same things we do.

We want economics, trade, national security issues. And I think it is imperative that we work through these committees to generate policies that make us stronger for our allies and our relationships. And we introduced the BUILD Act, which as you know, I heard you talk about OPIC and how important and valuable that tool is. Well, with the BUILD Act, what we have done is we have expanded the lending capacity up from $23 billion up to $60 billion. In addition, we can partner up with private enterprises and work and leverage that capital that they have, along with the expertise they have. And we can lend in foreign currency, which we weren't able to do before, and then we can partner up with foreign countries.

How do you feel that we can best utilize a vehicle like that to build projects in these countries? Mr. Farnsworth, if you want to try to tackle that.

Mr. FARNSWORTH. Yes, sir. And I appreciate both the opportunity to respond and also your and other leadership on this important act. I think it is a very important recognition that other countries are using tools, particularly in the Western Hemisphere, which we simply don't have——

Mr. YOHO. Right.

Mr. FARNSWORTH [continuing]. And we want to increase our authorities to be able to do that. One of the key areas that Latin America and the Caribbean needs and where the United States has great expertise is in infrastructure, and yet we have been losing this battle in some ways to China because China has a tool that we have not been able to mobilize in the same way, and that is development finance.

China comes not just with projects, but they come with the finance to be able to do the projects. OPIC has been a successful agency, in my view, but it has been limited. It is small and its authorities are limited. So what the BUILD Act does is it expands that, gives us the ability to compete more effectively with the China bag of money, if you want to put it that way.

What is important about that aspect is not simply though the commercial aspect. If you talk to many regional leaders and business people, they would prefer a relationship—they would prefer the investment from the United States because of management, because of quality, because of technology, because of anti-corruption, things that they are not necessarily getting from China. But if China is the only game in town, they have to be the partner, not the preferred partner; they are the only partner. So this gives us an opportunity to get back in the game, and I want to simply acknowledge that and say that this could be a very important tool if the Congress passes it soon.

Mr. YOHO. I appreciate that.

Mr. Herrington, do you want to weigh in on that?

Mr. HERRINGTON. Absolutely. Thank you, Congressman Yoho.

I think the U.S. Chamber is a big supporter of this bill. I think we have advocated—one of the things we have advocated in my written testimony is for an all—an inclusive, all of U.S. Government approach to supporting our exporters and our companies that do business in the region.

I think that this is what the BUILD Act does, and I commend you and others who were involved in that. And the best part about this is it is a free service to U.S. taxpayers, right to companies. And I think that a key issue we are talking about today is Chinese influence in the region. And one of the ways that China is able to successfully insert itself into our region is through basically a state-owned enterprise financing—State financing. And our companies and can no longer fight with one arm tied behind their back. So I commend you for advancing this legislation.

Mr. YOHO. Well, I appreciate it. Ms. Hock, do you have anything to add?

Ms. MEIMAN HOCK. It might be a bit off topic since it is OPIC, but just to endorse also returning Ex-Im to full functionality, that is something that we are seeing again and again, coming up against Chinese development banks, finance, et cetera.

Mr. YOHO. Right. That was the whole purpose of doing this because we had to have something to counter that, and if we are not leading in that area, and if we can't complete, there is a vacuum created. And nature abhors a vacuum, and that gets filled by somebody. And we want to make sure it is somebody that values what we do, and with the Western Hemisphere, we want to make sure that there are people that are going to promote democracies and, you know, the values that we do. And so we felt this was a very important issue to do.

One last thing on energy, we are blessed with an abundance of energy in the United States of America, and we are exporting now. And we have got bills on the floor to increase the amount of LNG. And this is something we feel very critical to send down to the Western Hemisphere, to the Caribbean basin, and have it as an alternative to number two diesel coming out after Venezuela, which is not a friendly regime.

Mr. Chairman, I am over my time, and I am going to yield back and tell you I appreciate it. But that is what we are working on. And thank you.

Mr. COOK. Thank you very much. We are joined by two more members from New York. They were late. They were watching reruns of the Mets and the Yankees. I understand their priorities, but right now, I am going to recognize the gentleman from New York, Mr. Espaillat.

Mr. ESPAILLAT. Thank you, Chairman Cook.

The world looks different from up here. I am usually down there, the southern part of the hemisphere. But thank you for what you have contributed to this debate, and I also want to ask some questions about China. And the Secretary of State was here last week, and I told him, you know: They are eating our candy in Latin America and the Caribbean; there is a vacuum of leadership there. And, of course, China has come in, and you have begun to see companies break from Taiwan. The most recent, the Dominican Republican a couple weeks ago. And China is coming into the hemisphere, and they are coming in to do public projects and roads and bridges and loans and investment. And, you know, there is a strong push to replace us as a main partner, even though they are so far away, yet politically, they are—it is a whole different continent, but they are making a strong argument to take over or have a strong influence in the region.

So what are the main obstacles? Is corruption a real obstacle for U.S. companies to continue to invest? La mordida, the bite they call it. In some countries, they say it is as high as 30 percent. And, of course, especially since we have very strong anticorruption laws here that are enforced. Is that a major problem in investment?

Mr. FARNSWORTH. Well, if I could try my hand, Congressman, at responding. First, the positive story about China in the region, they buy a lot of products from the region, which isn't a bad thing necessarily, and in the recession of 2008-2009, it was actually China that kept Latin America from falling itself into recession. There is legitimate trade; there is legitimate investment. So that is something that I think we should frankly celebrate because we are not buying all those products, and there is no reason why Latin America shouldn't have the opportunity to sell to other markets worldwide.

Having said that, there are broad implications of that, both for U.S. business and also frankly for the promotion of the U.S. strategic interest in the Western Hemisphere, and I think we have seen that develop over the last 10 or 15 years, which is really the time period that China has been directly engaged in the Western Hemisphere.

It is a question fundamentally about corruption? Corruption plays a part; there is no question about it. China is not subject to FCPA. Chinese, you know, companies aren't necessarily listed on the New York Stock Exchange. You don't have the same transparency and regulatory requirements, et cetera. So that is an issue. But if you talk to U.S. companies, that is not necessarily the first thing that they raise in terms of their ability to compete.

They really do raise the issue of development finance and the ability of Chinese companies to come in with financing at below market rates from the Chinese Government. They do raise the issue of Chinese ability to underbid U.S. companies because many of the Chinese companies are state-owned enterprises; they have government support, et cetera. They may not be bidding—even at market prices, they might be taking a loss in order to get the contract and get the investment and move forward that way.

There are a myriad number of other things. One of the other things that may be retarding the United States' ability to move forward in the region is the ability of the United States to support some of those efforts from the private sector side, the U.S. Government. And we have been talking about a little bit to this point. And I think the ability to ramp up commercial diplomacy at the very senior levels of the U.S. Government would really, really help and show Latin America that the United States is not just here on a transactional basis or commercial basis, but we are here on a partnership basis. And that really goes a long way in terms of the Western Hemisphere, what in some ways we used to do. I think we have gotten away from that a little bit. I would like to see that go forward in a similar way.

Mr. ESPAILLAT. Finally, I spoke to a former President of a Latin American country, and he said to me: Well, show me real U.S. investment in the hemisphere, you know, that is significant right now in the last 20 years. Even the banks are no longer there. And, you know, I sort of began to think, and he was absolutely right. I think that we need to invest, Mr. Chairman, more in the future of Latin America and come back to ensure that we continue to be their main partner. So thank you for your testimonies.

Mr. COOK. Thank you very much. At this time, I would like to recognize another Congressman from New York, my good friend, the gentleman from New York, Congressman Meeks.

Mr. MEEKS. Thank you, Mr. Chairman.

I want to kind of pick up from where Mr. Espaillat just left off. First, when I think about the CAFTA and, of course, the NAFTA, at one time, we were trying to do something in regards to a trade deal with all of the Americas, and even TPP, where we had various countries in Central and South America that would have been a part of that. TPP being important because it also kind of put a check on China, you know, to make sure they are playing by the rules, et cetera. So it is extremely important.

Can you tell me what you think would have been the negative or the positive effects if we had stayed in the TPP and whether CAFTA was increasing the investments and opportunities for American companies and improving the relationship with those on the hemisphere?

Mr. HERRINGTON. Thank you, Congressman Meeks, I think you raise an excellent issue. I think the U.S. Chamber was a very vocal supporter of the Trans-Pacific Partnership, TPP, and I think you correctly call out a key reason why it was important, which was to establish a transpacific trading system that is rules based, that whether the U.S. exerts its leadership on trade joined by like-minded free market-oriented economies in the effort to try and encourage the same sort of adoption of policies across Asia and other parts of Latin America that weren't necessarily involved.

The other key thing, though, that I think is really important about TPP is, you know, our exporters look to us every day, and NAFTA obviously is their priority, but they say to us, across numerous sectors, manufacturing, agriculture, they are very focused on Asia. Why? Because we project, by the year 2030, two-thirds of the world's middle class consumers will be in Asia.

So, when we talk to this administration following the announcement to withdraw from TPP, our question is, okay, what is your strategy to access these consumers that our exporters will desperately need in the future to continue growing?

Mr. MEEKS. So let me then add, and I presume, when you are late, you don't know what went on prior to you getting here, but I have now likewise concerns in regards to what is taking place with the tariffs that the President is currently placing on there. And I would love to get your take on the impacts these newly imposed tariffs will have on American jobs and businesses, both small and large, in our country, and then with the retaliations that some of our allies are talking about, I would like to get your perspective. Mr. Farnsworth?

Mr. FARNSWORTH. Thank you very much. I think that is the key question. It is the framing question for how do you promote U.S. commerce and business in the region, but the overall framework is an atmosphere that is roiled, is the word I used in my oral testimony, by the steel tariffs that we have seen against Canada and Mexico and Europe and others, and voluntary export restraints that Brazil and Argentina have had to comply with in the steel context. But also, in terms of the very aggressive approach the United States has taken on NAFTA, which is not clear if the United States even wants to continue with NAFTA, that is a real issue in terms of sustainability for investors, the pulling out of the Trans-Pacific Partnership, which you also alluded to, we could go on perhaps on some other issues.

But this is a circumstance where once the United States was the country that was actually creating the conditions for orderly business and commerce in the region, now we have become the primary disrupter. And the problem with that is that if you are an investor looking in the long term, you can't make decisions based on that because there is uncertainty, but it provides the conditions that an outside country, like China, which we have been talking about, but there are others as well, can come in and take advantage, particularly if the state is behind some of these investments, as we have been talking about in the context of Chinese investments in the region.

So, from my perspective, this is unhelpful, but despite that, there are other issues as well. Even if, as I mentioned previously in the testimony, even if the United States were to change course today and were to have a policy shift today on trade, the damage that is being done is going to take a long time to overcome. Supply chains, once they develop elsewhere, cannot just be on unwound. They are built, they are developed over years. If other countries began to look for partners that don't include the United States, whether because of formal trade relationships or some other reason, or just the question about the sustainability of the relationship with the United States, they began to develop those relations with other countries. And once those are developed, they are really tough and very expensive to break.

So I think we have to be very, very careful. We can be doing these as negotiation issues, or we can be being doing them because perhaps we believe in them, but nonetheless, there are consequences that go well beyond the United States as well.

And the final thing I would say, and just concurring with my two colleagues on the panel as well, is that there are economic consequences to the United States. This will hurt the U.S. economy from the job creation perspective, and from the ability to grow the economy even after tax reform and some of these other things that have been done over the recent months, from my perspective, this will be a step back for U.S. economic interests.

Mr. MEEKS. Thank you.

Mr. COOK. Thank you very much.

One further piece of business. If there is no objection, I would like to enter into the Congressional Record testimony from Transparency International.

Pursuant to committee rule 7, the members of the committee will be permitted to submit written statements to be included in the official hearing record.

Without objection, the hearing record will remain open for 5 business days to allow statements, questions, and extraneous materials for the record, subject to the length limitations in the rules.

I did want to add, this has been kind of a crazy day. I think everybody knows that. The ranking member was saying we have like a fly-in day. People are coming in hot-seating it and then leaving from one committee, and I want to apologize. We were a little late because of votes. It is that time of year. We are going to be in—I think the second series of votes is at 9 o'clock, 2100, for all the military folks out there. So I certainly appreciate your flexibility. It is great to have a committee here that is so engaging, and I try to get everybody—and right now, just a reminder, you know, we have a little meeting with the President of Honduras afterwards. But, once again, I can't thank you enough for being here.

And there being no further business, these guys can get back to their Yankee games—their New Jersey—there being no further business, the subcommittee is adjourned. Thank you.

[Whereupon, at 3:29 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on the Western Hemisphere
Paul Cook (CA-08), Chairman

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs to be held in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Thursday, June 7, 2018

TIME: 2:00 p.m.

SUBJECT: Advancing U.S. Business Investment and Trade in the Americas

WITNESSES: Mr. Eric Farnsworth
Vice President
Americas Society / Council of the Americas

Mr. Neil Herrington
Senior Vice President for the Americas
U.S. Chamber of Commerce

Ms. Kellie Meiman Hock
Managing Partner
McLarty Associates

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Western Hemisphere* HEARING

Day *Thursday* Date *June 7, 2018* Room *2172 RHOB*

Starting Time *2:00pm* Ending Time *3:29pm*

Recesses *n/a* (to) (to) (to) (to) (to) (to)

Presiding Member(s)

Chairman Cook

Check all of the following that apply:

Open Session ☑
Executive (closed) Session ☐
Televised ☑

Electronically Recorded (taped) ☑
Stenographic Record ☑

TITLE OF HEARING:

"Advancing U.S. Business Investment and Trade in the Americas"

SUBCOMMITTEE MEMBERS PRESENT:

Chairman Cook, Ranking Member Sires, Rep. Smith, Rep. Rooney, Rep. Yoho, Rep. Kelly, Rep. Meeks

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NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

N/A

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ No ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Chairman Cook QFRs

TIME SCHEDULED TO RECONVENE ______
or
TIME ADJOURNED *3:29pm*

Subcommittee Staff Associate

Questions for the Record

WHEM Subcommittee Hearing: "Advancing U.S. Business Investment and Trade in the Americas"
June 7, 2018 at 2:00 p.m. in Rayburn Room 2172

Chairman Paul Cook

TO: Mr. Eric Farnsworth

1. State Department Role in Advancing U.S. Business Engagement in Region:
   - How can the State Department help to spread successful best practices from Mexico, Chile, Peru, Colombia, and Costa Rica, which are rated the highest in the World Bank's "Ease of Doing Business" ranking, throughout the Western hemisphere region?
   - How could the State Department more effectively advance U.S. commercial interests in the region?

The State Department has a critically important role in advancing U.S. business interests in the Americas, and several steps ought to be considered in the near term to spread best practices and to support U.S. commerce.

In the first instance, the Department needs a full complement of Senate-confirmed senior officials, including the Assistant Secretary of Western Hemisphere Affairs, and the Secretary of State must make clear to the leaders of all bureaus and U.S. missions abroad that the promotion of commercial interests is a core aspect of their duties which will, in part, drive promotions and career advancement. We are now almost at the mid-term elections and essential positions both in Washington and abroad remain unfilled. We can do better than this, and must.

Second, the Department should actively solicit input from the private sector in terms of specific actions that can be promoted which will advance commercial interests, both at the political and working levels, and then work specific, actionable, and appropriate ideas into the broader agenda. There are multiple steps that could be taken to support U.S. business while at the same time building target-nation competitiveness. The key, however, is that input received from the private sector must then be factored into U.S. policy and assistance priorities, including USAID, MCC, and a multitude of other programs, not just presented to governments on a take it or leave it basis. There must be concrete follow up and implementation. Much of U.S. assistance that goes for regional "development" simply follows pre-existing priorities without much focus on competitiveness or support for U.S. commercial interests that will, in fact, support the broader development that advocates seek. This is a perennial problem.

Programs for the Northern Triangle of Central America, for example, designed to create conditions that will lessen migration pressures, must be refocused. Increased technical assistance, regionalization of assistance to encourage cooperation among aid recipients, anti-corruption and the rule of law, and investment climate reforms can all be made urgent priorities. The State Department is not the implementation agency for these programs but should nonetheless exercise its significant role in leading U.S. foreign policy formulation to guide assistance programs toward more commercially-relevant, and therefore sustainable, programs.

Third, the State Department must once again find its powerful voice in the context of U.S. trade policy. As the foundations of the U.S.-led global trade structure continue to be dismantled by the current administration, the United States is not only opening the door still wider across Latin America and the

Caribbean for our direct competitors including China, it is also creating significant ill-will among our closest trading partners. That means higher tariffs on U.S. products, broken supply chains, and skepticism about seeking new U.S. goods and services particularly when alternatives are available, as they increasingly are. This directly undermines U.S. commercial interest in the region. No doubt it is the role of the State Department to implement a president's policy under any administration, yet without a positive trade agenda the ability to promote U.S. commercial and strategic interests across the region will continue to suffer. At a minimum, this is a point that needs to be made clearly and often by senior State Department officials at every appropriate opportunity.

2. Energy Opportunities: In 2013, Mexico made some significant energy reforms. In 2014, Argentina's reforms provided offshore exploration opportunities to investors and encouraged foreign ventures in the country's shale reserves. In 2016, Brazil's repeal of a requirement that its oil company (Petrobras) had to have a 30% stake in all operations involving its "pre-salt" offshore oil reserves also opened up new opportunities.
    - Which countries in the region present the best opportunity for greater energy investment by U.S. companies?
    - Which countries pose the most significant challenges to energy exploration and investment?
    - What role do you see the State Department playing in advancing U.S. business energy investment in the region, particularly in the Caribbean and in exporting U.S. liquefied natural gas (LNG)?

Perhaps more than any other resource-rich region, Latin America routinely endures pendulum swings of resource nationalism in response to commodity price cycles and other political factors. The regional sectoral map is uneven for U.S. investors.

Brazil is an attractive market for further energy investment by U.S. industry. Unlike other countries in Latin America, Brazil has never reneged on an energy contract, attesting to the emphasis it places on private investment in one of its most strategic sectors. The geological risks of its pre-salt basins are low, the quantity of its pre-salt reserves are vast, and the productivity of the resources is among the highest in the world. But geology alone does not make for an attractive investment climate, as the collapse of Venezuela's oil sector has proven. Brazil's governance of its hydrocarbons sector is welcoming of foreign investment, characterized by a trajectory of pro-market reforms in its upstream. The lifting of Petrobras's minimum equity and operator mandate allows greater operational flexibility for private investors. The government has also eased previously-stringent local content rules and extended until 2040 a favorable customs and tax regime for industry that facilitates the import of goods and services to develop offshore resources. Brazil has also built out a calendar of bid rounds for the next several years that provides consistency and predictability to investors. Elections in October will be an important indicator of the sustainability of sector openness.

As it currently stands, the profile of Mexico's energy sector, aided by constitutional reforms to promote private sector participation, has tremendous complementarities with investment from U.S. industry. There is much at stake as the new Mexican president prepares to take office this year. Offshore reserves in Mexico's Gulf benefit from proximity to U.S. operations, both in terms of geological familiarity and access to supply and support services. Approximately 90% of Mexico's "proven" and "probable" reserves are still to be auctioned. SENER, Mexico's energy ministry, has rolled out a five-year timetable of bid rounds to provide consistency for investor spending. Through December 2017, upstream auctions have generated $248 billion in revenues for the Mexican government, according to SENER. But Mexico's energy opening is not limited to upstream exploration and production. Indeed, many of the benefits for Mexico's day-to-day economy will come from reforms to its more downstream markets. Electricity sector reforms are creating a new wholesale power market to promote more cost-effective electricity capacity, reduce electricity costs and transition Mexico to cleaner-burning fuels. The solution to most of those aims is natural gas—predominantly from the United States.

Other nations present differing pictures. Despite having the world's largest proven oil reserves, Venezuela is no longer attractive as an investment target. Resource-rich Ecuador and Bolivia still have limited options for the concession-based or profit-sharing contract structures that private industry prefers. Colombia has a very market-oriented framework to encourage investment, but many of its upstream opportunities are constrained by tense relations between the government, industry, and local communities and NGO's in its oil and gas producing-regions. The new government of Ivan Duque will have an opportunity to sort out these difficulties in a manner that restores sector attractiveness for investors.

Argentina boasts the largest commercial shale gas reserves in the world outside North America. Environmental resistance to industry operations does not run as deep as it does in other countries because of its long legacy of hydrocarbons production. And the resources themselves are the domain of state governments, an ownership structure that creates more buy-in at the local level. President Mauricio Macri and his government are working to unwind the worst excesses of the previous Kirchner government's market interventions. Nonetheless, to exploit the country's rich shale reserves and manage high operating costs stemming from labor to lack of infrastructure, industry relies heavily on subsidies from the central government that pay operators above-market prices for new gas developments. The broader political-economic landscape affecting Argentina's fiscal situation perhaps calls into question how long Buenos Aires can continue to offer these producer subsidies.

In terms of the State Department's role, energy diplomacy was brought into the Department under Secretary of State Clinton, to provide a stronger diplomatic voice on global energy issues and to capture these issues bureaucratically. Results have been mixed. For example, we have long urged the Department to form a regional Gas Council of major gas producing nations. Such a forum would be a clearinghouse for projects and best practices including technical, regulatory, infrastructure, environmental, and other aspects of sectoral competitiveness, while providing a neutral place for dialogue on mutually-beneficial matters with nations, such as Bolivia, where dialogue of any consequence is otherwise limited. Through Council of the Americas' leadership, this idea was an original recommendation of the Americas Business Dialogue, which we co-founded, for the Summit of the Americas. Regional governments failed to act on the recommendation, but the State Department remains in a position to establish this important dialogue. Similarly, for years we have urged the United States to take a more proactive role in building out closer energy relations with the Caribbean Basin. From a security, commercial, and environmental perspective it makes sense. It is deeply frustrating that more has not been done to promote these issues more effectively, and it is long past time to see greater progress on these complicated yet very important issues.

3. Regional Crises: Venezuela is in the throes of a horrific economic and humanitarian crisis, resulting in the spread of thousands of refugees and evoking concerns of a public health crisis. The unrest in Nicaragua is also stirring up significant concern.
    - How do economic and humanitarian crises like these affect the confidence of U.S. investors in the region?
    - In your experience, have you seen other countries in the region do enough economically and politically to protect themselves from similar crises?

Venezuela is clearly a ruined state. Even if the Maduro regime were to quit office today it might take a generation or more to restore this once-proud and relatively wealthy nation. Regrettably, the Maduro government has not given any indications of its willingness to depart, subverting the democratic process to its direction and creating conditions which support its ambitions to remain in power indefinitely. Deteriorating conditions are not "just" a tragedy for Venezuelans, though; the aggressive, extra-territorial ambitions of the regime in Caracas, the breathtaking corruption at the highest levels of government which facilitate drug trafficking and cross-border criminal activities, and the humanitarian crisis caused by the regime that pushes thousands of desperate Venezuelans each day to seek shelter and protection in neighboring states have all profoundly impacted the region. This is a crisis that continues to develop and worsens daily. A return to some semblance of sanity, including a restoration of investment flows that will re-capitalize the energy sector and provide any hope for the future in Venezuela, can only begin with the departure from office of the current leadership.

While U.S. investors across all sectors have done what they could to continue operations in Venezuela, prevailing and anticipated conditions there have virtually eliminated any further interest in the country except among the most aggressive financial speculators. What is perhaps more complicated is whether individual crisis, including Nicaragua's, impacts investor appetite across the region, or indeed for emerging markets as a class. We should be wary of making such a claim. Emerging markets investors are generally sophisticated and easily differentiate between Venezuela and Nicaragua and, say, Argentina and Costa Rica. Given the macro-prudential steps that many regional governments have taken over the years to increase resiliency in the face of economic challenges, the threat of contagion is similarly reduced.

More applicable in this current environment is the broader impact on emerging markets that a return to more normal interest rates and a turn toward protectionism in the United States is having, and the subsequent shift in capital flows across the class. Certainly, this scenario is not helped by the impression that Latin America is somewhat "troubled," either by Venezuela's collapse or Nicaragua's growing civil conflict or a challenging regional elections cycle or some other factor, or a combination of all. But there are any number of positive examples of nations, such as Chile, which are well-managed economically and where the threat of meaningful political turbulence is remote. Latin America has seen this movie before, with sequels more numerous and interesting than the Star Wars franchise. Responsible leaders in the region continue to monitor events and take actions accordingly.

TO: Mr. Neil Herrington

1. Opportunities for U.S. Investors: Which countries in Latin America and the Caribbean provide the most opportunities for U.S. investors? In what sectors? What can the U.S. government and the private sector do to enhance investment opportunities for U.S. businesses?

The United States is the single largest source of foreign direct investment in Latin America and the Caribbean. According to the Commerce Department's Bureau of Economic Analysis (BEA), the stock of U.S. direct investment in Latin America and other markets in the Western Hemisphere totaled $843.3 billion as of 2016, compared with $556 billion in 2007. Mexico has the largest stock of U.S. direct investment as of 2016 ($87.6 billion), followed by Brazil ($64.4 billion), Chile ($29.4 billion), and Argentina ($13.7 billion).

The U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America and the Caribbean (AACCLA) carried out the Business Pulse survey in 2017, which polled more than 600 business leaders representing companies doing business in the 28 markets that make up the AACCLA network of 24 American Chambers of Commerce (AmChams). The survey identified the following sectors as the most likely to attract investment over the next 12 months: energy, tourism, infrastructure, manufacturing, technology, and telecommunications. Free trade and economic integration were identified as the top policy priorities for the U.S. government to address. For more information on the AACCLA's Business Pulse survey, please click here.

2. Business Climate: The World Bank's Annual Doing Business report shows that the bulk of Latin American countries have a fairly poor business climate. Last year, 15 out 20 regional countries moved down in the global rankings while only three moved up.

- What are the primary regulatory, legal and practical challenges involved in setting up and operating a business in Latin American and the Caribbean?
- How does Latin America and the Caribbean fare as an investment climate compared to other regions of the world?

There are few issues as essential as the rule of law when identifying the critical factors in a company's ability to do business profitably and maintain a sustainable business model over time. Rule of law was identified as the "most important" issue to address in the Latin America and Caribbean regions in the 2017 Business Pulse survey conducted by the U.S. Chamber and AACCLA.
The U.S. Chamber's Coalition for the Rule of Law in Global Markets identified 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. They are:

- **Transparency** – Meaning the laws and regulations applied to business must be readily accessible and easily understood;
- **Predictability** – The laws and regulations of a country must be applied in a logical and consistent manner regardless of time, place, or parties concerned;
- **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;
- **Accountability** – Investors must be confident that the law will be upheld and applied equally to government as well as private actors; and
- **Due Process** – When disputes arise, they must be resolved in a fair, transparent, and predetermined process.

According to the 2017 World Bank's Doing Business report, Latin America and the Caribbean had undertaken the lowest average number of reforms designed to enhance ease of doing business than had any other region of the world. The only grouping of countries with a lower average number of reforms was the high-income OECD countries, which are already global leaders in good practices.

This is similar to the Chamber's own findings in its Global Business Rule of Law Dashboard, in which the markets in the Western Hemisphere earned the lowest average score of any region. This Dashboard illustrates the close relationship between adherence to the rule of law and a country's ability to attract investment based on the presence of the five factors listed above. Though the regulatory, legal, and practical challenges involved in operating a business in Latin America and the Caribbean vary by country, the adherence to the rule of law is a primary factor in a company's evaluation of these challenges.

In addition, the processes of rulemaking are often underdeveloped in many countries throughout the region. While some countries routinely implement certain elements of good regulatory practices in their rulemaking process, most do not: sufficiently utilize components such as regulatory impact assessments, cost-benefit analysis, notice and comment, risk measurement and management, data quality, and reliance on sound science, focusing regulation on the core requirements needed to protect legitimate objectives and the least burdensome approach to accomplishing a desired regulatory outcome. Without all of these elements, rulemaking leads to poor regulatory outcomes that create a drag on the economy.

3. Impact on Region's Reforms: Countries like Mexico, Brazil Colombia, Chile and Argentina have taken significant steps to improve regulatory conditions to facilitate foreign investment.
   - How effective have these reforms been in drawing U.S. businesses into the region?
   - How institutionalized and sustainable are these reforms, and what do they mean for the future of U.S. business interests in the region?

- What other countries can we expect to be key investment opportunities for U.S. companies?
- In your view, which reforms are most beneficial to U.S. business interests?

Regulation and compliance are frequently identified among the top risks facing American businesses overseas. Countries such as Mexico, Brazil, Colombia, Chile, and Argentina are at various stages of implementing regulatory reforms -- including in the energy sector -- that have been successful in attracting significant U.S. investment.

High-standard trade agreements and bilateral investment treaties are important tools for helping to institutionalize reforms by providing a transparent and predictable legal framework for U.S. investors and by addressing regulatory transparency.

Further, adoption and adherence to good regulatory practices will lead to better regulatory outcomes and make for a more attractive investment climate.

4. Value Added Tax: It is my understanding that some countries in Latin America and the Caribbean have instituted Value Added Tax (VAT) collection via withholdings by credit and debit card processors. While intended to mitigate tax evasion, this can result in an over-collection of taxes and leave U.S. businesses operating in the region in a position to request refunds from governments in the countries in which they operate. I've heard anecdotally that in some countries there are mechanisms for requesting and issuing refunds.
    - What recommendations would you have for U.S. businesses operating in the region where a Value Added Tax is collected vis withholdings by credit and debit card processors?
    - What recourse do U.S. businesses have in these instances, and how do you recommend that the State Department assist U.S. businesses in securing the refunds if they are entitled to them?

5. Alternative Minimum Tax: Some countries in the region have applied Alternative Minimum Tax (AMT) rules in a way that mandates a minimum taxable profit. I have heard concerns that the application of such AMT frameworks creates environments that are not conducive for U.S. private sector investment. In many countries, there also appears to be great uncertainty as to whether or not U.S. companies can request and receive refunds of AMT.
    - As part of its efforts to help strengthen the policy and technical capabilities of public institutions in the Western Hemisphere, what actions can the State Department take to ensure that AMT rules do not inadvertently create an uneven playing field for U.S. companies?

Response to 4 and 5: Many countries in Latin America and the Caribbean have instituted Value Added Tax (VAT) collection via withholdings by credit and debit card processors. While these policies were well-intended to mitigate tax evasion, they have inadvertently resulted in an over-collection of VAT and potentially inaccurate reporting of government revenue. Similarly, some countries in the region have applied (Alternative Minimum Tax) AMT rules in a way that essentially mandates a minimum taxable profit. The application of such tax frameworks harms local companies, runs contrary to local governments' goals of attracting U.S. and other foreign investment, and puts investors in a position to request refunds from government institutions in the countries in which they operate. In some cases, there are well-defined mechanisms for requesting and issuing reimbursements, but this is not true in all countries. Furthermore, even where defined mechanisms exist, the delays in obtaining these refunds create significant cash-flow pressures on American businesses.

These tax refund challenges are especially pronounced in the Northern Triangle. For example, the American Chamber of Commerce (AmCham) in Honduras reported in 2017 that the Government of Honduras owed more than $60 million of tax refunds to 49 local and U.S. companies, including seven U.S. companies owed more than $34 million. The AmChams in El Salvador and Guatemala have also stated that similar amounts are owed to local and U.S. companies in their countries, and that requests for refunds are consistently met with unjustified delays or denials. While El Salvador deserves credit for passing a new law clarifying that taxes paid in excess can be recovered by requesting a credit note that can be applied to taxes on imports, vigilance is required to ensure that all Northern Triangle governments establish and maintain refund policies supporting good corporate citizens like U.S. companies. Such an approach will help establish a best practice that can help formalize and stimulate local economies more broadly.

Congress should be applauded for its efforts to encourage the Northern Triangle governments to make progress in improving transparency in tax collection and increasing the timeliness of tax reimbursements owed to U.S. companies. During the Fiscal Year (FY) 2018 appropriations cycle, Congress clarified the Alliance for Prosperity in the Northern Triangle certification criteria to require meaningful efforts to address these issues for El Salvador, Guatemala, and Honduras to qualify for U.S. foreign assistance. Further, in the joint explanatory statement for FY18 omnibus appropriations bill, Congress was wise to require the State Department to submit a report to the appropriations committees within 60 days detailing any outstanding commercial and trade disputes between the United States and the Northern Triangle countries. This could help to create a benchmark from which to measure each country's progress. Because the Alliance for Prosperity is a multi-year program, Congress should consider further strengthening the Alliance for Prosperity certification criteria on resolving commercial disputes with U.S. entities as part of the FY19 appropriations process.

Additionally, the Chamber views the Alliance for Prosperity certification criteria as a tool the U.S. Government can use to improve enforcement of tax rules in each of these countries as a means to increase government revenue, rather than over-collecting from entities that already comply with local tax laws. Strengthening the certification criteria as it applies to transparency in public institutions and resolution of commercial disputes is an opportunity to meaningfully address tax evasion, grow government revenue, and create economic opportunity. The Chamber and our member companies operating in the Northern Triangle would be happy to work with Congress on statutory language modifications aimed at improving transparency in tax collection and the timeliness of tax reimbursements. Furthermore, while we understand that the State Department is still working on the report required by the omnibus, the Chamber ultimately hopes the report will specifically address any outstanding issues related to tax refunds due to American entities operating in the Northern Triangle. This will help create an appropriate baseline from which to judge the progress required for certifications to be made under the Alliance for Prosperity in the Northern Triangle.

While the Alliance for Prosperity in the Northern Triangle is an appropriate tool for addressing the capabilities and will of public institutions in El Salvador, Guatemala, and Honduras to resolve tax refunds owed to U.S. businesses, the U.S. Government must also strive to address these issues throughout the entire Latin American and Caribbean regions. Congress should be encouraged to use its oversight authorities to ensure the State and Commerce Departments are engaging directly with U.S. companies and foreign government leaders to ensure a level playing field for U.S. companies operating in the Western Hemisphere. Where appropriate, the U.S. Government should also offer technical assistance to identify solutions to help strengthen local finance and tax authorities, with a focus on ensuring non-compliant companies pay their fair share, as opposed to excessively burdening good U.S. corporate citizens.

As we understand, the House and Senate will soon consider their FY19 State, Foreign Operations, and Related Programs Appropriations Bills. The appropriations process creates an opportunity for Congress to strengthen the conditions that must be met for Latin American governments to benefit from U.S. assistance funding. To take advantage of U.S. taxpayer money, the Chamber believes it is imperative that foreign beneficiaries demonstrate efforts to create a level playing field for U.S. companies investing in their countries. It is also essential that Congress continue to provide adequate resources for the Commerce Department's International Trade Administration (ITA). Time and time again we hear from our member companies that ITA and regional Commerce Department representatives based in Latin America are critical to ensuring that U.S. companies maintain the ability to export U.S. products and are treated fairly in local jurisdictions. Finally, our diplomats operating at U.S. embassies in Latin America are just as crucial to promoting American competitiveness as their Commerce Department colleagues. While the Chamber has appreciated the work of our talented chargé d'affaires, our member companies are eager to have long-term ambassadors in place who are vetted by Congress and receive specific training to position them to help elevate U.S. business objectives in the countries where they serve. Unfortunately, many ambassadorial posts in Latin America lack a nominee or a nominee remains pending Senate confirmation. The Chamber requests that this committee continue to encourage the president to quickly identify qualified nominees. We also request that you impress upon your Senate colleagues the need to quickly confirm nominated ambassadors so they can be deployed overseas.