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U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: Doing Business in Latin America: Positive Trends but Serious Challenges

TO: Hearing of the Senate Foreign Relations Committee, Subcommittee on the Western Hemisphere, Peace Corps and Global Narcotics Affairs

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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.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 116 American Chambers of Commerce abroad, an increasing number of members are engaged 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.

Positions on national issues are developed by a cross section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

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

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

The Strategic Importance of the Americas

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

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

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

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

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

Challenges Persist: The Need for Legal Certainty

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

1) *Transparency*: Laws and regulations applied to business must be readily accessible and easily understood.

2) *Predictability*: Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.

3) *Stability*: The state's rationale for the regulation of business must be cohesive over time, establishing an institutional consistency across administrations, and free from arbitrary or retroactive amendment.

4) *Accountability*: Investors must be confident that the law will be upheld and applied equally to government as well as private actors.

5) *Due Process*: When disputes arise, they must be resolved in a fair, transparent, and pre-determined process.

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

<u>Argentina</u>

A case in point is Argentina, a country that has enjoyed impressive growth over the last decade, yet whose long-term prospects are dimmed by policies that limit opportunities for further expansion, and appears to be heading for a repeat of the boom-bust cycle that has been a hallmark of the Argentine economy. In efforts to address macroeconomic challenges resulting at least in part from the country's self-imposed inability to access international capital markets, Argentina has engaged in a systematic effort to reduce exports into and capital flows out of its market. The resulting series of byzantine and non-transparent regulatory measures make Argentina one of the most difficult places in the world for companies to do business even as they seek to contribute to Argentine job creation and growth. The informal manner in which these policies have been implemented contributes to an environment of increasing uncertainty for business. Moreover, the measures themselves in some cases — and certainly in their application — raise questions of compliance with international trade obligations, as well as of due process under domestic law.

- One such measure is Argentina's February 2012 "Advance Import Affidavit" (*Declaración Jurada Anticipada de Importación*, or "DJAI") requirement, which effectively requires companies to seek advance approval before they may import goods into Argentina.

- A related hurdle to trade is the non-automatic import licensing regime that Argentina maintains on a wide variety of imported goods. WTO rules require members to process applications for these licenses within 60 days; a time limit that Argentina has consistently ignored.

- A third issue pertains to Argentina's *de facto* trade balancing requirements, whereby companies have been required to balance their imports into Argentina with an equivalent level of exports.

- Other companies have been pressured to relocate manufacturing facilities to Argentina altogether as a prerequisite for continuing to do business there.

- We are also concerned with Argentina's newly adopted patent examination guidelines, which appear to significantly restrict patent subject matter eligibility and appear to prohibit or severely restrict patenting of deserving inventions, such as polymorphs, new formulations, etc. These guidelines are not consistent with WTO *Agreement on Trade-Related Intellectual Property Rights* (TRIPS) standards and also raise significant concerns regarding incentives for innovation in Argentina.

- Finally, Argentina has flaunted contractual and treaty obligations through confiscation of private property and open disregard for binding international arbitration rulings, contributing further to the breakdown of legal certainty.

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

At the very least, we believe that these policies do not exhibit behavior of a responsible global trading partner and a member of the G-20, as the Ranking Member of this Committee noted in a recently introduced resolution.

Ecuador

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

Specifically, as noted in a recent letter from the U.S. Chamber's Senior Vice President for International Affairs Myron Brilliant to U.S. Trade Representative Ron Kirk, the Government of the Republic of Ecuador has not been acting in good faith in recognizing as binding and enforcing arbitral awards. Not only has Ecuador withdrawn from the World Bank's Convention on the Settlement of Investment Disputes between States and Nationals of Other States and stated its intention to terminate the U.S.-Ecuador Bilateral Investment Treaty (BIT), it has also failed to comply with the pre-existing order of an international arbitration tribunal convened under Article 6 of the U.S.-Ecuador BIT and administered by the Permanent Court of Arbitration in The Hague, "(whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within or without Ecuador" of the $18.2 billion judgment by Ecuadoran courts against the Chevron Corporation. The Government of the Republic of Ecuador has flouted this and other BIT awards, with President Correa himself denouncing the panel's findings.

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

Contagion

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

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

What's Next?

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

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

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

We do so in close collaboration with key partners in and out of government. For instance, we are currently working with the Inter-American Development Bank on, among other things, a trade facilitation project that will identify private sector-led priorities for trade facilitation in Central America and the Dominican Republic. Likewise, we work closely with the U.S. Department of State to support and foster public-private dialogue, facilitating the Secretary's Global Business Conference in February, for instance.

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

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

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

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

North America

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

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

Central America and the Caribbean

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

Andes

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

Southern Cone

The U.S. Chamber is pursuing a more ambitious trade agenda with Brazil to increase an already substantial trading relationship of more than $70 billion in goods in 2011.[4] Through the Chamber-affiliated Brazil-U.S. Business Council — the leading advocate for the trade and investment relationship between the United States and Brazil — we have worked hard to reduce the irritants to our trade relationship, including on ethanol, orange juice, spirits, GSP, and cotton; still, we have much to do to enhance our prospective economic ties between our countries.

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

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

Conclusion

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

Thank you for this opportunity, and I look forward to your questions.

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

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

[3] Jose Raul Perales, “The Hemisphere's Spaghetti Bowl of Free-Trade Agreements,” Americas Quarterly, April 30, 2012, http://www.americasquarterly.org/perales

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