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 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]

<u>Guatemala</u>: 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.

<u>Venezuela:</u> 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.

<u>Data Privacy and Protection:</u> 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.

<u>Digital Economy</u>: 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.

<u>Trade Facilitation:</u> 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.