

**“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

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**Chairman of the Committee on Foreign Affairs Congressman Ed Royce, Chairman of the Subcommittee 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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