

As Prepared for Delivery

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AmCham El Salvador

“A Role for Business in Rule of Law”

Good morning. Thank you, Dr. Arias, for the warm welcome and kind introduction. It's a great pleasure to be here in El Salvador. It is my first visit to this beautiful, green country. It will not be my last. Thank you, Carmen Aida, and to the board of AmCham El Salvador for graciously inviting me to be here and for giving me an opportunity to share some thoughts with you.

I'm here today on behalf of the U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America (AACCLA). The U.S. Chamber represents the interests of over three million companies, business organizations, and chambers of commerce. It is the largest business federation in the world. AACCLA represents a network of 23 American Chambers (“AmChams”) in 21 countries in Latin America and the Caribbean. Together, these two organizations stand for economic freedoms and the power of free enterprise to bring job creation, social mobility, and shared prosperity to the people of the Americas.

AmCham El Salvador is by no means the largest in the hemisphere, but it is one of the most active and effective. As we say in the States, AmCham punches above its weight and we are very proud of the association we share with them.

Introduction

This morning, I'd like to talk with you about an issue that is critical to the effective functioning of global markets and especially important to emerging markets such as El Salvador's. Each year, AACCLA carries out a survey of AmCham member companies from throughout the hemisphere. We ask about the business environment in the region and in their countries. In the latest survey, 1,400 business executives from throughout the Americas pointed to the rule of law as the number one policy priority for the region.

Like any good association, we listen to our members. So you won't be surprised to hear that AACCLA quickly assembled a rule of law task force. And in January 2010 for the first time ever rule of law became a central plank

in AACCLA's policy agenda. Meanwhile, the U.S. Chamber, hearing the same message domestically from our U.S. based colleagues, responded by forming a Coalition for the Rule of Law in Global Markets. Together, these two initiatives are calling attention to the business related aspects of the rule of law and its importance for trade, investment, economic growth, and development.

Our aim is to give business a voice in the way rule of law performance is applied to business around the world. We hope that the efforts of the U.S. Chamber and AACCLA can help make El Salvador and its neighbors in the Americas a leader in this space, ahead of the global competition in this important policy area.

And for reasons I'll explain, I believe that El Salvador has already done a great deal to put itself in such a role through its participation in the CAFTA.

Our first goal is to make sure policymakers everywhere hear loud and clear that business cares about the rule of law. There seems to be a misperception among some nongovernmental organizations, academics, and intellectuals that business actually benefits from the absence of the rule of law, that companies prefer an environment where they can exploit a lax regulatory environment and turn it to their advantage. And it is true that there are unscrupulous actors who would like nothing better than to find and exploit such advantages.

But it is also true that the companies El Salvador and others would like to attract to their markets operate in a different manner. These are the AmCham members, the companies with brand recognition and with an image to protect. These companies have too much to lose to play fast and loose with the rules.

No, these are the companies that pay their taxes, that meet labor and environmental standards, that support good paying jobs, and that contribute to the communities where they do business. These are companies that suffer if their competition is not held to the same standards to which they hold themselves. They are companies that recognize rule of law as a critical factor, perhaps sometimes the critical factor, in their decision to invest in any given market.

### What is Rule of Law for Business?

But what exactly do we mean by rule of law in the business environment?

Let me first tell you what we don't mean. It's not rule by law. Not the manipulation of nominally democratic mechanisms to achieve a pre-cooked

authoritarian result, without checks and balances on the will of a political elite. It's not lip-service to regulatory or judicial processes whose administrators are not held accountable for the integrity of those processes.

So what do we mean by rule of law? A member of the U.S. Congress was once asked to define "pornography." He famously responded, "I know it when I see it."

We know the rule of law when we see it. But we can do better than that. I think it is best defined by the advantages that accrue when it is present. For a business concern whose continued operations are dependent on a return on investment over time, there are several factors related to the rule of law that will determine its ability to make rational investment and operating decisions, and thereby have a reasonable expectation of returning a profit:

- 1) First, 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;
- 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 retrospective amendment;
- 4) Enforceability/Accountability – investors must be confident that the law will be upheld and applied equally to government as well as private actors;
- 5) Fifth and finally, Due Process – when disputes inevitably arise, they must be resolved in a fair, transparent, and pre-determined process.

Where these factors are present, investment thrives, economies grow, jobs are created, prosperity follows.

Where they are absent, corruption thrives, informality reigns, investment dollars flee, and tax revenues plummet.

### A Role for Business in Rule of Law

Accordingly, the aim of the Coalition for the Rule of Law in Global Markets is to:

- Vigorously defend the rule of law, sanctity of contracts, and respect for property rights, including intellectual property, and advocate for the quick resolution of conflicts.
- Foster an understanding that there is a spectrum of regional realities related to rule of law, ranging from those that impede business and investment, to those undermining national competitiveness, to those posing an outright threat to democratic institutions.
- Promote the negotiation and implementation of vehicles such as trade agreements for the strengthening of government institutions related to rule of law. And highlight, where applicable, provisions in existing and pending trade agreements that improve governmental transparency, combat corruption, protect due process, or otherwise enhance the rule of law.

These, by the way, are some of the many benefits that the CAFTA brings and that give El Salvador an opportunity to be a leader in creating a positive rule of law environment for business.

- And, help ensure that the benefits of rule of law and constitutional processes are more broadly shared and understood throughout our societies.

Sounds great, right? So what do we do about it?

In our view, the business community has been far too silent for far too long on the subject of the rule of law. We've left the field to the academics, the unions, and the NGO's. But while these groups do admirable, essential work related to marginalized populations, access to justice, and social inclusion – critically important areas - they don't necessarily focus on those aspects of the rule of law that go into a productive business environment. And arguably, they avoid them altogether.

It's up to business to foster a conducive rule of law environment for investment by bringing its focus to bear on the topic. We are beginning to do that at the U.S. Chamber and AACCLA by bringing companies together in the Coalition for the Rule of Law in Global Markets.

Too often, companies cope with rule of law challenges completely on their own. The circumstances are usually sensitive and company-specific, with significant political and/or economic risk involved. Especially where substantial fixed investments are involved they can't afford to blow the

whistle. Our role is to bring these companies together, show them the common threads in the challenges they face, and work collectively to bring the leverage of the private sector to bear on the governance deficiencies that undermine the rule of law, and on those who abuse their position to exploit them.

As a first step in developing that collective leverage, we are carefully examining how rule of law is measured and who is doing the measuring. Our goal is to show where these measurements can and should be adjusted to fully reflect the impact of rule of law on the business community.

Let's take an example: a hypothetical NGO publishes a ranking of Western Hemisphere countries on rule of law performance. The NGO bases its measurements on responses to a series of questions it poses to acknowledged local experts. Those questions might be: What percentage of violent crimes go unprosecuted? Are defendants invariably represented by counsel in judicial proceedings? Are judges appointed without regard to their private political views?

These may or may not be important questions to ask, but they do not in my view provide a prospective investor with a clear sense of how a country measures on the business-critical rule of law factors, namely, transparency, predictability, stability, accountability, and due process. And I would suggest that many of the measurements that are currently being performed by multilaterals and NGOs do not necessarily address these factors to the degree necessary to be truly useful to investors.

### Conclusion

In conclusion, it is incumbent upon the business community to create a voice for itself that focuses on rule of law and the business environment. Through the efforts of the U.S. Chamber and AACCLA, we are trying to be that voice and we look forward to working with all willing partners in the region to accomplish that objective.

Thank you.