

**H.R. _____, THE GLOBAL INVESTMENT IN
AMERICAN JOBS ACT OF 2013**

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING,
AND TRADE
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

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**H.R. ———, THE GLOBAL INVESTMENT IN
AMERICAN JOBS ACT OF 2013**

THURSDAY, APRIL 18, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:33 a.m., in room 2322 of the Rayburn House Office Building, Hon. Lee Terry (chairman of the subcommittee) presiding.

Members present: Representatives Terry, Lance, McKinley, Pompeo, Kinzinger, Johnson, Long, Schakowsky, McNerney, and Barrow.

Staff present: Charlotte Baker, Press Secretary; Kirby Howard, Legislative Clerk; Nick Magallanes, Policy Coordinator, CMT; Brian McCullough, Senior Professional Staff Member, CMT; Andrew Powaleny, Deputy Press Secretary; Shannon Weinberg Taylor, Counsel, CMT; Michelle Ash, Democratic Chief Counsel; Jacqueline Cohen, Democratic Senior Counsel; and Will Wallace, Democratic Policy Analyst.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. So welcome, everybody. Good morning to our panelists and guests. The purpose of today's hearing is to highlight the importance of foreign direct investment in the United States and learn more from our experts on how lowering barriers to foreign investment in our country can have significant benefits for our economy as a whole. I hate to steal the undersecretary's thunder, but his testimony lays out some of the facts that deserve being mentioned more than once.

In 2010 U.S. affiliates of foreign firms employed over 5.3 million workers—as I understand, that is now 5.6 as of today—and the average salaries are 77,000 per year. These firms accounted for 41.3 billion worth of research and development efforts and 149 billion worth of capital expenditures in that same year. In the manufacturing sector alone, FDI inflows were nearly 84 billion in 2012, according to the National Association of Manufacturers.

These statistics tell us a clear story: increasing capital in the form of direct foreign investment has positive effects on manufacturing, increased exports, job creation, and U.S. competitiveness. It is just that simple.

Unfortunately, these rosy statistics fail to tell the whole story. Foreign direct investment in the United States has fallen drastically over the last few years, relative to other nations. According to the testimony we will hear today from the organization for international investment, the U.S. share of foreign direct investment has dropped from 41 percent in '99 to 17 percent in 2011.

The reality is that, while the U.S. remains an economic leader, the other nations are catching up. The statistic I just mentioned is indicative of that. Companies want to manufacture in a country where there is fair corporate tax code, a high degree of regulatory certainty, and a set of policies that welcome investments into the country.

The United States can't rest on its laurels. We need to take a hard look at some of our national policies and assess whether they are stunting our ability to attract companies to the U.S. that have proven they create jobs and will help grow our economy. The legislation that we will be introducing in the following days, the Global Investment in American Jobs Act of 2013, is just the first step in that process.

Given what we will learn in today's hearing from a panel of experts—and we have heard in our last three meetings focused on manufacturing that this should be a no-brainer. Investing in American jobs is not a partisan issue when companies like Toyota and Honda choose to open up manufacturing facilities in Kentucky or Texas or Tennessee or Ohio or South Carolina or Georgia. Notice Nebraska wasn't on there. Neither was Illinois, so there is room for improvement.

Ms. SCHAKOWSKY. Yes.

Mr. TERRY. We heard from some of our executives just last week that when they opened the doors, thousands of jobs were created directly and indirectly. Local, state, and federal tax revenues went up not because marginal rates went up but because the economies in those cities and States grew and more people are working. We heard from these companies and how they helped change the communities they became part of, contributing through outreach programs like workforce training and charitable giving.

If our legislation, the Global Investment in American Jobs Act of 2013, can succeed in highlighting what the U.S. needs to do to and attract more of our great companies to our shores, then it is a win-win for every American and workers.

The U.S. can still be one of the most much attractive places in the world to invest capital. We have a large and affluent consumer base, a strong rule of law when it comes to intellectual property, and one of the best and most productive workforces in the world. It is my hope that today's hearing can help us highlight some areas where barriers on foreign direct investment currently exist so that we can build upon the positives I just mentioned and not only compete for but win the opportunities for foreign direct investment.

I want to thank all of our panelists for coming here today and especially Mr. Sanchez. Thank you for being here as well. You are a key part of this effort and have done well.

[The prepared statement of Mr. Terry follows:]

PREPARED STATEMENT OF HON. LEE TERRY

Good Morning and welcome to our panelists and other guests. The purpose of today's hearing is to highlight the importance of Foreign Direct Investment in the United States, and learn more from the experts on how lowering barriers to foreign investment in our country can have significant benefits for the economy as a whole.

I hate to steal Under Secretary Sanchez's thunder-but his testimony lays out some facts that deserve being mentioned twice. In 2010—U.S. affiliates of foreign firms employed over 5.3 million workers making an average of \$77,000 per year. These firms accounted for \$41.3 billion worth of Research and Development efforts and \$149 billion worth of capital expenditures that same year. In the manufacturing sector alone, FDI inflows were nearly \$84 billion in 2012, according to the National Association of Manufacturers.

These statistics tell a clear story: increasing capital in the form of direct foreign investment has positive effects on manufacturing, increased exports, job creation and U.S. competitiveness. It is just that simple.

Unfortunately, these rosy statistics fail to tell the whole story. Foreign direct investment in the United States has fallen drastically, relative to other nations. According to testimony we will hear today from the Organization for International Investment, the U.S. share of foreign direct investment has dropped from 41% in 1999 to 17% in 2011.

The reality is that, while the U.S. remains an economic leader, other nations are beginning to catch up. The statistic I just mentioned is indicative of that. Companies want to manufacture in a country where there is a fair corporate tax code, a high degree of regulatory certainty and a set of policies that welcome investments into the economy.

The United States cannot rest on its laurels. We need to take a hard look at some of our national policies and assess whether they are stunting our ability to attract companies to the U.S. that have proven they create jobs and help grow our economy. The legislation that I will be introducing in the following days, the Global Investment in American Jobs Act of 2013, is the first step in this process.

I hope that every member of this subcommittee, on both sides, will be willing to cosponsor this legislation. Given what we will learn in today's hearing from our panels of experts and what we have heard in our last three hearings focused on manufacturing, it should be a "no-brainer."

Investing in American Jobs is not a partisan issue-when companies like Toyota and Honda choose to open up manufacturing facilities in Tennessee and Kentucky and Ohio and South Carolina-we all win. We heard from some of their executives just last week. When they opened their doors, thousands of jobs were created, directly and indirectly. Local, state and federal tax revenues went up—not because marginal rates went up—but because the economies in those cities and states grew and because more people were working. We heard from these companies how they helped change the communities they became a part of—contributing through outreach programs like workforce training and charitable giving.

If my legislation, the Global Investment in American Jobs Act of 2013, can succeed at highlighting what the U.S. needs to do to keep attracting more great companies to our shores, then it is a win for every U.S. worker.

The U.S. can still be one of the most attractive places in the world to invest capital. We have a large and affluent consumer base, a strong rule of law when it comes to intellectual property and one of the best and most productive workforces in the world.

It is my hope that today's hearing can help us highlight some areas where barriers on foreign direct investment currently exist-so that we can build upon the positives I just mentioned and not only compete for, but win, opportunities for more foreign investment.

#

[The discussion draft follows:]

[DISCUSSION DRAFT]113TH CONGRESS
1ST SESSION**H. R.** _____

To direct the Secretary of Commerce, in coordination with the heads of other relevant Federal departments and agencies, to conduct an interagency review of and report to Congress on the global competitiveness of the United States in attracting foreign direct investment.

IN THE HOUSE OF REPRESENTATIVES

_____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To direct the Secretary of Commerce, in coordination with the heads of other relevant Federal departments and agencies, to conduct an interagency review of and report to Congress on the global competitiveness of the United States in attracting foreign direct investment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Global Investment in
5 American Jobs Act of 2013”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) It remains an urgent national priority to
4 improve economic growth and create new jobs.

5 (2) National security requires economic
6 strength and global engagement.

7 (3) Businesses today have a wide array of
8 choices when considering where to invest, expand, or
9 establish new operations.

10 (4) Administrations of both parties have con-
11 sistentlly reaffirmed the need to promote an open in-
12 vestment climate as a key to domestic economic
13 prosperity and security.

14 (5) The United States has historically been the
15 largest worldwide recipient of global investment but
16 has seen its share of inbound global investment de-
17 cline in recent years.

18 (6) The United States ranks 34th among 55
19 countries in the Organization for Economic Coopera-
20 tion and Development's 2012 Regulatory Restrictive-
21 ness Index, which measures each country's openness
22 to foreign direct investment.

23 (7) Governors and mayors throughout the
24 United States face increasing competition from other
25 countries as they work to recruit investment from
26 global companies.

1 (8) Foreign direct investment can benefit the
2 economy and workforce of every State and Common-
3 wealth in the United States.

4 (9) According to the latest Federal statistics,
5 the United States subsidiaries of companies
6 headquartered abroad contribute to the United
7 States economy in a variety of important ways, in-
8 cluding by—

9 (A) providing jobs for nearly 5,300,000
10 Americans, with average compensation that is
11 approximately 33 percent higher than the na-
12 tional private-sector average, as these jobs are
13 often in high-skilled, high-paying industries;

14 (B) strengthening the United States indus-
15 trial base and employing nearly 17 percent of
16 the United States manufacturing sector work-
17 force;

18 (C) establishing operations in the United
19 States from which to sell goods and services
20 around the world, thereby producing nearly 18
21 percent of United States exports;

22 (D) promoting innovation with more than
23 \$41,000,000,000 in annual United States re-
24 search and development activities;

1 (E) paying nearly 14 percent of United
2 States corporate income taxes; and

3 (F) purchasing more than
4 \$1,800,000,000,000 in domestic goods and
5 services annually from local suppliers and small
6 businesses, amounting to 80 cents for every dol-
7 lar spent on input purchases.

8 (10) These companies account for 4.5 percent
9 of United States private sector Gross Domestic
10 Product.

11 (11) The Department of Commerce has initia-
12 tives in place to increase global investment.

13 (12) The President issued a statement in 2011
14 reaffirming the longstanding open investment policy
15 of the United States and encouraged all countries to
16 pursue such a policy.

17 (13) The President signed an Executive order
18 in 2011 to establish the SelectUSA initiative and ex-
19 panded its resources and activities in 2012, so as to
20 promote greater levels of business investment in the
21 United States.

22 (14) The President's Council on Jobs and Com-
23 petitiveness in 2011 recommended the establishment
24 of a National Investment Initiative to attract

1 \$1,000,000,000,000 in new business investment
2 from abroad.

3 (15) In 2012, the United States and the Euro-
4 pean Union developed a set of principles aimed at
5 promoting a more open climate for international in-
6 vestment and intended as a model for countries
7 around the world.

8 (16) Maintaining the United States commit-
9 ment to open investment policy encourages other
10 countries to do the same and enables the United
11 States to open new markets abroad for United
12 States companies and their products.

13 **SEC. 3. SENSE OF CONGRESS.**

14 It is the sense of Congress that—

15 (1) the ability of the United States to attract
16 inbound investment is directly linked to the long-
17 term economic prosperity, competitiveness, and secu-
18 rity of the United States;

19 (2) in order to remain the most attractive loca-
20 tion for global investment, Congress should be mind-
21 ful of the potential impact upon the ability of the
22 United States to attract foreign direct investment
23 when evaluating proposed legislation;

1 (3) it is a top national priority to enhance the
2 competitiveness, prosperity, and security of the
3 United States by—

4 (A) removing unnecessary barriers to in-
5 ward global investment and the jobs that it cre-
6 ates throughout the United States; and

7 (B) promoting policies to ensure the
8 United States remains the premier destination
9 for global companies to invest, hire, innovate,
10 and manufacture their products; and

11 (4) while foreign direct investment can enhance
12 our economic strength, policies regarding foreign di-
13 rect investment should reflect national security inter-
14 ests.

15 **SEC. 4. FOREIGN DIRECT INVESTMENT REVIEW.**

16 (a) REVIEW.—Not later than ____ days after the
17 date of enactment of this Act, the Secretary of Commerce,
18 in coordination with the Federal Interagency Investment
19 Working Group and the heads of other relevant Federal
20 departments and agencies, shall conduct an interagency
21 review of the global competitiveness of the United States
22 in attracting foreign direct investment.

23 (b) SPECIFIC MATTERS TO BE INCLUDED.—The re-
24 view conducted pursuant to subsection (a) shall include
25 a review of—

1 (1) the current economic impact of foreign di-
2 rect investment in the United States, with particular
3 focus on manufacturing, research and development,
4 trade, and jobs;

5 (2) trends in global cross-border investment
6 flows and the underlying factors for such trends;

7 (3) United States policies that are closely linked
8 to the ability of the United States to attract and re-
9 tain foreign direct investment;

10 (4) ongoing Federal Government efforts to im-
11 prove the investment climate, reduce investment bar-
12 riers, and facilitate greater levels of foreign direct
13 investment in the United States;

14 (5) innovative and noteworthy State, regional,
15 and local government initiatives to attract foreign in-
16 vestment; and

17 (6) initiatives by other countries in order to
18 identify best practices in attracting foreign direct in-
19 vestment.

20 (e) LIMITATION.—The review conducted pursuant to
21 subsection (a) shall not address laws or policies relating
22 to the Committee on Foreign Investment in the United
23 States.

24 (d) COMMENT PERIOD.—Prior to conducting the re-
25 view under subsection (a), the Secretary shall publish no-

1 tice of the review in the Federal Register and shall provide
2 an opportunity for public comment on the matters to be
3 covered by the review.

4 (e) REPORT TO CONGRESS.—Upon completion of the
5 review conducted pursuant to subsection (a), the Secretary
6 shall report to Congress the findings of the review and
7 recommendations for making the United States more com-
8 petitive in attracting global investment without under-
9 mining fundamental labor, consumer, or environmental
10 protections.

Mr. TERRY. So I yield back the rest of my time and now recognize that Ranking Member, Ms. Jan Schakowsky.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I am hoping that we can keep our run of bipartisan hearings and work. We have got a good string going so far. And I thank you for holding this hearing on draft legislation to attract further foreign investment in the United States.

I welcome the witnesses, especially Mr. Sanchez, this morning as our first panelist and look forward to all of the testimony.

In the interest of promoting good jobs and overall economic growth, I agree that we should consider ways to increase investment in this country, both domestic and foreign. The United States is the global leader in attracting foreign direct investment. There is more foreign direct investment in America than anywhere else, and we are consistently ranked as number one of the easiest places to do business.

There is a strong incentive to invest in America. Our economy is continuing to recover from the Great Recession and we remain the best place on Earth to find talented, motivated employees. In order to access all that our country has to offer, foreign investors know that they will be required to meet labor, health, environmental, and consumer standards. Strong standards protect workers in the communities in which these foreign investments occur, and they are essential for long-term economic growth in this country.

Our economy is built on the middle class and those who aspire to it, and it is imperative that our attempts to expand foreign investment strengthen rather than undermine worker protections, compensation, and job security. Just as the best American companies observe high labor standards, so must foreign investors understand that a well-compensated and well-protected workforce will drive the future growth of their corporations and our overall economy. It is imperative that foreign investors respect our local, state, and federal environmental protections.

I believe that climate change is the greatest challenge we face as a planet and as a Nation. Reducing greenhouse gas emissions, protecting our waterways from harmful toxins and chemicals, and shifting toward cleaner energy sources is essential if we are to thrive for generations to come. Our effort to encourage foreign direct investment should align with our efforts to combat climate change and help us transition to a clean energy future.

Finally, it is essential that we maintain restrictions on former foreign investment and industries that are critical to public safety, national security, and a strong domestic workforce. Those restrictions help ensure the safety of the American people and the security of American jobs.

I have listed some of the things that I am concerned about on foreign investment, but I look forward to hearing from our witnesses about how we can continue to drive foreign direct investment in the United States that promotes good jobs, a clean environment, and the security of the American people.

And I want to yield the balance of my time to Mr. Barrow.

Mr. BARROW. I thank the ranking member for her time. I appreciate it.

I cosponsored this bill in the last Congress because it is a step in the right direction to grow American jobs. Every time I go home, I am reminded how investors overseas can spur jobs here at home by tapping into the infrastructure and workforce we have right here in America. Belgian companies like Solvay in Augusta, French companies like Alstom in Waynesboro, and Irish companies like Covidien in Augusta can invest in any country in the world. They are proud to invest in Georgia's 12th District. And the families that work for them take just as much pride in their work.

We have the best workers in the world and we like it when companies all over the world compete for workers in Georgia. I will continue supporting job-creating efforts like this, and I look forward to today's hearing.

With that, I yield back the balance of my time.

Mr. TERRY. Very good. No other requests for opening statements. Mr. Sanchez, we will recognize you for 5 minutes.

STATEMENT OF FRANCISCO J. SANCHEZ, UNDERSECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE

Mr. SANCHEZ. Chairman Terry, thank you very, very much. Ranking Member Schakowsky, distinguished members—is that better?

Mr. TERRY. Yes.

Mr. SANCHEZ. Oh, that is a lot better. Distinguished members of the committee, thank you very much for inviting me to speak to you today about the Department of Commerce's work to attract and retain business investment in the United States.

With your permission, Mr. Chairman, I will summarize my statement and submit my full testimony for the record.

Mr. TERRY. Thank you.

Mr. SANCHEZ. Thank you, Mr. Chairman.

At the outset, I want to thank the committee and the members of the House who have introduced legislation focusing on global investment. This is a clear recognition of how important the role that foreign direct investment plays in strengthening our economy. Such an effort reinforces a very simple truth: that, as a free market economy, the United States encourages investment from both domestic and foreign sources and that this investment leads to economic growth and job creation.

In 2010, which was until this morning the latest available data we had, U.S. subsidiaries of foreign-owned firms employed 5.3 million U.S. workers. As Chairman Terry just recognized, that number now is up to 5.6 million. And what is really important, I think, is that these are high-paying jobs with an average compensation of over \$77,000 per year. And these firms also spend tens of billions of dollars expanding their facilities, purchasing equipment, and investing in research and development that keeps our economy at the cutting edge of innovation.

So the bottom line: increasing the investment of attracted and retained investment to the U.S. is absolutely critical to growing our

economy. And the good news is that the United States is the world's largest recipient of foreign direct investment. Companies from around the world choose to do business here in the United States and take advantage of the unparalleled business climate, which includes our innovative and stable market, a skilled and well-educated workforce, strong intellectual property rights protection and enforcement, and a stable regulatory climate.

In addition, the United States has trade agreements with 20 markets, giving firms with U.S. operations access to a global marketplace. In short, the U.S. is a great place to do business.

Nevertheless, as the chairman pointed out, economies worldwide, as they open up and liberalize, we are now faced from these other economies increased competition to attract new investment projects and retain existing ones. Our States, regions, and local communities need a federal advocate to help win new investments because we are now competing with at least 159 countries that have investment promotion programs, and on average these programs spend about \$58 million annually.

In this new climate, the U.S. needs to be actively engaged in foreign direct investment, making SelectUSA a valuable initiative. President Obama launched SelectUSA in 2011, as a first-ever U.S. government-wide initiative to promote and facilitate business investment in the United States. SelectUSA's unique services complement States' efforts and provide federal information and ombudsman services to firms seeking to invest, seeking to remain here, seeking to expand or, in many cases now, return to the United States. And this work is generating results.

Since June 2011, SelectUSA has responded to over 600 investor inquiries, assisted with over 100 ombudsman cases, and counseled nearly 140 U.S. cities, States, and regions. And that is just the start. We aim to build on this momentum in a variety of ways. One vehicle will be for SelectUSA to host an investment summit from October 31 to November 1 right here in Washington D.C. The SelectUSA investment summit is designed to highlight the benefits of the U.S. business climate to investors and help them engage with U.S. economic development organizations.

In addition, SelectUSA will work to keep pace with the increase in investment, inquiries, cases, and, we hope, many successes. It will also continue to leverage the partnerships and relationships that we have with other federal agencies, as well as creating new ones. The Commerce Department will continue do all that it can to attract and retain business investment.

I want to take a moment to thank the other agencies that have been diligently working to strengthen this initiative, and I want to thank you again for the opportunity to discuss this important topic. I welcome your questions.

[The prepared statement of Mr. Sanchez follows:]

**Testimony of Under Secretary of Commerce for International Trade
Francisco Sánchez
On Foreign Direct Investment and SelectUSA
for a hearing
Before the House Energy and Commerce Subcommittee on Commerce, Manufacturing &
Trade
April 18, 2013**

Introduction

Chairman Terry, Ranking Member Schakowsky, and members of the Committee, thank you for the opportunity to speak to you today about the Department of Commerce's work on attracting and retaining business investment in the United States. The United States has a longstanding open investment policy that includes a free market economy and encourages investment from sources both domestic and foreign. Therefore it is no surprise that the United States is the world's largest recipient of foreign direct investment (FDI).¹ However, as economies worldwide continue to open up and liberalize, we face increased competition to attract new investment projects and retain existing ones. Our states, regions, and local communities need a federal level advocate to help win these projects that lead to job creation and economic prosperity for our nation.

My remarks focus on three critical aspects of FDI: 1) its impact on the U.S. economy and the need for a national level investment promotion initiative; 2) the Administration's efforts to promote the U.S. open investment policy through SelectUSA – a program located in the Department of Commerce's International Trade Administration (ITA); and 3) opportunities and

¹ According to the U.N. Conference on Trade and Development (UNCTAD) and based on the latest available 2011 data, the United States is the largest recipient of FDI in the world in both stock and flow. The share of FDI inward flows captured by the United States has declined from approximately 45 percent in the 1980s to about 15 percent in 2012. (<http://unctadstat.unctad.org/TableViewer/tableView.aspx>).

challenges the United States must prepare for to remain a top destination for business investment.

The Need for a National-Level Investment Promotion Initiative

Direct investment in the United States leads to economic growth and job creation. In 2010, U.S. affiliates of foreign firms employed over 5.3 million U.S. workers with average compensation of over \$77,000 per year. Those firms were responsible for tens of billions of dollars of research and development (\$41.3 billion) and spending on fixed assets like manufacturing plants and equipment (\$149 billion). Approximately one-fifth (or 18 percent) of all U.S. goods exports come from U.S. subsidiaries of foreign firms. At the end of 2011, the \$2.5 trillion stock of FDI in the United States was equivalent to nearly 17 percent of U.S. GDP. In 2012 alone, nearly \$168 billion in FDI flowed into the United States.

Companies from around the world choose to do business in the United States and take advantage of its unparalleled business climate. The United States is an innovative and stable market, with the world's largest economy. It boasts sophisticated industry clusters, first-class research and development centers, a skilled and well-educated workforce, strong intellectual property rights protection and enforcement, and a stable regulatory climate. In addition, the United States has free trade agreements entered into force with 20 markets, giving firms with U.S. operations access to a global marketplace.

While there are countless reasons to invest in the United States and companies choose to locate their operations on our shores every day, global capital mobility has led to greater competition for investment and jobs, and the U.S. share of global FDI flows has decreased from 45 percent in the early 1980s to about 15 percent in 2012. Today, firms enjoy increased capital

mobility and face heightened commercial competition to pursue cost-effective operating locations that offer access to suppliers as well as customers. And, they have more location options than ever — compelling U.S. state and local governments to dedicate efforts to attract investment to our shores.

Despite this increase in competition—and the corresponding decrease in the U.S. share of FDI—the United States has been among only a handful of countries without a dedicated national-level investment promotion initiative. The membership list of the World Association of Investment Promotion Agencies identifies 159 economies around the world with an investment promotion agency (IPA) that actively markets its nation as an investment destination. Competitor national governments, with economies much smaller than our own, spend an average of \$58 million each year – with an average of 167 dedicated staff – on promoting their economies for direct investment.²

An investment promotion initiative is an important governmental function to promote a nation, state, or local region for business investment. Such an initiative helps investors utilize public services available to firms that seek to create jobs and grow the economy of the location. Successful national-level IPAs consist of an effective combination of authorities, resources, and personnel to serve three major roles: a) provide consultation and ombudsman services to current and potential investors, b) serve as a point of coordination for resources available at the national, sub-national, and local levels, and c) monitor and report federal policies and their impact on the nation's overall investment climate.

As the competition for cross-border investment increases, the United States needs to proactively protect its leadership position and ensure that it remains a destination of choice for

² SelectUSA analysis of IPAs in Australia, Brazil, Canada, France, Germany, Ireland, Netherlands, Spain, and the United Kingdom

firms worldwide. This is especially critical now – particularly in the manufacturing sector – as there are important positive trends (e.g. increased worker productivity and relatively low energy prices) that make the United States an attractive market for long term investment. We need to take full advantage of these trends and help state and local efforts to promote the United States for business investment.

That is why the President is requesting \$20 million in the FY 2014 Budget for SelectUSA—to develop a competitive national investment attraction program, with increased staff both at Commerce headquarters in Washington, D.C. and stationed around the world working on attracting investment, and fully leveraging our commercial foreign service and our embassies abroad. As a fully funded investment promotion program, SelectUSA can ensure that the Federal government is taking an active role in attracting and retaining business investment, recognizing the need to compete with efforts undertaken by other nations. SelectUSA will also serve as a critical partner to support U.S. economic development organizations’ (EDOs) business attraction, retention, and expansion efforts, encourage regional cooperation and level the global competition they face.

The SelectUSA Initiative

In order to promote the U.S. open investment policy and to provide a federal level resource for firms and U.S. economic development organizations, President Obama launched the SelectUSA Initiative in 2011 by Executive Order as the first-ever U.S. Government-wide initiative to promote and facilitate business investment in the United States. SelectUSA provides uniquely federal information and ombudsman services to firms seeking to invest, remain, expand, or return to the United States. In addition, it serves as a federal-level partner, advocate,

and resource for U.S. cities, states, and regions seeking to attract and retain investment.

Exercising strict geographic neutrality, SelectUSA provides support to U.S. EDOs, and state and local governments in their investment promotion efforts.

SelectUSA provides key services to U.S. EDOs and firms, including: EDO counseling, ombudsman assistance, investment advocacy, and information assistance.

- ***EDO Counseling:*** SelectUSA staff helps EDOs develop and implement their investment attraction and retention strategies. SelectUSA counsels EDOs on FDI trends, effective outreach methods tailored for specific overseas sources of investment, best practices, and marketing strategies to promote their location to foreign investors.
- ***Ombudsman:*** Working across the Federal government, SelectUSA helps investors navigate the wide range of federal regulatory issues. Through its ombudsman function, SelectUSA can: contact a federal agency or office to get answers about a specific case; facilitate direct communication with the relevant federal agency and the investor if necessary; and raise awareness with key policymakers about processes that may adversely impact the climate for FDI in the United States. Working with SelectUSA, investors and U.S. EDOs can develop a better understanding of how to navigate and comply with the U.S. regulations.
- ***Investment Advocacy:*** At the request of a U.S. state or local government, SelectUSA can help promote the United States as an investment destination to potential investors in on-going projects that may be at risk or that face international competition. SelectUSA maintains strict geographic neutrality and serves as a federal-level complement to the efforts of these EDOs and state or local governments.

- **Information Assistance:** SelectUSA serves as a resource for potential investors, providing information on the benefits of establishing operations, Federal standards, rules, regulations. SelectUSA also helps firms understand resources such as workforce training, research and development grants, loans and other programs.

SelectUSA's Progress and Upcoming Initiatives

Since its inception, SelectUSA has worked to fulfill a critical role to support business investment in the United States. Through SelectUSA, the United States works to effectively compete with the investment promotion efforts conducted at the national level by our competitor economies. Moreover, the United States should strive to win a higher share of investments by signaling to both domestic and foreign investors that the Federal Government is a partner when it comes to making global location decisions. If we want to win a higher share of these investment decisions, we need to be in the game.

Since launching in 2011, SelectUSA has worked with a limited budget and leveraged resources across the U.S. Government to reach impressive milestones. As of early April 2013, SelectUSA has responded to 622 investor inquiries, assisted with 103 ombudsman cases, and counseled nearly 140 U.S. cities, states, and regions. The following is a recent example of how SelectUSA has helped facilitate investment in the United States.

In August 2012, Voestalpine Metal Forming (Voestalpine), Austria's largest steelmaker, and a manufacturer of auto parts announced plans to invest in an automotive components plant in Cartersville, Georgia, which according to Voestalpine will create 220 jobs. The Department of Commerce's U.S. & Foreign Commercial Service (US&FCS) overseas staff at the U.S. Embassy in Austria began engaging Voestalpine in 2007 by providing a comprehensive counseling session

concerning the planned greenfield investment by the Automotive Division of Voestalpine in the United States. At the firm's request, SelectUSA connected Voestalpine with relevant contacts for the U.S. states and regions the firm was interested in as potential investment destinations, including the State of Georgia's European Office in Munich. US&FCS staff in Austria held ongoing meetings with the firm's investment project manager to provide counseling on various aspects of investing in the United States. The U.S. Ambassador to Austria, Hon. William C. Eacho, also met with the firm's leadership and advocated for its investments to be made in the United States. Additionally, in part as a result of the assistance provided on the Georgia automotive components project, Voestalpine engaged SelectUSA and US&FCS staff in Austria for guidance on a new metal reduction facility and last month, the company announced its plans to establish a plant in Corpus Christi, Texas which is expected to be in production by 2016.³

AGS Automotive, an auto parts company that participated in the January 2012 Insourcing Forum, announced a \$21 million investment that the company states will create 90 new jobs and support 50 existing jobs in Flint, Michigan.⁴ SelectUSA provided comprehensive information on the U.S. business climate, facilitated connections between the company and the Michigan Economic Development Corporation, and provided ongoing support and information to the firm as it conducted its due diligence. Additionally, the US&FCS staff in Toronto organized an investment promotion event and roundtable with U.S. Ambassador to Canada David Jacobson, which facilitated AGS contacts with Michigan officials and invited the company to attend the President's Export Council meeting in Detroit, MI. AGS executives have stated that despite

³ <http://www.bloomberg.com/news/2013-03-13/voestalpine-choses-texas-for-record-718-million-pellet-plant.html>

⁴ <http://www.craigslist.com/article/20120604/FREE/120609958>

their familiarity with and connections to the U.S market, “SelectUSA’s involvement encouraged a timely response from Michigan agencies, which favored the investment being made in Michigan.” AGS was also considering Ontario, Canada as a possible location.

Challenges and U.S. Strengths

While the United States remains the most appealing business environment in the world, there are some challenges – both real and perceived – to investing in the United States. In working with clients, SelectUSA and our partner agencies have learned that there are specific areas that impact foreign companies’ interest in investing in the United States. Some areas that pose challenges are the lack of trained workers, and certain investor-related tax and visa issues.

Skilled Workers and Training

Multinational firms are willing to pay competitive wages for qualified labor. In fact, U.S. employees of foreign-owned subsidiaries earned an annual average compensation of \$77,000 in 2011. Businesses in many sectors cite difficulty in finding trained workers in the United States as a challenge to increasing productivity and competitiveness. While the United States boasts a highly educated workforce with a diversity of skills, we struggle to compete with economies with higher levels of worker mobility and support for technical training opportunities. SelectUSA is working with several members of the Federal Interagency Investment Working Group, including the U.S. Department of Defense’s Military Spouse Employment Partnership, to help communities address these gaps through training and workforce strategies. Additionally, SelectUSA is partnering with the U.S. Department of Labor and other Commerce agencies to

support the ‘Make it in America Challenge.’⁵ As a non-funding partner, SelectUSA will work directly with Make it in America grantees and potential investors to offer business solutions and help economic development entities develop and implement their investment strategy.

Investor-Related Tax Issues

SelectUSA frequently refers investors to the U.S. Department of the Treasury to address tax-related issues. The Foreign Account Tax Compliance Act, bilateral taxation treaties, and the uncertainty surrounding the potential 2013 U.S. tax burden that corporations may face, are among the frequently raised concerns.

Business-Related Visas

SelectUSA frequently works with its counterparts at the Department of State to address concerns raised by investors on a variety of business-related visa issues. These include visa wait times and processing delays, communications difficulties with visa authorities, and a general perception that U.S. visa policy is confusing and bureaucratic. Through December 2012, 40 percent of SelectUSA ombudsman cases have involved business-related visa issues. A majority of these cases cited processing delays as the main concern. SelectUSA is working with the Department of State to address these concerns and respond effectively to business-related visa cases.

⁵ A joint Commerce and Labor grant program of \$40 million in competitive grant funding.
<http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge>

The Immigrant Investor Program

SelectUSA engages with various components of the U.S. Department of Homeland Security, including U.S. Citizenship and Immigration Services (USCIS) to ensure timely responses to SelectUSA clients and identify any other issues with respect to USCIS's Immigrant Investor Program, also known as EB-5. The EB-5 program encourages the investment of private capital by foreign nationals to enhance U.S. economic development and job creation. SelectUSA and USCIS are working together to identify ways to enhance the EB-5 program and maximize its job-creating potential.

International Investors' Entry/Exit Experience at U.S. Borders

Investors and technical experts traveling to the United States in order to evaluate and successfully execute their investment projects report difficulties during their entry and exit experience at U.S. borders. In an effort to ease the entry experience for investors, SelectUSA is working with U.S. Customs and Border Protection to discuss expanding Global Entry Program eligibility to SelectUSA's 25 initial markets, which generate 90 percent of the FDI flow into the United States.

Free Trade Agreements and Bilateral Investment Treaties

While SelectUSA and our partners work to address these challenges, SelectUSA also recognizes that there are many factors that make the United States an ideal investment location. In addition to the U.S. open investment policy and highly educated workforce, firms can take advantage of numerous Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs).

Bilateral and multilateral FTAs with comprehensive investment chapters as well as BITs enhance the investment climate. Clearly defined rules and standards related to trade and investment not only create a predictable environment but also encourage investment from export-oriented industries. Considering that nearly one-fifth of all U.S. exports come from U.S. subsidiaries of foreign-owned firms, SelectUSA promotes the negotiation and implementation of BITs and FTAs with comprehensive investment chapters to help grow investment in the United States, develop market-oriented policies in partner countries, and ultimately promote U.S. exports.

2013 SelectUSA Investment Summit

Finally, I am pleased to announce that the SelectUSA Investment Summit will be held October 31 – November 1, 2013 in Washington D.C. The SelectUSA Investment Summit will bring together investors from the United States and around the world with U.S. EDOs and other key stakeholders to both highlight the benefits of the U.S. business climate to investors and create an unparalleled environment for match-making between investors and economic development organizations.

Conclusion

SelectUSA is still a young program, but it has already shown tangible wins through its work with EDOs and firms looking to invest in the United States. However, if the U.S. is going to be serious about competing with other countries for globally mobile capital investment, we need a world class national-level investment initiative. Implementing this vision will require an increase in funding, consistent with the President's FY 2014 Budget request of \$20 million.

The demand for the services that SelectUSA provides has been steadily growing, and it is imperative that we as a country demonstrate our commitment to attracting and retaining business investment. The dedicated staff of SelectUSA will continue to diligently work with firms and U.S. EDOs, leveraging the partnerships and relationships with other federal agencies as well as work on creating new ones. We have recognized from the launch of SelectUSA that a successful investment initiative requires a government-wide effort, and to that end I want to thank the other agencies that have been diligently working to strengthen this initiative, including the Departments of State, Treasury, Homeland Security and the Office of the United States Trade Representative, just to name a few. I appreciate the opportunity to discuss this important topic. Given the critical role that FDI will continue to play in our economic growth, we must continue to work together to preserve our competitiveness and ensure that the United States remains the best place to invest. Thank you.

Mr. TERRY. Thank you very much.

At this point we will start our questions, and I really do appreciate you being here.

Mr. SANCHEZ. Thank you, Mr. Chairman.

Mr. TERRY. It means a lot to us. And so your statement was very strong about the need and the importance of direct foreign investment, and I appreciate the strength of that statement.

So you agree that we should take a look at approaches to make U.S. more competitive in attracting these foreign companies to invest here? That is your mission, right?

Mr. SANCHEZ. That is part of our mission is to make sure we maintain a competitive business climate.

Mr. TERRY. Does the Commerce Department currently have any expertise in evaluating policies that affect our competitiveness in the world marketplace in attracting foreign investment?

Mr. SANCHEZ. One of the things that the International Trade Administration has—and that is the business unit that I have the privilege of overseeing—is manufacturing services. And it does a lot of outreach to our business sectors. And so we are constantly interacting with them, getting feedback from them on what is working and what is not working. And we try to keep that dialogue going constantly, and as we learn that, share it with relevant agencies.

Mr. TERRY. So with that type of collaboration you feel comfortable that you could provide us with a study of where we can improve or remove barriers?

Mr. SANCHEZ. Well, we are not the only agency that can contribute to that, but we certainly have a lot to say on it and we would welcome the opportunity to be a part of that dialogue.

Mr. TERRY. I appreciate that. Now, if a study like this is undertaken, who would you rely on in your staff to help piece this together?

Mr. SANCHEZ. Well, we have a number of—

Mr. TERRY. Is he sitting here today, or she?

Mr. SANCHEZ. I think part of that team—

Mr. TERRY. I think the one with the grin is probably, yes—

Mr. SANCHEZ. The one who is feeling the weight of the new task. I am sure part of that team is right here in this room. We would probably draw on a number of people within the International Trade Administration, but I suspect we would want to draw on other relevant business units within the Department of Commerce, including NIST, PTO, Bureau of Economic Analysis, as well as reaching out to other relevant agencies.

Mr. TERRY. Well, I would appreciate that. And 180 days, do you feel that that is an appropriate time period? What is your feedback?

Mr. SANCHEZ. Mr. Chairman, I probably would want to look at the scope of the study before I gave you a specific number, but if Congress mandated us to do that, we would certainly make every effort to provide a good study within the time requested.

Mr. TERRY. Fair. You went through a series of numbers—or the number of countries that we compete with is what, 160 did you say?

Mr. SANCHEZ. Well, there are at least 159 that have active investment promotion programs and the average budget for those programs is about \$58 million.

Mr. TERRY. So did you have any initial beliefs of where we should focus to remove barriers, or become stronger—ways to strengthen our ability to attract the foreign investment in the United States?

Mr. SANCHEZ. As I mentioned in my testimony, we already start with a good attractive business climate. If you look at indicators that are put out by The World Bank, the World Economic Forum, and other groups, we consistently rank most often in the top 5, perhaps sometimes in the top 10, as one of the best places to do business. So we, fortunately, start from a very good place.

One of the things that we have to do, and this is why SelectUSA was launched, is we have to recognize that more and more countries are seeking in foreign investment. And so we can no longer just rest on our laurels, we can no longer just say, look, we are a great place to do business; come. We have to actively promote. And I think that is one of the areas that we need to really pay attention to and that is what SelectUSA seeks to do. And your attention to this legislation into this effort is indicative that you and this committee recognize that.

Mr. TERRY. And in that regard of working in a collaborative way you mentioned in your statement with SelectUSA of working with the States. What do you feel the States' roles are and what have you seen from the experience of trying to attract foreign investment? How are the States doing? What should they be doing better? Who is doing best?

Mr. SANCHEZ. Well, I think—and I believe this is the philosophy of SelectUSA—is that the States have the primary role of promoting foreign direct investment. That has been their role; it should continue to be. SelectUSA should be more of a facilitator, a supporter of those efforts.

So there are things that we are able to do that helps them. For example, SelectUSA is leveraging the offices that the U.S. and Foreign Commercial Service have in 72 countries around the world and 100 cities here in the United States. And that is an important value added that we provide. Most States don't have that kind of coverage. In fact, no State that I know of has that coverage. My home State of Florida has 14 offices abroad and I believe that is the largest grouping of offices that any State has anywhere in the world.

So presence outside of the United States is very important, helping them reach out as we get leads, connecting them to the economic development organizations. So I think these are the kinds of things that we play a very good complementary role with the States.

Mr. TERRY. Thank you very much. And my time is expired. And I now recognize the Ranking Member, Jan Schakowsky.

Mr. SANCHEZ. Thank you, Mr. Chairman.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, and thank you, Mr. Sanchez.

Before I begin our hearing I want to say congratulations. I understand that you are among a short list of candidates being con-

sidered for the United States trade representative and I wish you the very best of luck.

Mr. SANCHEZ. You are very kind. Thank you very much.

Ms. SCHAKOWSKY. I have a question about greenfield investment, new investment versus merger and acquisitions. Preparing for this hearing presented us with some conflicting information. On the one hand, we are told that the reason we need to do this study and to promote foreign direct investment is because the United States is losing investment, as our chairman pointed out, losing investment opportunities to other countries such as Mexico and India, developing countries. I would agree that we should be concerned if that is the case and we need to promote that U.S. is the best place to invest.

Now, the other hand, the most recent data available indicates that 85 percent or more of the foreign direct investment occurs through mergers and acquisitions. So if the vast majority of FDI is used to acquire preexisting United States' businesses that were previously owned by Americans, I am less clear about the benefits.

In many cases, a large foreign firm is expanding into the United States by buying out smaller U.S. businesses. In these situations, the end result is often either the same number of jobs or even somewhat fewer jobs. In fact, a recent study concluded that despite the productivity gain that is associated with foreign ownership, any dollar of foreign direct investment from merger and acquisition sales has a weaker effect on growth than a dollar of foreign investment that stems from greenfield investment, which occurs when an investor builds a new productive unit from scratch.

So my question is, if you could tell me what the Department of Commerce is doing, what you are doing, your administration is doing to distinguish between these two types of foreign direct investment and what changes could be made to the draft legislation so it focuses more intensively on greenfield investment?

Mr. SANCHEZ. Thank you very much, Representative Schakowsky, and again, thank you for your kind words at the start of your question.

SelectUSA starts with the premise that the United States has an open investment environment. And I agree with you that new investment that creates new jobs is very, very appealing and we have had the privilege, through SelectUSA, of working with a number of companies that have made those kinds of investments.

I would also point out, however, that oftentimes there are investments being made acquiring companies that can use that added revenue, or in some cases if they don't get that revenue, those businesses might shut down. And so attracting foreign direct investment that takes over an existing company isn't always a net negative. In many cases it is a net positive. And so we look at it more broadly, that we are attracting investment and that that investment does a number of things. They often buy new equipment. They often expand facilities. They then, in turn, often add to our exports because what they manufacture here often then gets re-exported.

So we will continue to focus on supporting investment here that, our hope is, will add to the net jobs, as most of the foreign direct investment, I believe, has, though I have not had the opportunity

to read this study. And I will do so, and I would appreciate if I could get a copy of that study.

But generally, we focus on helping attract this investment that has all this ripple effect net positive activity for our economy.

Ms. SCHAKOWSKY. Let me get one more question. The Bureau of Economic Analysis at the Department of Commerce is responsible for measuring foreign direct investment. BEA used to carry out a survey of businesses that differentiated between growth and greenfield investment and investment growth from merger and acquisition. In 2008, it had to cancel this survey for budget reasons but the President's 2014 budget proposes to reinstate it. Why not get quickly here—the GAO, NBER, and the National Academy of Public Administration have each recommended that BEA expand its foreign direct investment data and that provided specific recommendations to the Bureau on what parts of its efforts would be most viable to expand.

So I commend the Department of Commerce for seeking to resume this collection. Yes or no, should the Congress appropriate funding for this survey differentiating between Greenfield investment and investment through acquisitions?

Mr. SANCHEZ. As I said, Representative Schakowsky, I have not read this study, though it sounds like you make a compelling argument for taking a hard look at this since we have done in the past through our Bureau of Economic Analysis. And we certainly were closely with the Bureau of Economic Analysis and I would certainly work closely with them to get this information either through their efforts or through other appropriate efforts.

Ms. SCHAKOWSKY. It used to be that regardless of the policy decision we make as a consequence of having this information would inform how we move forward. So I thank you for that.

Mr. SANCHEZ. Thank you.

Ms. SCHAKOWSKY. I yield back.

Mr. SANCHEZ. Thank you very much.

Mr. TERRY. The gentleman from Missouri is now recognized for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman and thank you for being here today.

And Ms. Schakowsky was making reference to a trade position that you may be up for, and trade was one of the few things that we were able to handle in a very good bipartisan fashion in the last Congress up here. So good luck in that endeavor, and if I can be of any assistance to you, I would love to. We got the Columbia, Panama, and Korea Free Trade Agreements done last year that they had not been able to do for 6 or 8 years.

And we also were successful in extending permanent normal trade relations to Russia, which didn't do anything except help our manufacturers. We were already trading with Russia and a lot of people didn't realize that when Russia went into the WTO last July, that if we didn't change some things and change the old Jackson-Vanik law that dated back to the Cold War era—that we needed to get rid of that so that we could help our manufacturers and farmers here at home.

So thank you and good luck on your endeavor there.

Mr. SANCHEZ. Thank you very much, Congressman.

Chairman, would you invite me to come regularly to testify before this committee?

Mr. LONG. I haven't gotten to the bad part.

Mr. SANCHEZ. Yes.

Mr. LONG. I still have time.

Mr. SANCHEZ. Oh, no.

Mr. TERRY. You may want to wait.

Mr. SANCHEZ. Thank you very much.

Mr. LONG. But what is SelectUSA's function with regards to state and local development organizations, and to what extent are the Federal Government's efforts duplicative of the state and regional economic development organizations?

Mr. SANCHEZ. Thank you very much for the question, Congressman.

As I mentioned to Congresswoman Schakowsky, SelectUSA plays a facilitator role and we are very much a demand-driven organization, demand driven largely by state and local governments who seek out our assistance. And so, for example, we have done about 140 consulting engagements with state and local governments in helping them seek out opportunities, work better with the Federal Government on foreign direct investment initiative.

Mr. LONG. And you have done that through SelectUSA?

Mr. SANCHEZ. Yes. SelectUSA, which was stood up in June of 2011, and we have worked with state and local governments from the very start. It really is the cornerstone of how SelectUSA works.

Mr. LONG. Well, I have a personal friend, good friend, that works for the State of Louisiana. I am from Missouri—but for the State of Louisiana in this type of economic development. And my thought was it might be better to allow them to compete than for businesses to handle the promotion and leave the Federal Government out of it. The Federal Government is always overreaching, always trying to do too much. We have the sequester going on and I just question whether this is necessary.

Mr. SANCHEZ. Well, first of all, the State of Louisiana has been a great partner with us. We recently worked on an investment by a South African firm by the name of Sasol that is going to make a very, very important investment in the State of Louisiana. And at the request of the State of Louisiana, we worked very, very closely with them in a number of ways.

One thing that we are doing in that particular example is introducing that company to the relevant federal agencies that they are going to have to interact with. So just a few months ago, after the announcement, we put together a meeting with all of the relevant federal agencies at the Department of Commerce. They all came. The CEO of the U.S. subsidiary had a chance to present their project to these federal agencies. So that is one example of how we are working at the request of the State of Louisiana to support their FDI promotion efforts.

And again, as I mentioned in an earlier response to question, through the U.S. Foreign Commercial Service we have offices in 72 countries around the world. No State has that kind of reach outside. The State of Florida has 14 and that is the most of any State. And we are able to leverage those offices to identify potential com-

panies, potential targets. And we are going to continue to play the facilitator role, not the lead role, but the facilitator role.

One more thing, Congressman, is that we are competing against 159 other countries that use the full weight of their efforts of their governments to advocate on behalf of investment in their country. And when we are competing, say against Mexico or Canada or perhaps a country in Europe versus United States, it really does help to have a federal advocate supporting that investment right here in the United States.

Mr. LONG. Wouldn't you agree that it would go a long way is if we tried to make this the best place in the world to do business?

Mr. SANCHEZ. It is and I am all for that.

Mr. LONG. I think we have got some work to do there and I yield back.

Mr. SANCHEZ. Thank you.

Mr. TERRY. Thank you, Mr. Long. I now recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Mr. Sanchez, I appreciate you coming to my district a year or two ago. It was a very successful event and we heard a lot of positive feedback from that.

Mr. SANCHEZ. Well, thank you. We did an export promotion event as I recall.

Mr. MCNERNEY. That is right. I appreciate that.

I am also interested in ensuring that the American firms are able to find local talent to fill skilled labor positions, and I support the SelectUSA initiative.

I am also curious about any partnerships you may have with educational institutions. Does the initiative include efforts to address deficiencies in our educational system to make sure that our workers are attractive to businesses as they move into this country?

Mr. SANCHEZ. We are very much aware that, while we have a very well-educated workforce, we have some gaps in technical training. And although the Department of Commerce does not itself have programs that are focused on education or technical training, we are working very closely with the Department of Labor, with the Department of Education, with the Department of Defense that has programs in place of finding jobs for returning military personnel, as well as spouses of military personnel.

So we certainly provide feedback and look for ways to work with our federal agencies in identifying ways that we can help with this gap in technical training.

Mr. MCNERNEY. But you don't have the relationships with universities, or technical schools to give them guidance in what would be useful to employers?

Mr. SANCHEZ. The Department of Commerce certainly interacts regularly with educational institutions, but we defer to our sister agencies who have a more direct role in education, whether it be the Department of Labor or the Department of Education.

Mr. MCNERNEY. Well, you have been around many districts in this country and seen a lot of what the local governments due to attract investment and businesses to come into their communities. Could you give us just a couple of little examples of how that has

been helpful or hurtful to the effort of local communities? Some of the things that the local communities have done that have been helpful, if you could, and some that have been hurtful, just to give us an idea of what might be useful.

Mr. SANCHEZ. Well, I would say the first thing is just showing up. And that is actually having a presence in the market, letting the world know that they are open for business, they want to attract foreign direct investment. And so those communities and those States that really make this a priority, really put together a robust promotion program, are going to do better. And so I would encourage States to take an active role. And part of the role of the SelectUSA is helping States and helping local communities put together robust export promotion programs.

Mr. MCNERNEY. So, for example, right now, Governor Brown, the Governor of California, is in China promoting California as a place to do business and you are suggesting that that is helpful and positive.

Mr. SANCHEZ. Increasingly, governors and other local leaders are going overseas to attract foreign direct investment, and I think that that effort should pay dividends. It seems to in a number of States, and I am sure it will pay for California to be active internationally.

Mr. MCNERNEY. What about the negative side? Are there things that some of our local governments are doing that are detrimental to our trade attractiveness?

Mr. SANCHEZ. Well, I believe that just like the United States needs to be attractive, create a good business climate—and generally we do that, at least as evidenced by the indicators of the World Economic Forum, the World Bank, and other indicators, so do local communities and state governments. So to the extent that they create attractive business climates, there are going to do well. And to the extent that they don't compete as effectively with other communities—and I would say I am using the term communities not just within the United States, but they are now competing with communities around the world. I would say communities need to measure themselves against communities worldwide. And that to me is an important effort for States and communities that want to be serious about attracting investment.

Mr. MCNERNEY. Well, you know if I was a Beijing businessman and I was breathing the air in Beijing day in and day out, I would look at the San Francisco Bay Area and say, hey, this is a much cleaner place. I would like to go there. Does that come in to the calculations at all for those folks, do you think?

Mr. TERRY. May I suggest Omaha's air is even cleaner than San Francisco's.

Mr. MCNERNEY. I yield back.

Mr. TERRY. All right, the gentleman from West Virginia, Mr. McKinley, you are recognized for 5 minutes.

Mr. MCKINLEY. Thank you. Secretary Sanchez, at the risk of ending the kumbaya questioning that have occurred here, I have got two questions that I am curious where you may be coming from on. The easier one, perhaps, first is, we of numbers of businesses in our district that they are small companies that have been victims of dumping, and Commerce has told them that they can file

an action and they have pursued that but they find out it is going to cost, for example, in this one 1.2 million to file an action. These small companies can't afford \$1.2 million to fight that, so they are giving in. And as a result, we are seeing more dumping occurring here in this country.

Is there a role for the government, perhaps, to step in for companies that are undervalued or have the inability to come up with \$1.2 dollars to fight? Is there someplace that we might be able to help them?

Mr. SANCHEZ. Congressman, I share that frustration. I have, under the—

Mr. MCKINLEY. What is the solution? I don't want the whining because that is what I am doing.

Mr. SANCHEZ. Yes.

Mr. MCKINLEY. I am trying to find what is the solution?

Mr. SANCHEZ. We make every effort to help companies prepare for an antidumping petition. Within the budget constraints that we have, within the staffing constraints that we have, we make every effort to provide advice and counsel for them. That has its limits, but we do everything that we can to help small and medium-size companies that feel that they are being hurt by companies that are dumping. And so within those constraints, we do everything that we possibly can and I suspect that we are not able to do all that we could or all that would like to—

Mr. MCKINLEY. We really you don't have—other than maybe giving some help, there is no way to help pick up that cost for them?

Mr. SANCHEZ. Within the existing budget that we have, we do what we can.

Mr. MCKINLEY. OK. Second question is further to do with dumping. We know that foreign companies, their dumping doesn't all occur in one; it can be spread out over different businesses. But one company may be—so it is called, as you know, is targeted dumping. And this administration has just come out in supporting some recent determinations on targeted dumping, particularly about Fu Fang Biotechnical. And that decision or that report has just come out in early March. Are we revisiting that or is this something that—because we know that Fu Fang had 68 percent of its sales varied among different customers, so they can dump on one and then charge more in another, and that avoided their dumping charge. How can we protect that if the administration is saying I will support that? And they have that—he signed off on this on March 4, said he agrees with that process.

Mr. SANCHEZ. Congressman, I need to review that particular case before I respond on that. I do know that we do, I believe, a very good job within the constraints that we have of enforcing our trade laws, we also do it in compliance with our international obligations. And I would need to look at this little more carefully, and I would be happy to do so and get back with you.

Mr. MCKINLEY. I hope you can, because we are seeing—just 20 some years ago we had a very vibrant steel industry in the northern section of West Virginia with 30,000 steelworkers. We now have less than 1,000 steelworkers. Now, think about that. Primarily, they will say up and down the line that this had to do with trade and dumping. And I hear a lot of people talking about trying

to help but I don't see the activity. I don't see where that has really stepped in. People said we will look at it. We will reconsider that. But in the meantime, nearly 30,000 steelworkers have lost their jobs.

And here it is again where people are saying they can't come up with \$1.2 million to fight back against these agreements and then the administration coming out and saying they are going to support this decision. I just wanted to question you about that. If you can find it—I don't see a number on it, but I will be glad to give you my copy.

Mr. SANCHEZ. Thank you. I promise to look into it and get back to you.

Mr. MCKINLEY. OK. Thank you very much.

Mr. SANCHEZ. Thank you, Congressman.

Mr. TERRY. Thank you, Mr. McKinley. Mr. Pompeo of Kansas, you are recognized for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. Good morning, Mr. Secretary.

In your written testimony you expressed that one of the concerns foreign companies often have in considering direct investment is their difficulty entering and exiting at U.S. borders. A major employer in my district, Learjet, has a major foreign direct investment from a company called Bombardier in Canada. They are a great employer in our district. They have done a phenomenal job of taking care of our team in Kansas and building a great airplane.

They have a shuttle in which they fly employees back and forth from different facilities in Mexico and Canada. They bring team members; they bring parts back and forth. They have been prevented from flying directly in to Wichita because of the Customs and Border Protection folks said they don't have the requisite staff on site. It forces Bombardier to clear customs someplace else late at night. It is very, very challenging and costly and, I think, discouraging to them to continue to grow their asset in Kansas. I know the company has worked very hard to try and coordinate with customs. Our offices have tried to do the same. We have engaged your folks, the ombudsman's office, in that process. But we have had little success, to be honest with you, getting CBP to become engaged.

Thoughts on how that process may be strengthened so that companies that do put their capital risk in America can get in and out and do the things they need to do, both to be successful in their endeavors but also to grow jobs in America?

Mr. SANCHEZ. Well, Congressman first of all, thank you for reaching out to SelectUSA to let us work on that. Bombardier has been a great source of foreign direct investment. They spent a lot of money here, created a lot of jobs, and I believe we are still working on that case. What I can tell you is that I will personally follow up with our team and also reach out to Customs and Border Patrol and see what options that might exist.

I know that over the last several years they have made a special effort to balance the needs of security at the border with making sure that they don't impede legitimate business. And I applaud them for that effort and we are going to continue to work with them more broadly on policies that make it easy for businesses like

Bombardier to invest here. And I will personally look into this one in particular.

Mr. POMPEO. Thank you, I appreciate that. Actually, this is happening in districts all costs country, the same issue. And so it is just very important that these folks can get in and do the business they need to do here or they will ultimately be discouraged from those investments.

Changing topics just a little bit, we had a long hearing on the Keystone XL pipeline yesterday, lots of different views, but I would be interested in your take. Do you think that this kind of highly visible, highly politicized discouragement of foreign direct investment is being observed by other folks who may want to bring capital to America and has an impact on their decisions to invest here in the country?

Mr. SANCHEZ. Well, Congressman, I think that everything that we do, particularly from an investor's point of view, gets looked at. I will say this: that in general, this case I know there are a lot of strong opinions on both sides. One of the good things that we do have going for us is that energy costs here are going down. And that is increasingly becoming an attractive incentive to bring investment to our shores. So we certainly are focusing on ways to highlight that and it is my hope that we will continue on that path and we will be able to use that as an opportunity to bring more investment here to the U.S.

Mr. POMPEO. Great. I appreciate it. I just think when companies want to come here and do business and follow our laws and all of our processes that to have an administration just make it so difficult and so political and put them through the ringer, I think the world watches when these things happen and I don't think it is productive to what it is that you all are trying to accomplish and what we are trying to do here through this legislation this morning.

You know, the last thing I will say, so we have a piece of legislation we are debating that directs this interagency study. I think there are lots of studies out there. I think we all have a pretty good handle on what folks are looking for when they make capital decisions to decide whether to invest here or not. So I am happy to take a look at this and see what it is going to cost and how much burden it is going to place. But I think we all have a deep recognition of what it is, what folks are really looking for when they are trying to figure out where to spend their money and invest. So thank you for being with us this morning.

Mr. SANCHEZ. Thank you, Congressman.

Mr. POMPEO. I yield back, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Pompeo. And that concludes our questions for you, Secretary Sanchez. I appreciate your time. We tell witnesses after they are finished testifying that we may have written questions that will be submitted to you and I know I have a few. But they are along the same—

Mr. SANCHEZ. Great.

Mr. TERRY [continuing]. Lines of just trying to gather information to help us guide our efforts here. So if you can respond to those in a timely manner, we would greatly appreciate it.

Mr. SANCHEZ. I look forward to receiving your written questions and I thank you and the ranking member and the members of this committee for the opportunity to speak on this very important topic, and I appreciate your interest in this. Thank you very much.

Mr. TERRY. Well, thank you for your efforts.

And now, we will take a slight pause as we rearrange chairs for the next panel.

Thank you, everybody. I want to introduce this panel. We have Nancy McLernon, President and CEO of the Organization of International Investment; Linda Dempsey, Vice President of International Economic Affairs of the National Association of Manufacturers; Matthew Slaughter, Associate Dean for Faculty, Tuck School of Business, Dartmouth University; Dr. Martin Baily, Senior Fellow of Economic Studies at the Bernard Schwartz Chair of Economic Policy Development with the Brookings Institute; then, last to testify in line would be Celestine Drake with the Trade and Globalization Policy Specialist with the AFL-CIO.

And welcome, all of you. Thank you for coming here today. And we will start right away. Each of you will have 5 minutes. At 5 minutes if you are still talking, I will lightly tap and that will mean summarize.

So now, Ms. McLernon, you may begin.

STATEMENTS OF NANCY L. MCLERNON, PRESIDENT AND CEO, ORGANIZATION FOR INTERNATIONAL INVESTMENT; LINDA DEMPSEY, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS; MATTHEW J. SLAUGHTER, ASSOCIATE DEAN FOR FACULTY, TUCK SCHOOL OF BUSINESS, DARTMOUTH UNIVERSITY; MARTIN BAILY, SENIOR FELLOW, ECONOMIC STUDIES, BERNARD L. SCHWARTZ CHAIR IN ECONOMIC POLICY DEVELOPMENT, BROOKINGS INSTITUTE; AND CELESTE DRAKE, TRADE AND GLOBALIZATION POLICY SPECIALIST, AFL-CIO

STATEMENT OF NANCY L. MCLERNON

Ms. MCLERNON. Good morning. Chairman Terry, Ranking Member Schakowsky, and distinguished members of the subcommittee, I want to thank you for the opportunity to testify this morning. I applaud your leadership in holding this timely hearing on legislation to enhance the Nation's ability to attract and retain global investment.

The Organization for International Investment is an association exclusively comprised of U.S. subsidiaries of global companies. Our mission is to ensure the United States remains an attractive and the most attractive location for global investment.

This hearing comes at a time when the United States is at a crossroads facing serious economic and fiscal challenges. And while the U.S. remains the top location for foreign direct investment, its share of worldwide FDI has dropped significantly over the past decade. This really is a national challenge, one that impacts every State in every congressional district in this country. Simply put, it is no longer enough for the U.S. to merely be open to global investment. We must proactively have a strategy to leverage all the tools within our reach if we hope to remain competitive for high-value

FDI. For this reason, my organization and our member companies strongly support the Global Investment in American Jobs Act of 2013.

FDI has long been a catalyst for economic growth in this country. U.S. subsidiaries of global companies in-source 5.6 jobs to the United States and support an annual payroll of over \$400 billion. Their employees earn an average compensation well above the private sector average pointing to the high-end nature of the activities that they have in this country. These companies are in high-value fields like advanced manufacturing, life sciences, R&D, and engineering, generating the types of jobs and economic activities that enhance U.S. competitiveness. Furthermore, they reinvest heavily in their U.S. operations and spend heavily on new equipment, upgraded facilities, and new construction, all of which demonstrate a long-term commitment to their U.S. operations.

I will give you a few examples: Astellas pharmaceutical R&D facility in Northbrook, Illinois; Case New Holland exporting Unionville tractors from Racine, Wisconsin; Philips Healthcare developing advanced medical imaging technologies in Highland Heights, Ohio; and Rolls-Royce partnering with local Virginia schools to teach STEM education and train manufacturing workers in Prince George County.

But in spite of all these vital contributions, the extent of their impact throughout the economy is actually not very widely understood. FDI has traditionally occupied something of a blind spot in U.S. policy. The growing importance of global cross-border investment makes it essential for FDI to play a more prominent role in U.S. economic policy in the years ahead. And the potential for additional FDI provides a tremendous opportunity for economic growth in the U.S.

As I mentioned earlier, the U.S. share of global cross-border investment has dropped. We currently garner about 17 percent. There is no reason we cannot grab more market share. Additionally, the United Nations estimates that multinational companies are currently sitting on some \$5 trillion in cash in the wake of the global economic downturn. We can give those companies a reason to unleash that investment here.

While there are no magic formulas, enhancing U.S. competitiveness for FDI will certainly require progress in key macro policy issues, including reforming our tax code, advancing a more expensive Free Trade Agreement, modernizing America's infrastructure, implementing a program with energy policy, and developing a workforce that can compete for the jobs of the future.

But importantly, we must also make sure that once the U.S. wins a new investment that we provide good aftercare and we ensure that the U.S. subsidiaries of global companies have the ability to succeed and grow their business here on a level playing field with homegrown companies. The U.S. must avoid policies and regulations that disadvantage or discriminate against companies that are headquartered abroad.

Given our unique advantages, the U.S. is fully capable of improving its competitive edge for FDI. We have an enormous domestic market, abundant natural resources, strong rule of law, and a culture of innovation and productivity. We need to couple those advan-

tages with a better understanding of what kinds of policies and best practices position the U.S. to successfully recruit global companies.

The Global Investment in American Jobs Act seeks to do just that. The legislation recognizes that the U.S. cannot compete for 21st century investment with a 20th century policy mindset. It aims to equip policymakers with a forward-thinking strategic approach to capture new investment in this increasingly competitive, yet opportunity-rich, global environment. The interagency review and recommendations would provide Congress a roadmap for further action to attract global manufacturers, service providers, and innovators to our shores. If enacted, the legislation will send a powerful message at home and abroad that the U.S. is working to improve its investment climate for FDI in a thoughtful and bipartisan manner.

I would like to thank the subcommittee again for the opportunity to testify and I look forward to questions.

[The prepared statement of Ms. McLernon follows:]

Testimony of Nancy L. McLernon

President & CEO

Organization for International Investment

Before the Subcommittee on Commerce, Trade, and Manufacturing

Committee on Energy and Commerce

For the Hearing: “Discussion Draft of H.R. ____, The Global Investment in American Jobs Act of 2013”

April 18, 2013

Summary

- OFII and its member companies strongly support the “Global Investment in American Jobs Act of 2013.”
- Foreign direct investment (FDI) is a catalyst for economic growth that fuels American manufacturing, innovation, trade, and overall job creation.
- U.S. subsidiaries employ 5.3 million workers in the United States and account for 5.8 percent of private sector GDP. As a business community, these companies generate the types of high-value jobs and economic activities that enhance U.S. competitiveness.
- While the United States remains the top location for foreign direct investment, its share of world FDI stock has dropped significantly over the past decade, falling from 41% in 1999 to just 17% in 2011.
- Emerging markets such as China, India, and Brazil have now overtaken the developed world in share of global FDI.
- If the United States can improve in key policy areas and embrace a more proactive approach to inbound investment, it could successfully unleash new investment capital here in the United States.
- The Global Investment in American Jobs Act would provide policy makers with a long-term, strategic understanding of what kinds of policies and best practices will position the U.S. to successfully recruit global companies to our shores.
- The legislation advances U.S. leadership in promoting open investment policy around the world.
- If enacted, OFII believes this legislation would send a powerful message at home and abroad that the United States is working to elevate its competitiveness for FDI in a thoughtful and bipartisan manner.

Introduction and Overview

Good morning. Chairman Terry, Ranking Member Schakowsky, and distinguished Members of the Subcommittee, I want to thank you for the opportunity to testify this morning. I applaud your leadership in holding this timely hearing on legislation to enhance our nation's ability to attract and retain foreign direct investment (FDI).

My name is Nancy McLernon and I am President and CEO of the Organization for International Investment (OFII). OFII is a business association exclusively comprised of the U.S. subsidiaries of global companies. We advocate for fair and non-discriminatory treatment in U.S. law and regulation for these companies and the millions of Americans they employ. Our mission is to ensure that the United States remains the most attractive location for global companies looking to expand around the world.

This hearing comes at a time when the United States is at a crossroads, facing serious economic and fiscal challenges at home as well as an increasingly competitive global landscape abroad. While the United States remains the top location for foreign direct investment, its share of world FDI stock has dropped significantly over the past decade. This is a national challenge, one that impacts every state and district represented here this morning. Simply put, it is no longer enough for the U.S. to merely be "open" to global investment; we must have a proactive strategy to leverage all the tools within our reach if we hope to remain competitive for high-value FDI. For this reason, OFII and its member companies strongly support the "Global Investment in American Jobs Act of 2013."

Foreign Direct Investment is Vital to the U.S. Economy

According to the most recent U.S. government data, U.S. subsidiaries employ 5.3 million workers in the United States and account for 5.8 percent of private sector GDP.

As a business community, these companies generate precisely the types of high-value jobs and economic activities that enhance the competitiveness of the national economy.

Some notable examples include:

- Wages: U.S. subsidiaries support an annual payroll of over \$400 billion with an average salary of more than \$77,000 – roughly a third higher than the private sector average. In the manufacturing sector, the average salary rises to over \$85,000, compared the sector-wide average of \$74,534.
- Manufacturing: Manufacturing is the top sector for inward FDI, accounting for over one third of cumulative foreign investment in the United States. U.S. subsidiaries of global companies employ nearly two million workers in the American manufacturing sector – roughly 17% of that sector’s workforce. Not only are these jobs well-paying, they have a positive ripple effect throughout the U.S. economy. An economic study commissioned by OFII last year found that each manufacturing job at a U.S. subsidiary supports five additional jobs in the broader economy.
- Research & Development: FDI is a tremendous catalyst for American innovation, employing tens of thousands of scientists and engineers throughout the country. U.S. subsidiaries underwrite 14 percent of all research and development (R&D) activity in the United States, spending over \$40 billion annually on U.S. R&D.
- Exports: Inbound investment is closely linked to outbound trade. In addition to investing in the U.S. to access the domestic market, many foreign-based firms use their U.S. operations to service new markets around the world. In fact, nearly 18 percent of all U.S. exports are produced by foreign-owned companies, which provide \$229.3 billion in American goods and services annually to customers around the world.

- Supply Chain, Reinvestment, and Expansion: The effects of FDI are felt “downstream” as well. U.S. subsidiaries support a vibrant network of U.S. suppliers, purchasing hundreds of billions of dollars in goods and services every year from small businesses and local companies to sustain and grow their U.S. operations. Additionally, U.S. subsidiaries reinvest \$87.4 billion of their annual earnings back into their U.S. operations and spend \$149 billion on new property, plant construction, and equipment to help upgrade and expand their businesses. These investments demonstrate a substantial commitment to the long-term success and vitality of their U.S. operations.
- Taxes Paid: U.S. subsidiaries also comprise a significant portion of the U.S. corporate tax base, paying roughly 14% of total corporate income taxes.

In spite of the vital contributions of U.S. subsidiaries of global companies, the extent of their impact throughout the U.S. economy is not widely understood. FDI has traditionally occupied something of a blind spot in U.S. policy, overshadowed by a much greater level of focus on trade. While trade will remain an indispensable priority, the growing importance of global cross-border investment makes it essential for FDI promotion to play a more prominent role in U.S. economic policy in the years ahead.

Local Success Stories

In the midst of continued economic challenges, foreign investment is having a dramatic impact on local communities throughout the United States.

Consider the recent investment of UK-based Rolls-Royce in Prince George County, Virginia. In May 2011, Rolls-Royce North America opened its 1,000-acre “Crosspointe” campus to develop, manufacture, and export aero engine disks and jet-engine components. It is the company’s first manufacturing facility built from the ground

up in the United States and includes a 120-acre supplier park and new R&D facility. The facility exports key components to the UK and Singapore to power such revolutionary aircraft as the Airbus A350 and the Boeing 787. Crosspointe is an especially noteworthy example of recent FDI thanks to the innovative way Rolls-Royce is recruiting suppliers to co-locate on site, while also partnering with state universities and local community colleges to establish world-class workforce training programs and bring STEM education to local schools. The company has also teamed with 13 other manufacturers to establish a public-private research partnership with local universities including Virginia Tech and the University of Virginia known as the Commonwealth Center for Advanced Manufacturing.

Foreign direct investment is also helping to revive local communities hit hard by the loss of manufacturing jobs. Nestlé, a company based in Switzerland, made the largest single capital investment in the company's history with a \$650 million manufacturing project in Anderson, Indiana, a city that was devastated by an exodus of automotive jobs. Nestlé's investment has created close to 800 new jobs since 2006 and is providing new hope and opportunity to the local community.

There are countless stories like these all across the country: Michelin's tire plant in the Upstate of South Carolina; the new Astellas pharmaceutical R&D facility in Northbrook, Illinois; Case New Holland exporting union-built tractors from Racine, Wisconsin; Philips Healthcare developing advanced medical imaging technologies in Highland Heights, Ohio. In every state and every industry sector, U.S. subsidiaries of global companies are woven into the fabric of our economy, providing high-quality jobs and much-needed investment.

Challenging Global Trends

Though foreign investment remains a catalyst for economic growth and prosperity, recent global economic trends underscore that the U.S. cannot afford to become complacent due to past success. Competition to attract and retain global investment has never been stronger, providing companies with an unprecedented array of options when looking to expand into new markets around the world.

The U.S. has seen its competitive position erode rapidly as other nations have become more sophisticated in their efforts to attract FDI. After a sharp rise during the 1990s, U.S. share of global FDI has experienced a severe and prolonged decline, falling from 41% in 1999 to just 17% in 2011 – a drop in world share of more than 50% in just over a decade.

Meanwhile, developing nations like the BRICS have claimed a steadily growing share of the world's investment. 2011 marked the second time – and the second year in a row – that emerging markets such as China, India, and Brazil captured a greater share of global FDI than the developed world.

Some of these shifts are well beyond the control of policymakers. However, it is clear that other nations are outpacing the United States in revamping policies to better recruit global business. For example, the Organization for Economic Co-Operation and Development (OECD) recently ranked the United States 34th out of 55 countries examined in its 2012 FDI Regulatory Restrictiveness Index, which measures a country's openness to FDI. In a related benchmark survey from 1997 to 2010, the OECD found that the vast majority of countries measured were successful in reducing barriers to FDI over time. The United States was one of only six countries that either lost ground or stood still.

Policy and Promotion

While there are no magic formulas, enhancing U.S. competitiveness for FDI will certainly require progress in key areas of U.S. policy, including reforming an uncompetitive tax code, advancing a more expansive free trade agenda, modernizing America's ageing infrastructure, implementing a pro-growth energy policy, and developing a workforce that can compete for the jobs of the future. These are among the issues OFII member company executives most frequently cite when discussing the challenges of winning approval for new investment in the United States.

The U.S. must also avoid the negative consequences of policies and regulations that disproportionately harm or discriminate against companies headquartered abroad. For example, attempts to block U.S. subsidiaries from fair competition for government contracting are self-defeating and undermine U.S. leadership in advancing open investment policies around the world. Discriminatory and isolationist policies here at home often invite retaliatory measures against U.S.-based companies abroad, providing a convenient excuse for those countries looking to close their markets to U.S. competitors.

Presidents from both parties over the last thirty years, including President Obama, have consistently reaffirmed the longstanding commitment of the United States to upholding and promoting open investment policy. In 2011, the Obama Administration took an important step in establishing the SelectUSA initiative through Executive Order. Housed in the Department of Commerce, SelectUSA is the first federal agency focused on recruiting global business investment to our shores. In addition, the President's Council on Jobs and Competitiveness issued a recommendation that year calling for a "National Investment Initiative" to improve U.S. competitiveness in attracting FDI. The Council's recommendation aligns closely with the goals of the draft legislation under discussion today.

U.S. commitment to open investment policy is not a matter of altruism; it provides significant long-term economic benefit to the U.S. economy and workforce. Given the pervasive challenges facing the U.S. economy today, we must not jeopardize our ability to attract global business investment through inaction on key issues or a retreat from key principles.

New Sources of FDI

Foreign direct investment in the United States comes predominantly from developed economies, namely Europe, Canada, and Japan. In 2010, firms domiciled in those locations accounted for nearly 90% of U.S. inbound FDI flows. However, the rise of developing economies has created significant new sources of global FDI. For example, Indian outbound investment rose from \$514 million in 2000 to nearly \$20 billion in less than a decade. China increased its outbound investment from \$915 million in 2000 to nearly \$70 billion in 2010. In spite of this boom in outbound investment, firms based in the developing world still account for only a small fraction of global investment in the United States. While there are unique and important challenges associated with investment from emerging markets, this presents a significant opportunity for the United States to benefit in new ways from the rise of developing economies.

There is also enormous potential for the United States to capitalize on the cash reserves global corporations have been holding in the wake of the global economic downturn. As the world economy recovers, businesses continue to hold back on investments and now post record cash holdings. The United Nations estimates that multinational companies currently hold some \$5 trillion in cash. If the U.S. can improve in key policy areas and embrace a more proactive approach to inbound investment, it could successfully draw that capital to the United States, creating new, high-paying American jobs and boosting the U.S. economy.

Comments on the Global Investment in American Jobs Act

Given its unique advantages, the United States is fully capable of improving its competitive edge for FDI. The U.S. has an enormous domestic market, an educated workforce, abundant natural resources, strong rule of law and a culture of innovation and productivity. We need to couple those advantages with a better understanding of what kinds of policies and best practices will position the U.S. to successfully recruit global companies to our shores. “The Global Investment in American Jobs Act” seeks to do just that.

This legislation recognizes that the United States cannot compete for 21st century investment with a 20th century policy mindset. It aims to equip policymakers with a forward-thinking, strategic approach to capture new investment in this increasingly competitive – yet opportunity-rich – global environment.

First, this bill would direct the Secretary of Commerce to lead the first comprehensive, multi-agency assessment of FDI in the United States. The review would examine economic trends, best practices in investment promotion, and policies that are closely linked to U.S. competitiveness for FDI. The resulting report and recommendations would provide Congress with a roadmap for further action to attract global manufacturers, service providers, and innovators to our shores.

If enacted, OFII believes this legislation will send a powerful message at home and abroad that the United States is working to elevate its competitiveness for FDI in a thoughtful and bipartisan manner.

Conclusion

I want to again thank the Subcommittee for the opportunity to testify on the role of FDI in the U.S. economy. OFII and its member companies look forward to working closely with you on this important legislation.

Mr. TERRY. Well done. Ms. Dempsey, you are now recognized for your 5 minutes.

STATEMENT OF LINDA DEMPSEY

Ms. DEMPSEY. Thank you. Good morning, Chairman Terry, Ranking Member Schakowsky, and members of the subcommittee. I welcome the opportunity to testify today on behalf of the National Association of Manufacturers, the oldest and largest industrial trade association in the United States.

The NAM represents small and large manufacturers in every industrial sector and in all 50 States, including many foreign-headquartered companies that manufacture throughout our Nation. As this subcommittee knows well, manufacturing is the engine that drives the U.S. economy by creating jobs, opportunity, and prosperity. A robust international trade and investment approach are vital to the success of manufacturing in the United States.

In particular, FDI into the United States plays a critical role in growing manufacturing. While fluctuating yearly, foreign investment in manufacturing has shown substantial growth since 2003, with important benefits for the U.S. economy. In 2012, FDI inflows into the United States in manufacturing equaled nearly \$83 billion, accounting for nearly half of those inflows.

While the United States has remained the largest recipient of FDI through 2012, we have heard from my colleague that global competition for FDI is rising sharply and the U.S. share of that FDI is on the decline. From the NAM's perspective, we should be working to help grow FDI into the United States, which grows manufacturing and jobs, innovation, and economic opportunities.

The NAM's 2013 Growth Agenda presents four goals for manufacturing resurgence in America. The NAM's first goal is very much the subject of this hearing: to make the United States the best place in the world to manufacture and to attract FDI. The goal of the legislation before this subcommittee is an important one: to spur policy improvements that will help the United States further attract FDI, including through requiring an interagency review of policies and best practices with recommendations for further action. We hope the report will result in concrete proposals and action and encourage the Subcommittee to continue working on this legislation and moving it forward.

We also recommend that the report consider the recommendations from the President's Council on Jobs and Competitiveness, which called for a national investment initiative.

The U.S. open investment policy that this legislation reaffirms is supported through a number of different aspects of U.S. law, regulation, and policy. The United States generally treats FDI on a nondiscriminatory basis, unless there is a threat to national security as determined by CFIUS.

The U.S. open investment policy is also supported through the U.S. Bilateral Investment Treaty program, BITs, which began about 4 decades ago. The United States has in place 38 BITs including, most recently, with Rwanda that secure reciprocal and open investment frameworks with interested countries. The BIT program helps secure U.S. investment abroad, which is also focused on reaching consumers and is a huge driver of U.S. exports, as well

as R&D and capital expenditures here in the United States. A robust BIT program, which includes the strong investor state enforcement mechanisms, is a vital part of the U.S. open investment policy.

Yet, given the increasingly competitive environment for FDI, the United States cannot stand still. From the manufacturing perspective, the United States faces significant challenges of our own making. It is 20 percent more expensive to manufacture in the United States than in other major industrialized nations. The United States continues to have the highest corporate tax rates among major industrial countries, and 2/3 of all manufacturers pay taxes at the individual rate.

To make the United States the best place in the world to manufacture and attract FDI, we urge Congress and the administration more broadly to work together to create a national tax climate to promote manufacturing and embrace an all-of-the-above approach to energy, modernize and invest in infrastructure, ensure that the benefits of regulations justify their cost, implement commonsense legal reform, reduce healthcare costs, and ensure robust export opportunities for manufacturers in the United States, including through an aggressive trade policy agenda, have open markets, and provides competitive export financing, and works to ensure that our trading partners protect intellectual property and play by the rules.

By addressing the multitude of these policies that shape global competitiveness, the United States will be able to increasingly attract and retain the kind of foreign investment to sustain and grow manufacturing here in America.

Thank you.

[The prepared statement of Ms. Dempsey follows:]



Testimony

of Linda Menghetti Dempsey

Vice President

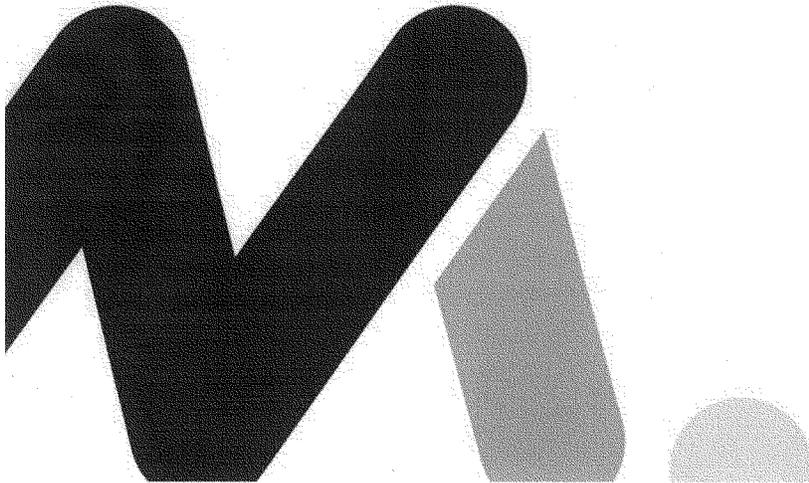
International Economic Affairs

National Association of Manufacturers

before the Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade

on Discussion Draft of H.R. ____,
the Global Investment in American Jobs Act of 2013

April 18, 2013



SUMMARY OF TESTIMONY

- The National Association of Manufacturers (NAM) has a significant number of member companies that are the subsidiaries of foreign-headquartered companies. These companies create jobs, invest in research and development (R&D) and make substantial capital expenditures in the United States.
- FDI plays a critical role in manufacturing, and competition for FDI is heating up. The most recent data from 2012 show that FDI in manufacturing accounts for nearly 50 percent of total FDI last year. FDI in manufacturing is showing a rebound from the weakness in 2008 and 2009.
- This legislation builds on the longstanding “open investment policy” that successive administrations, both Republican and Democratic, have reaffirmed.
- The open investment policy in the United States is supported through various aspects of U.S. law, regulation and policy – including the bilateral investment treaty (BIT) program and the recently launched SelectUSA program.
- An interagency review of investment policies would help foster a greater understanding of the U.S. investment environment and how it can be improved. We hope the ensuing report will result in concrete legislative proposals, and we encourage Congress to carefully consider a recommendation from the President’s Council on Jobs and Competitiveness to create a National Investment Initiative to attract substantial foreign investment.
- Still, there is more that Congress to help make the United States the best place in the world to manufacture and would grow even more foreign investment here. The NAM’s 2013 *Growth Agenda* presents four goals for a manufacturing resurgence in America, with policy recommendations that would help attract – and retain – investment in the United States.

**COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE**

**Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade**

APRIL 18, 2013

Good morning, Chairman Terry, Ranking Member Schakowsky and members of the Subcommittee on Commerce, Manufacturing and Trade. I am Linda Menghetti Dempsey, vice president of international economic affairs at the National Association of Manufacturers (NAM), and I am pleased to provide testimony today on the Global Investment in American Jobs Act of 2013 as well as the broader issues involved in attracting foreign direct investment (FDI) into the United States.

The NAM is the nation's oldest and largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Its membership includes both large multinational corporations with operations in many foreign countries, as well as small and medium-sized manufacturers that increasingly engage in international trade. The manufacturing sector employs nearly 12 million Americans and is the engine that drives the U.S. economy by creating jobs, opportunity and prosperity. International trade and investment are vital to the success of manufacturing in the United States. Our members are highly integrated into complex global supply chains that rely on access to open markets and investment opportunities.

The Global Investment in American Jobs Act catalogs the importance and benefits of foreign investment in the United States, and the NAM strongly agrees with those findings. The NAM has a significant number of member companies that are the

subsidiaries of foreign-headquartered companies, and they create jobs, invest in research and development (R&D) and make substantial capital expenditures in the United States. Foreign investment has long supported U.S. economic growth. U.S. subsidiaries of international companies employ 5.3 million American workers, account for 17 percent of the country's manufacturing workforce, produce nearly 18 percent of all U.S. goods exported and fund more than \$40 billion of R&D activities annually.¹ Furthermore, these companies support a supplier network of countless small and medium-sized American companies.

The bill expresses the sense of Congress on the importance of FDI and urges Congress to review carefully the potential impact of legislation and regulatory policy on foreign investment in the United States. We strongly support this sense of Congress, and we welcome an interagency review that could help to bring greater understanding of the U.S. investment environment and how it can be improved.

Still, there is more that Congress can and must do to advance a policy agenda that would make the United States the best place in the world to manufacture and would grow even more foreign investment here. Congress and the Administration should move swiftly to address a host of issues that undermine U.S. competitiveness and economic growth.

Manufacturing and FDI

Manufacturing in the United States creates \$1.8 trillion of value on an annual basis, representing 12.2 percent of U.S. GDP. Furthermore, manufacturing has the highest multiplier effect of any economic sector. For every \$1.00 spent in manufacturing, another \$1.48 is added to the economy. Manufacturers in the United States are the most productive workers in the world, leading to higher wages and living standards. As a way

¹ OFII, "Insourcing Facts," accessed at <http://ofii.org/resources/insourcing-facts.html>.

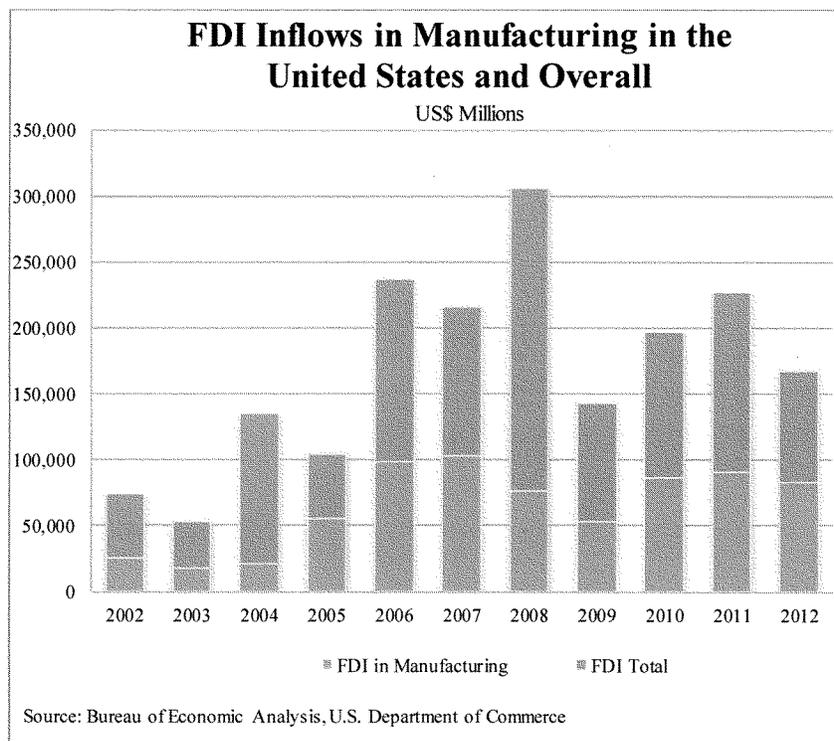
of putting it in perspective, if manufacturing in the United States was a separate economy, it would be the 10th largest in the world.

FDI plays a critical role in manufacturing. Based on data from the Commerce Department's Bureau of Economic Analysis, FDI inflows in manufacturing equaled nearly \$83.4 billion in 2012, accounting for almost 50 percent of total FDI inflows. FDI in manufacturing has shown substantial growth since 2003 and is showing a rebound from the weakness in 2008 and 2009.

About 95 percent of all FDI in the United States comes from developed countries, starting with the United Kingdom. While the share fluctuates yearly, a substantial portion of such investment since 2005 has been in the manufacturing sector. The most recent data from 2012, which are still preliminary, show that FDI in manufacturing accounts for nearly 50 percent of total FDI that year.

While the United States has remained the largest recipient of FDI through 2012, competition for FDI is rising. With global FDI experiencing an 18 percent decline in 2012 and significant risks that may prevent rebounds in coming years, more countries will be seeking fewer FDI opportunities. The United States, like Europe, experienced substantial FDI declines in 2012, with total FDI into the United States dropping about 26 percent (although FDI in manufacturing sustained only an 8 percent decline). Meanwhile, developing countries held their own and absorbed greater FDI inflows than developing countries.² In 2012, the United States welcomed 11 percent of global FDI inflows, while China received about 9 percent. Clearly, there is room to grow the U.S. share of FDI.

² See UNCTAD, *Global Investment Trends Monitor* (Jan. 23, 2013).



NAM Priorities for a Manufacturing Resurgence in America

The NAM's 2013 *Growth Agenda* presents four goals for a manufacturing resurgence in America.³ The NAM's first goal is very much the subject of today's hearing: to make the United States the best place in the world to manufacture and to attract FDI. I want to focus directly on the legislation before this subcommittee and FDI promotion generally, but I will also address broader issues that the United States must tackle to be the best place in the world to manufacture.

³ National Association of Manufacturers, *A Growth Agenda: Four Goals for a Manufacturing Resurgence in America* (2013), accessed at <http://www.nam.org/~media/39CF92351DD24DED8EC0663CBA8021AF.ashx>.

Welcoming and Promoting FDI in Manufacturing in the United States

The goal of the Global Investment in American Jobs Act of 2013 is an important one: to spur policy improvements that will help the United States further attract FDI. This legislation builds on the longstanding “open investment policy” that successive administrations, both Republican and Democratic, have reaffirmed. The importance of FDI into the United States – for all the reasons cited in this bill, including promoting jobs, R&D, capital investment and exports – was recognized in 1983 when President Reagan stated:

A world with strong foreign investment flows is the opposite of a zero-sum game. We believe there are only winners, no losers, and all participants gain from it. . . . A free and open international investment climate will play a key role not only in sustaining our own economic recovery here at home, but also in resolving many of the current international debt problems.⁴

More recently, President Obama made the following statement on international investment on June 20, 2011:

The United States reaffirms our open investment policy, a commitment to treat all investors in a fair and equitable manner under the law, and I encourage all countries to pursue such a policy. My Administration is committed to ensuring that the United States continues to be the most attractive place for businesses to locate, invest, grow and create jobs. We encourage and support business investment from sources both at home and abroad.⁵

The reasons for this broad support is clear when you consider the important economic and commercial benefits of FDI to the United States, as laid out in this legislation. The Council of Economic Advisers detailed in more depth the important

⁴ White House, Statement on International Investment Policy (Sept. 9, 1983), accessed at <http://www.presidency.ucsb.edu/ws/?pid=41814>.

⁵ White House, Statement by the President on United States Commitment to Open Investment Policy (June 20, 2011), accessed at <http://www.whitehouse.gov/the-press-office/2011/06/20/statement-president-united-states-commitment-open-investment-policy>. See also President Bush’s Statement on Open Economies (May 10, 2007), accessed at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070510-3.html>.

benefits of FDI to the United States at the time of President Obama's June 2011 statement:

Inbound foreign direct investment has long played an important role in the U.S. economy. Foreign companies with operations in the United States invest billions of dollars here. They employ millions of U.S. workers and offer higher-than-average levels of compensation. Their investments help to modernize the U.S. capital stock, and they are important contributors to the U.S. manufacturing sector. Furthermore, evidence from continued high levels of flows of inbound FDI, as well as cross-country comparisons and firm-level surveys, reveal that the United States has a very open investment climate and remains an attractive destination for investment.⁶

The Global Investment in American Jobs Act highlights the need to do more to attract foreign investment in the United States, requiring an interagency review of policies and best practices and a report on U.S. policies, with recommendations for further action. This review, as well as the report, would be beneficial for policymakers. We hope the report will result in concrete legislative proposals, and the NAM encourages the subcommittee to consider further strengthening the bill's provisions in this area. From the NAM's perspective, we encourage Congress to carefully consider the recommendations from the President's Council on Jobs and Competitiveness, which released a report last year that called for a National Investment Initiative to attract \$1 trillion in foreign investment over the next five years.⁷ This initiative would leverage local "innovation investment zones" near major universities, establish supply chain partnerships, improve SelectUSA and U.S. immigration policies and explore tax reforms that would enhance U.S. competitiveness.

Our open investment policy is supported through a number of different aspects of U.S. law, regulation and policy. The United States generally treats FDI on a non-discriminatory basis, as compared with domestic investment, unless there is a threat to

⁶ Council of Economic Advisers, U.S. Inbound Foreign Direct Investment (June 2011), accessed at http://m.whitehouse.gov/sites/default/files/microsites/cea_fdi_report.pdf.

⁷ President's Council on Jobs and Competitiveness, National Investment Initiative, accessed at <http://www.jobs-council.com/recommendations/launch-a-national-investment-initiative/>.

national security as determined by the Committee on Foreign Investment in the United States (CFIUS). In 2007, Congress amended the underlying legislation that created CFIUS to ensure greater congressional oversight and extend reviews of transactions involving foreign-controlled corporations.⁸

The U.S. open investment policy is also supported through the U.S. bilateral investment treaty (BIT) program, which began about four decades ago to secure reciprocal open investment frameworks with interested countries. The United States has in place 38 BITs, including most recently with Rwanda, that seek to promote similar open investment policies on a reciprocal basis. The Obama Administration completed its review of the model BIT template a year ago and is negotiating with countries in Asia and Africa to secure strong commitments from other governments to adopt open economy approaches. The BIT program helps secure U.S. investment abroad, which, like FDI in the United States, is largely focused on reaching new customers. An often overlooked fact about U.S. investment overseas is that those investments are a major driver of U.S. exports, as well as R&D and capital expenditures here in the United States. A robust BIT negotiation program is a vital part of the U.S. open investment policy and one that will provide important benefits to accessing markets overseas. President Obama also launched the SelectUSA program in 2011 to promote and facilitate investment in the United States, in partnership with state governments.

Making the United States the Best Place in the World to Manufacture

Given the substantial benefits that FDI provides for the United States and the increasingly competitive environment for FDI, the United States cannot presume that it will continue to remain the largest recipient of FDI by mere routine. From the manufacturing perspective, the United States faces significant challenges of our own

⁸ Foreign Investment and National Security Act of 2007, Pub. L. 110-49 (July 26, 2007).

making. According to figures from the Manufacturing Institute,⁹ it is 20 percent more expensive to manufacture in the United States than in other industrialized nations based on an analysis of tax, tort, energy and regulatory policies (and excluding the cost of labor). Unfortunately, the United States continues to have the highest tax rates among major industrial countries, and two-thirds of all manufacturers pay taxes at individual rates. The lack of a strong, permanent R&D tax credit and high tort costs fuel the cost disadvantage.

To make the United States the best place in the world to manufacture and invest, Congress and the Administration should work together to do the following:

- Create a national tax climate that promotes manufacturing.
- Embrace an “all-of-the-above” approach to energy.
- Modernize and invest in infrastructure.
- Ensure and independently verify that the benefits of regulations justify their costs.
- Implement common-sense legal reform.
- Reduce health care costs for patients and providers.

The United States must also ensure robust export opportunities for manufacturers in the United States. We urge Congress to work with President Obama to pursue an aggressive trade policy agenda that will open further access to fast-growing markets overseas, ensure competitive export financing, prioritize trade facilitation in our import and export processing, encourage our trade partners to protect and enforce intellectual property rights and guarantee that our competitors – and customers – dare playing by the rules.

⁹ The Manufacturing Institute, the Manufacturers Alliance for Productivity and Innovation and the National Association of Manufacturers, 2012 Facts About Manufacturing (Oct. 2012), accessed at <http://www.themanufacturinginstitute.org/Research/Facts-About-Manufacturing/Facts-2012.aspx>.

Only by addressing the multitude of policies that shape U.S. global competitiveness will our nation be able to increasingly attract and retain the kind of foreign investment that will sustain and grow jobs.

Conclusion

I want to thank the Subcommittee on Commerce, Manufacturing and Trade for this opportunity to testify on the FDI issues that are vital to the manufacturing sector in the United States. The NAM looks forward to working with you as the subcommittee moves forward on this legislation and other activities to promote U.S. competitiveness.

Thank you.

Mr. TERRY. Wow, perfect timing.

Mr. Slaughter, you are now recognized for your 5 minutes.

STATEMENT OF MATTHEW J. SLAUGHTER

Mr. SLAUGHTER. Thank you, Chairman Terry, Ranking Member Schakowsky, and fellow members. Thank you very much for inviting me to testify on these important and timely issues of how global investment can contribute to American jobs and overall economic strength.

In my remarks, I will stress that although the U.S. subsidiaries of global companies have long made large contributions to U.S. jobs and overall economic strength, the past need not be prologue. There recently were some trends that America's attractiveness to these companies may be waning. To support the U.S. economy amidst a still-fragile labor market and overall recovery, policy-makers should strive to sustain an environment in which global firms can thrive here.

Research for the United States and many other countries has long documented that globally engaged companies tend to perform better than purely domestic companies do. The U.S. subsidiaries of global companies, despite accounting for far less than 1 percent of all U.S. businesses, perform large shares of America's productivity-enhancing activities that lead to high average compensation for American workers.

For the most recent year of data available, 2010, or as of this morning, 2011, contributions of these companies included the following: 5.8 percent of all private sector output, over 14 percent of all nonresidential private sector capital investment, almost 18 percent of U.S. exports of goods, and over 14 percent of the total research and development performed by all U.S. companies. All of these activities contribute to millions of well-paying jobs in America.

In 2011, these U.S. affiliates employed 5.6 million workers, 5 percent of total private sector employment. In 2010, their total compensation averaged over \$77,000 per worker, more than $\frac{1}{3}$ above the average for the rest of the private sector. Of these jobs, nearly 2 million were manufacturing and the U.S. subsidiaries of global companies have long had relatively high unionization rates. In 2007, over 12 percent of these firms' U.S. employees were covered by collective bargaining versus just about 8 percent for all private sector workers.

And finally, U.S. subsidiaries of global companies support U.S. jobs through their supply chains. In 2010, these subsidiaries purchased almost \$2 trillion in intermediate inputs from other U.S. companies.

Despite these strengths of the past, over the first dozen years of the 21st century two worrisome trends emerged regarding the presence and dynamism of U.S. subsidiaries in global companies. First, although many of their non-employment activities continued to grow, their U.S. employment did not. There were about the same number of Americans working in these companies in 2011 as in 2002.

The second worrisome trend is that the U.S. share of global foreign direct investment has fallen sharply. The U.S. share of the

world stock of FDI fell from over 41 percent in 1999 to only about 17 percent in 2009.

Taken together, these two worrisome trends of the past decade suggest that the U.S. economy has become a less attractive location for global companies to establish and expand their operations. And these trends have emerged while a steadily rising share of the leading global companies are headquartered outside of America. The options that the world presents to global companies have expanded dramatically in recent years due to policy liberalization and related accelerated economic growth in so many countries. The United States cannot rest on past success and take the U.S. engagement of these global companies for granted.

A vigorous optimistic future for inward investment in America is very possible, but achieving this optimistic future will require crafting new U.S. policies to boost FDI inflows and the related employment and other productivity-enhancing activities of these companies.

An important first policy step would be for the Secretary of Commerce to oversee an interagency review and report of America's global competitiveness in attracting FDI, as specified in the Global Investment in American Jobs Act of 2013. The baseline information from this report would provide an excellent guide to refining U.S. economic policies and promotion and ultimately U.S. economic performance.

Let me here recommend second important policy step: higher-quality U.S. Government data. U.S. Government statistics currently do not capture the full extent and evolution of the U.S. operations of global companies. This is in no way a fault of the dedicated public servants working at these statistical agencies. Rather, it simply reflects the fact that many of the business surveys conducted and analyzed by these agencies were created decades ago in ways that today fail to encompass the modern and ever-evolving complexity of business in America.

Here in the 21st century, if we want to best craft U.S. economic policies to support American workers and their families, then we need to find a way to update and expand many of our key economic statistics on how these global companies work.

Thank you again for your time and your interest in my testimony, and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Slaughter follows:]

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

Testimony of Matthew J. Slaughter
Discussion of “The Global Investment in American Jobs Act of 2013”

Thursday, April 18, 2013 2322 Rayburn House Office Building

Subcommittee Chairman Terry, Committee Chairman Upton, Ranking Member Waxman, and fellow Members, thank you very much for inviting me to testify on these important and timely issues of how global investment can contribute to American jobs and overall economic strength.

My name is Matt Slaughter, and I am currently Associate Dean and Signal Companies’ Professor of Management at the Tuck School of Business at Dartmouth, Research Associate at the National Bureau of Economic Research, and adjunct Senior Fellow at the Council on Foreign Relations. From 2005 to 2007 I also served as a Senate-confirmed Member on the Council of Economic Advisers, where my international portfolio spanned topics on the competitiveness of the American economy.¹ More recently I was a founding member of the Squam Lake Group, a non-partisan group of 15 academics who initially came together in the fall of 2008 to offer guidance on the reform of financial regulation amidst the World Financial Crisis.²

The topic of today’s hearing is extremely important. The news for American workers has improved somewhat in recent months: the rate of net job creation has accelerated, and the unemployment rate has fallen. But in many ways the U.S. labor market remains quite fragile, a fact stressed by Federal Reserve Chairman Ben Bernanke in a recent speech in which he said, “We cannot yet be sure that the recent pace of improvement in the labor market will be sustained.” Today America has 113.3 million private-sector payroll jobs. That is only about 1.3% above the number of private-sector payroll jobs America had 13 years ago, in 2000. America has created almost no new private-sector jobs in well over a decade, during which time its civilian labor force has expanded by about 15 million people. The result is that today over 22 million Americans, about one in seven in the entire labor force, are unemployed or under-employed.

¹ In the past two years, I have not received any Federal research grants. Currently, in addition to the affiliations listed above I serve as a member of the academic advisory board of the International Tax Policy Forum; a member of the Congressional Budget Office’s Panel of Economic Advisers; and a member of the U.S. State Department’s Advisory Committee on International Economic Policy. For many years I have consulted both to individual firms and also to industry organizations that support dialogue on issues of international trade, investment, and taxation. For a listing of such activities, please consult my curriculum vitae posted on my web page maintained by the Tuck School of Business at Dartmouth.

² The book our Group co-authored that discusses the challenges in understanding and aiming to prevent financial crises is *The Squam Lake Report: Fixing the Financial System*, with Kenneth R. French, Martin N. Baily, John Y. Campbell, John H. Cochrane, Douglas W. Diamond, Darrell Duffie, Anil K Kashyap, Frederic S. Mishkin, Raghuram G. Rajan, David S. Scharfstein, Robert J. Shiller, Hyun Song Shin, Matthew J. Slaughter, Jeremy C. Stein, and Rene M. Stulz: Princeton University Press, June 2010.

In my remarks, I will stress that although the U.S. subsidiaries of global companies have long made large contributions to U.S. jobs and overall economic strength, past need not be prologue. There are recent worrisome trends that America's attractiveness to these companies may be waning. To support the U.S. economy amidst a still-fragile labor market and overall recovery, policymakers should strive to sustain an environment in which global firms can thrive here.

The Positives of the Past: Rising U.S. Contributions of Insourcing Companies

Research for the United States and many other countries has documented that globally engaged companies—both the U.S. parents of U.S.-based multinationals and also the U.S. subsidiaries of foreign-based multinationals—tend to perform better than purely domestic companies. Globally engaged companies enhance the American economy by their capital investment, their exports, their research and development, and by supporting good-paying American jobs.³

The U.S. subsidiaries of global companies—despite accounting for far less than 1% of U.S. businesses—perform large shares of America's productivity-enhancing activities that lead to high average compensation for American workers. For the most recent year of data available, 2010, contributions of these companies included the following.⁴

- ***Output:*** U.S. subsidiaries of global companies produced \$649.3 billion in output (measured in terms of gross domestic product), which was approximately 5.8% of all private-sector output.
- ***Capital Investment:*** U.S. subsidiaries of global companies purchased \$149.0 billion in new property, plant, and equipment—14.4% of all non-residential private-sector capital investment.
- ***Exports:*** U.S. subsidiaries of global companies exported \$229.3 billion of goods to the rest of the world, 17.9% of the U.S. total.
- ***Research and Development:*** To discover new products and processes, U.S. subsidiaries of global companies performed \$41.3 billion of research and development. This was about 14.3% of the total R&D performed by all U.S. companies.
- ***Intermediate Inputs:*** To produce their goods and services, U.S. subsidiaries of global companies purchased over \$1.9 trillion in intermediate inputs from other U.S. companies, which was about 78.7% of their total input purchases.

All these activities contribute to millions of well-paying jobs in America. In 2010, these U.S. affiliates employed nearly 5.3 million U.S. workers, 4.7% of total private-sector payroll employment. Their total compensation was \$408.0 billion—a per-worker average of \$77,409,

³See, for example, "A Warning Sign from Global Companies," by Matthew J. Slaughter and Laura D'Andrea Tyson, *Harvard Business Review*, March 2012. See also *American Jobs, American Infrastructure, and American Global Competitiveness*, by Matthew J. Slaughter, Organization for International Investment research report, spring 2011. See also *American Companies and Global Supply Networks: Driving U.S. Economic Growth and Jobs by Connecting with the World*, by Matthew J. Slaughter and U.S. Council Federation, Business Roundtable research report, January 2013.

⁴A foreign-based multinational company is any foreign entity, called the "parent," that holds at least a 10% direct ownership stake in at least one U.S. business enterprise, called the "affiliate" or "subsidiary." All data cited in this passage come from the Bureau of Economic Analysis of the U.S. Department of Commerce. In 2009 there were in America 4,662 majority-owned subsidiaries of foreign-headquartered multinationals.

more than a third above the average for the rest of the private sector. Of these jobs, 37.7%—nearly 2.0 million—were in manufacturing, far higher than manufacturing's 10.6% share of all jobs in the overall U.S. private sector today. And U.S. subsidiaries of global companies have long had relatively high unionization rates, contrary to what is sometimes assumed. In 2007 12.4% of these firms' U.S. employees were covered by collective bargaining, versus just 8.2% of all private-sector workers.

In the late 20th century the U.S. presence of these “insourcing” companies expanded considerably. Between 1987 and 2002 their U.S. employment more than doubled, from 2.6 million to 5.6 million—an average annual rate of growth of 5.25%. Over this period many of their other activities, such as capital investment, at least doubled as well. The last part of the 20th century, then, was a period where the U.S. economy enjoyed a steadily rising presence of and benefits from the foreign direct investment (FDI) of U.S. subsidiaries of global companies.

The Uncertainties of the Present: Two Worrisome Trends

Over the first dozen years of the 21st century, two worrisome trends emerged regarding the presence and dynamism of U.S. subsidiaries of global companies.

First, although many of their non-employment activities continued to grow, their U.S. employment did not: it flat-lined from 2002 to 2007 and then dipped from 2007 to 2010. The result was fewer Americans working in these companies in 2010 than in 2002.

Employment in U.S. Subsidiaries of Global Companies (Millions)

<u>Year</u>	<u>U.S. Affiliates</u>
1987	2.6
1992	3.9
1997	4.4
2002	5.6
2007	5.6
2009	5.2
2010	5.3

The second worrisome trend is that the U.S. share of global FDI has fallen sharply. According to data from the United Nations, the U.S. share of the world's stock of FDI rose from 25.9% in 1990 to 41.4% in 1999, but it then fell sharply down to just 17.6% in 2009. Much of this fall reflects the surge of China, India, and other developing countries as attractive locations for multinational companies to establish and expand operations. Regardless, the clear fact is that the U.S. share of global FDI has fallen over the past decade—and has fallen at a much faster rate than has either the FDI share of other advanced countries or the U.S. share of other global economic activities such as global gross domestic product.

What forces explain these two trends? They were not simply a matter of global companies shrinking all dimensions of their U.S. subsidiaries. For example, from 2002 to 2010 their R&D expanded from \$27.5 billion to \$41.3 billion and capital investment expanded from \$111.9 billion to \$149.0 billion.

The trend of falling U.S. employment has not yet been closely examined to assess its causes. Despite this, some plausible connections can be made. One force at play seems to have been the business cycle; in particular, the historic drop in business activity triggered by the World Financial Crisis and Great Recession. A second important force may have been strong productivity gains, which even as they generate economy-wide gains can sometimes trim employment in their source industries. The mix of forces reducing the employment in U.S. subsidiaries of global companies is not yet understood—nor is the outlook for this trend.

More generally, both the share of global FDI that America attracts and the related magnitude of the American operations of investing global companies depend on three related forces: U.S. *economic performance*, *economic policies*, and *economic promotion*—all relative to the rest of the world. The phrase “relative to the rest of the world” is critical, because what matters is not just America’s strengths in and of themselves but those strengths compared to what other countries offer. Policymakers can surely shape all three of these forces, but not always immediately and not always with certain effects.

Consider economic performance. One of America’s continued strengths is its market scale: today the United States remains the world’s largest single-country market, with a 2012 GDP of \$15.7 trillion. Serving this market remains a powerful imperative for many global companies. However, for decades the United States has grown more slowly than much of the world. The cumulative impact is that the United States accounts for a steadily falling share of total world output. The U.S. share of world GDP fell from 32.3% in 2001 to just 21.6% in 2011. Connecting with foreign customers in fast-growth markets has thus become more imperative for many global companies—even as America remains important to many of them.

Taken together, these two worrisome trends of the past decade suggest that the U.S. economy has become a less-attractive location for global companies to establish and expand their operations. And these trends have emerged while a steadily rising share of the leading global companies are headquartered outside of America. In 2010 the United States was home to 179 of the Fortune Global 500 companies; by 2011 that number had fallen 25.7%, to just 133 companies.⁵

The Possibilities of the Future: Optimistic or Pessimistic?

The options the world presents to global firms have expanded dramatically in recent years, due to policy liberalization and related accelerated economic growth in so many countries. The United States cannot rest on past success and take the U.S. engagement of these global companies for granted. Leaders of these companies are today voicing concern about a deep set of problems facing America across the three dimensions of economic performance, policies, and promotion: e.g., complex taxation, broken immigration, and crumbling infrastructure.

What is unclear is what policies the United States will pursue in response to this challenge of maintaining America’s economic strength by, in part, sustaining an environment in which global firms can thrive here. Perhaps the most pressing dimension of this challenge is filling the large jobs hole that America still faces in the wake of the World Financial Crisis and Great Recession.

⁵ See *Landscape Changing for Headquarter Locations: An Update*, by Tom Neubig, Thomas Kinrade, and Tiffany Young, Ernst & Young research report, September 2011.

So, what will the future bring? A pessimistic future would entail a continued erosion of America's global competitiveness. In absolute size, the U.S. subsidiaries of global companies may or may not hold steady. But their share of the U.S. economy would erode as they made more key investments outside America. These companies' dynamic connections to the broader U.S. economy would erode as well, with smaller contributions to the U.S. economy by their U.S. subsidiaries: less R&D, less investment, fewer exports, and fewer jobs. All of this, in turn, would slow overall U.S. growth in output, productivity, and standards of living.

This pessimistic future would need not involve any dramatic crisis. But it would involve a slower-growing, less-dynamic U.S. economy without any rekindling of the growth trajectory insourcing companies followed in the last part of the 20th century. In the pessimistic future, 2020 may well arrive with business and government leaders puzzling over why the U.S. labor market had still not recovered its pre-Crisis health.

This need not be the future for the United States. A vigorous, optimistic future is very possible. But achieving an optimistic future will require crafting new U.S. policies to boost FDI inflows and the related employment and other productivity-enhancing activities of insourcing companies.

Conclusions and Policy Implications

Which future is more likely? The answer will hinge on U.S. policy choices. With poor policies, then the pessimistic future may well play out. Indeed, if the strong economic performance of the "BRIC and beyond" countries continues, then just to maintain U.S. competitiveness U.S. policies will need to improve. Realizing an optimistic FDI future will almost surely require bold policy changes in America—changes that, nevertheless, are well within the grasp of policymakers.

An important first policy step would be for the Secretary of Commerce to oversee an interagency review and report of America's global competitiveness in attracting FDI, as specified in the Global Investment in American Jobs Act of 2013. The baseline information from this report would provide an excellent guide to refining U.S. economic policies and promotion—and, ultimately, economic performance.

Let me recommend a second important policy step: higher-quality U.S.-government data. U.S. government statistics currently do not capture the full extent and evolution of the U.S. operations of global companies. This is in no way a fault of the dedicated public servants working at statistical agencies such as the U.S. Bureau of Economic Analysis. Rather, it simply reflects the fact that many of the business surveys conducted and analyzed by BEA and other agencies were created decades ago in ways that today fail to encompass the modern and ever-evolving complexity of business in America. Here in the 21st century, if we want to craft U.S. economic policies and promotion that reflect best support U.S. job creation, then then we need to find a way to update and expand many of our key economic statistics on how global companies work.

Thank you again for your time and interest in my testimony. I look forward to answering any questions you may have.

Mr. TERRY. Thank you. And Dr. Baily, you are now recognized for your 5 minutes.

STATEMENT OF MARTIN BAILY

Mr. BAILY. Thank you. Thank you, Chairman Terry and Ranking Member Schakowsky, and the other members of the committee for the opportunity to present my testimony today. I would like to submit the full statement for the record if I may. And there are a couple of typos in it that I would like to correct before it gets submitted, which I just discovered.

I do think that making America the location that attracts good foreign companies is a very important task. And I think really the same things that attract foreign companies will encourage American multinational companies to invest more in the United States. And as one of the earlier panelists noted, there is a lot of money sitting out there that we would love to see invested here to improve the recovery.

There have been quite a few numbers already put out here and I am going to just comment on them rather than reprise what is in my testimony. I just want to comment on a couple of them. One is, I think, it is obviously a concern if our share of FDI has gone down. I think there is a certain thought that it is inevitable with emerging economies growing. They are much poorer than we are. They are growing faster than we are. There is going to be more investment taking place in those economies than in the U.S., so I don't think we should get down on ourselves too much if we find that investment elsewhere is growing relative to the U.S. I think that is just part of life.

And the second point I would make is to note that really a lot of the investment that comes from overseas is going into manufacturing. I think that is important. We have heard that the manufacturing sector is important. It is an area where we maybe haven't had enough domestic investment. We would like to see more. We want exports to grow. We want to get a more balanced trade picture for the United States so I think it is particularly helpful that foreign investment comes into the U.S.

One thing, though, to remember, since a lot of the investment is concentrated in manufacturing and since manufacturing employment generally has been on a rather declining trend as a fraction of total employment, we are going to see that the employment in foreign companies in the United States is not necessarily going to look as good as investments in some other industry just because of the industry that they tend to be in. And again, I don't think that is something that we are necessarily going to change because manufacturing is an area with a lot of productivity growth, a lot of automation, and so employment growth tends to be slower there or declining there relative to other industries.

The other point I would notice on the investment is that so much of it comes from Europe and Japan, really our friends and allies, and I think that does make a difference in the way that we think about it. Many of these companies are used to operating with environmental regulations. They are used to operating with their labor standards and so on. So I think a lot of the companies that are coming in such as from Germany, from Switzerland, and so on,

these, by and large, are going to be good neighbor companies in terms of what they do and the practices that they have.

I say a little bit in the testimony about pros and cons. Since I have only got 2 minutes left, I am going to talk a little bit about what I think might be the best ways to make the United States more competitive.

The first thing I will say is we need to get the macroeconomics right. I know it is a hard concept to get across, but I think as long as we have a shortage of national saving over national investment in our economy, we are going to be running trade deficits because one is the counterpart of the other. So while I don't want to balance the budget tomorrow, I think that would be disastrous in a weak recovery. I do think that is something we need to do over the next 10 years. We have to make room for more export growth, more manufacturing growth, and one way to do that is to get a better balance between saving and investment.

The second point I would make is on trade agreements, and I think that is something where, you know, it would be great to work on a multilateral basis. If not, we do need to work, as I think you said here, on bilateral agreements. That is where one of the typos is. One of the major German auto companies that has invested in the United States to serve the U.S. market has decided to locate one of its other plants in Mexico because that is a location where they are going to export from primarily. And they feel they have better trade agreements operating in Mexico than they would in the United States. So, I think, that is a sign that we need to do more on the trade agreement side if a company that, say, wants to export into Latin America decides to locate in Mexico rather than in the U.S.

On the corporate income tax, I agree with the sentiment generally. I think, you know, again, we need to get more tax revenue from somewhere. I don't see how we are going to balance the budget over 10 years if we don't get more tax revenue. But we have to recognize that corporations are mobile. We have to be in step with other countries around the world, both in terms of what our marginal tax rate is and whether or not we tax companies on their foreign earnings or whether we tax them on the activities that they do here in the United States. So I think basically we need to get our corporate tax in line with where our competitors' is.

I am running out of time here, but just quickly I think we do need to do a bit more to improve the skills of our workforce. There are good community colleges that are doing that. The Department of Defense has shown some tremendous ability to give them their soldier skills in short periods of time, so I think there are a lot of things we can do in terms of vocational training and technical training to improve the quality of our workforce. And it is not that the workers are bad; it is just that they don't have some of the skills that they need.

And then, finally, I will mention taking advantage of the energy boom and that has been mentioned here already. I think this has been a massive change—a game changer—for the U.S. economy, this discovery of energy sources. I think there are environmental concerns about it, absolutely. But I think we can meet those concerns and have cheaper energy, cheaper natural gas, which will

really increase the attractiveness of the United States, both for domestic companies and for foreign companies. Thank you.
[The prepared statement of Mr. Baily follows:]

Testimony Prepared for the Hearing: Discussion of the Global Investment in
American Jobs Act, 2013
United States House of Representatives
Subcommittee on Commerce, Manufacturing, and Trade
Committee on Energy and Commerce

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By

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Introduction

I would like to thank Chairman Terry, Ranking Member Schakowsky and the members of the Committee for the opportunity to present my testimony today on the Global Investment in American Jobs Act. I have had the opportunity over the past twenty years or more to do research on issues of productivity, competitiveness and the impact of foreign investment, looking not only at the United States but also at Europe, Japan, Korea and many emerging markets.

The American economy today is improving but fragile. Real GDP growth is expected to be around 3 percent in the first quarter of this year but only about 1 percent in the second quarter and be well below 3 percent for the second half of the year because of the impact of payroll tax increases and the sequester. The number of jobs is increasing but too slowly. After flat-lining in the middle quarters of 2012, business investment picked up in the fourth quarter, but we need a lot more investment in order to create the jobs needed to raise living standards.

To a great extent, the performance of our economy over the next 10 years or so depends on the contributions here at home of US workers and companies. The competitive position of this country in the global economy will play a vital role and I applaud the House for proposing a comprehensive review of how to make the US economy a more attractive place to invest for foreign companies. In the years after World War II, it was American companies that went overseas, bringing with them technology and business expertise as well as capital. These companies helped spread prosperity to the rest of the world, a process that is still happening. But today successful, productive companies from around the world are also investing in America, bringing jobs, capital and, in some cases, new technologies and business efficiencies. The auto company that exports the most outside North America is BMW. Toyota makes the bestselling cars in America in its factories here; and Siemens is helping fix the electric power grid.

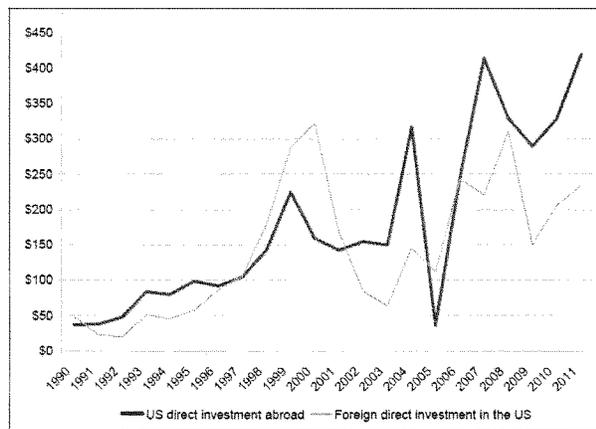
The inflow of foreign direct investment slowed as a result of the Great Recession, not surprisingly, but there is tremendous potential to increase that flow now and in the future, bringing additional jobs and boosting the economic recovery. Making America a location that attracts good foreign companies is very important and, by the way, those same factors will also make it more attractive for US multinational companies to locate more of their investment here at home.

The Pattern of Foreign Direct Investment

Figure 1 below shows the inflow of foreign direct investment to the United States and the outflow of direct investment by US companies overseas. The figure shows that the magnitudes of the inflow and outflows are comparable, although the outflow has been larger than the inflow for all but one year since around 2001. There was a surge of foreign investment into the US market at the time of the technology boom in the 1990s, which dropped sharply when that boom subsided. The level of foreign inflows has not reached its 2000 peak since then. Is it a problem that the outflows exceed the inflows? The US economy attracts huge amounts of capital from

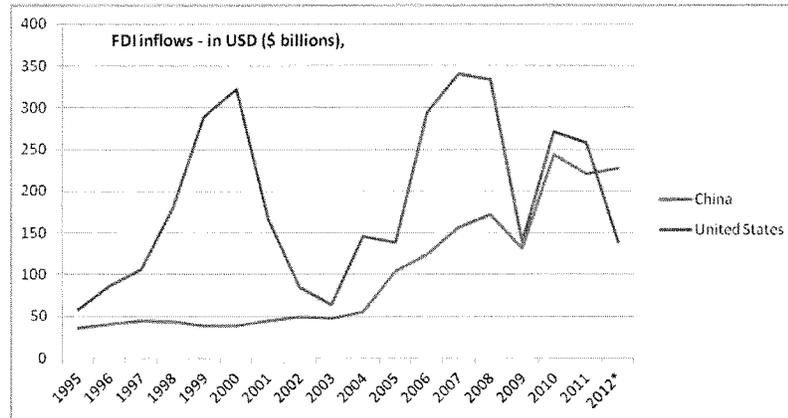
around the world every year. The McKinsey Global Institute estimated that between 2000 and 2007, 85 percent of the international capital available in the world (in the form of total current account surpluses) came to the United States, largely in the form of purchases of financial assets. Almost certainly, the US economy became too reliant on foreign capital at that time. The capital inflows were the counterpart to the large current account and trade deficits and the easy access to funds contributed to the housing boom and subsequent bust. Direct foreign investment inflows are different, however, in that they are stable and brings jobs and production. Bringing in more foreign direct investment, even while we rely less on foreign purchases of US financial assets, would be a plus for the economy.

Figure 1: Foreign Direct Investment in the United States and US Direct Investment Abroad, Annual Flows, 1990-2011 (in billions of dollars)



Source: U.S. Department of Commerce

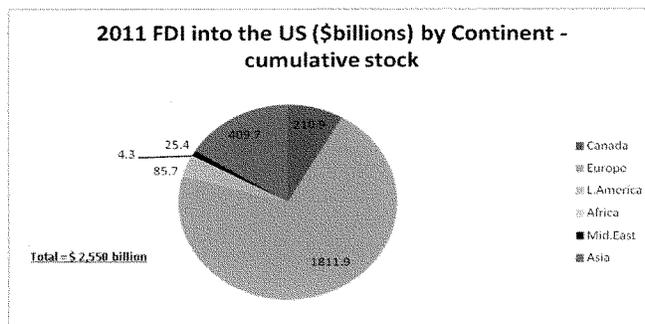
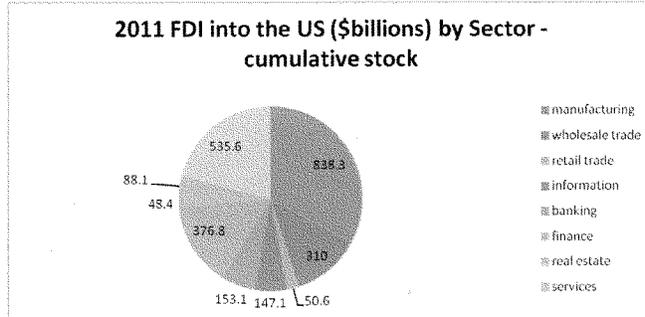
Figure 2 below looks at direct investment inflows to China compared to the United States. Over the entire period from 1995 to the present, direct investment in the United States was far greater than the flow into China. Of course, China traditionally put up barriers to foreign investment and even today many companies report that it is hard place in which to invest and do business. In 2012, however, based on the first three quarters of data, direct foreign investment into China exceeded the flow into the United States. Is this a matter of concern? Yes and no. China's economy is growing rapidly and will likely become larger than the US economy in the future. It is not surprising that multinational companies want to access China's labor pool and its market. It is also notable that the direct investment flowing into China is not coming primarily from US multinationals. Some American companies, like GM or Ford, have set up business in China, but most of the investment in China is from Taiwan, Korea and elsewhere, not from the US. On the other hand, the recent weakness in investment inflows in the past few years, visible in Figures 1 and 2, may be indicative of the lack of relative attractiveness of the United States to foreign investors.

Figure 2: Foreign Direct Investment into China and the United States

Source: World Bank, OECD. * Figures for 2012 obtained by annualizing the first three quarters.

Figure 3 below shows information about the stock of foreign direct investment located in the United States by industry and, below that, by country. Two points are notable. First, a disproportionate fraction of foreign investment coming to the United States is in the manufacturing sector. This important sector makes up less than 10 percent of the economy today but a much larger share of foreign investment stock. Over the past twenty years or more there has been concern that the US economy is not devoting enough of its investment to manufacturing, having an adverse impact on competitiveness and contributing to the large chronic trade deficit. It is notable that foreign-based multinationals have shown greater willingness to invest in manufacturing operations and are adding to competitiveness. Second, by far the largest proportion of the foreign investment (71 percent) comes from European countries, with the next largest coming from Asia, notably Japan, but also Korea. The UK, Netherlands, Switzerland, Germany and France are the largest investors from Europe. This pattern of investment coming from Europe and Asia is not perhaps surprising since these economies are among the most developed with global leading companies, strong technologies and efficient business practices. These countries are also strong allies of the United States. The economic problems in Europe and Japan help explain the decline in the inflow of investment. When foreign companies are stressed at home they are less willing to invest here.

Figure 3: The Cumulative Stock of Foreign Investment in the United States by Industry and by Geography.



Source: James K. Jackson, "Foreign Direct Investment in the United States: An Economic Analysis," October 26, 2012, Congressional Research Service.

The Pros of Foreign Investment in the United States

1. *Foreign companies can bring new technologies and efficient operations.* Overall, the US economy remains the global leader in both productivity and technology, but there are large variations by firm and by industry. We cannot expect to be the country that is the source of every innovation or every good business idea, and we are not. Research that compares productivity across countries has found that the biggest benefits of innovation come from its dissemination through the economy. American innovations in computers and semiconductors now contribute to economic growth around the world. German innovations in auto parts are used by the American auto industry. Foreign direct investment is crucial to distributing innovations and allows the US economy to benefit from the global pool of new ideas.

2. *Foreign direct investment provides capital for jobs in America.* American corporations are on average very profitable, partly because they are well-run compared to companies world-wide, but also because they set high target rates of return before they are willing to invest. US corporate

strategy has emphasized being lean in the use of capital and avoiding making large, risky investments unless the expected returns are high. Without making any judgment on this practice, it means that there are opportunities in America for investment and job creation where projected returns are pretty good but where US-based companies are reluctant to commit the necessary capital. Foreign companies based in Asia now own and operate much of the steel capacity based in the United States. As I will discuss shortly, the energy boom is attracting many foreign companies to build highly capital intensive new plants making petrochemicals in America. Infrastructure is an area where foreign investment could make a contribution to US economic performance.

3. *Foreign direct investment increases the competitive intensity of the US economy.* A basic tenet of economics since Adam Smith has been that competition benefits consumers. Markets with a dominant single producer or with an oligopoly of companies that reach tacit agreements to limit price competition will result in prices that are too high. More recently, economic research has stressed the dynamic benefits of competition in putting pressure on all market participants to cut costs and develop new and innovative products. Global companies that have established their positions in their own domestic markets can provide important competitive pressure to American industries where the domestic companies have become complacent.

The Cons of Foreign Direct Investment in the United States

1. *Foreign investment can displace jobs and production in domestic companies.* There is little question that the arrival of Asian and European auto companies producing in North America has resulted in a decrease in the number of jobs in the traditional American companies in the industry. Many of those jobs were unionized. Many Americans look back to a time in history when domestic companies dominated the economy and foreign competition was minor. Much of the apprehension is about imports and the trade deficit, but the changing identity of companies producing in the US market is also a concern.

2. *Foreign takeovers of American companies can be motivated by a desire to capture American technology.* The fight among countries and companies to take advantage of technology is older than the industrial revolution. Alexander Hamilton orchestrated an effort to bring European technology to post-revolutionary America, while today China is doing its utmost to push its economy into the twenty-first century by grabbing as much technology from around the world as it can. One reason that American companies have been reluctant to invest more in China is because of concerns about violations of property rights. The US government, of course, already has in place safeguards to prevent the capture of vital technologies by foreign entities and all foreign takeovers have to be vetted. The hard question is whether or not this process is striking the correct balance between protecting vital American interests and excluding foreign investors who could contribute positively to our economy.

3. *In the event of an economic downturn, foreign-owned companies may protect home country workers and operations at the expense of their US operations.* Some multinational companies produce the same, or very similar, products in different locations around the world. These companies have a choice about how to allocate production in situations where they have overcapacity. If workers in their home country have reached agreements to protect their own

jobs, the company may decide to keep full employment at home and cut production elsewhere. This concern is a legitimate one, but should not be overstated. Shifting production is costly and most foreign-owned companies with significant operations in the United States are concerned about the long term sustainability of their US operations.

Balancing the Arguments

Although there are real concerns about foreign direct investment, the benefits greatly outweigh the costs. On balance, international trade is beneficial to Americans but the case for expanding trade is a hard one to make to skeptical voters. By contrast, the case for encouraging foreign investment is much easier to make. New green field investments clearly create jobs and benefit local communities. Takeovers of domestic companies by foreign companies are also generally beneficial, providing an infusion of capital and new management that can prevent established companies from failing and allow them to make investments.

How to Make the United States More Competitive

1. *Get the macroeconomics right.* Chronic US trade deficits since the early 1980s have been sustained by an equal shortfall of domestic saving over investment. The best policies in the world will not restore American competitiveness in the long run as long as there is gap between national saving and investment. Reducing investment is not the right approach. Alternatively, national saving will need to increase once the recovery has taken a firmer hold. There are few if any tools by which government can influence private saving; thus, the increment to national saving will be achieved most effectively by reducing or eliminating the federal budget deficit over the next ten years. It is clear from the past that insufficient levels of national saving drove up the exchange rate, priced U.S. exports out of foreign markets and swelled the volume of imports.

2. *Work for trade agreements.* Balance in international trade needs to be a more focused objective of US foreign policy. In past negotiations, the United States traded access to US markets for foreign political support or access of US financial firms to foreign markets, to the detriment of admittance for US exports. A major US auto company is siting an assembly plant in Mexico because that country's free trade agreements will allow it to use the plant as an export platform to Latin America and elsewhere. In addition to obtaining more trade agreements, there is also a need to develop greater international consensus on appropriate guidance for exchange rates.¹

3. *Improve the Corporate Income Tax.* The mobility of capital, technology, and production facilities makes the national taxation of production as opposed to consumption increasing impractical. The marginal rate of corporate taxation in the United States is too high, particularly in relationship to the tax rates of other countries, inducing firms to locate overseas. The United

¹ A greater reliance on market-determined exchange rates would be preferable in most cases, but countries differ widely in their stages of development and ability to rely on such mechanisms.

States needs to follow the lead of other countries in shifting toward greater reliance on consumption-based taxation.²

4. *Improve skills.* Both American companies and foreign companies investing in the United States say that the skills of the US workforce are comparatively weak. It lags behind many other countries in developing effective vocational education and job training programs, and the educational attainment of young workers is falling behind that of countries like Canada, Japan and Korea. Furthermore, US 15-year-olds rank 25th in math and 17th in science in PISA scores among OECD nations. Germany is an example of a country that has used a high-quality vocational education system to improve the skills of its workforce. While there is no space here to elaborate on what changes should be made, greater attention needs to be paid to reversing the deterioration in workforce skills.

5. *Repair and improve infrastructure.* Similarly, the country suffers from a deteriorating physical infrastructure that raises the costs of production. The extraordinarily low level of current interest rates suggests that now is a good time to borrow funds to finance the repair and modernization of those systems. The adoption of such a program is constrained by a concern that it is simply an excuse for added deficit spending. That issue can be addressed within a capital budget framework in which each investment is financed with amortized debt for which a portion comes due in each year and is repaid with an explicit tax or dedicated revenue source over the duration of the bond issue. Such financing, if matched by a credible dedicated revenue source, would not add to concerns about an unmanageable level of general fund debt.

6. *Take advantage of the energy boom.* US natural gas resources have nearly doubled since 2003, driven by the development of shale deposits nationwide. The United States has the second largest recoverable shale gas reserves in the world at 24 tcm (trillion cubic meters), after China's reserves of 36 tcm. However, the United States is substantially ahead of the rest of the world in having started to tap these reserves at increasing scale. By 2020, shale gas is expected to add 10-15 billion cubic feet per day over current levels and grow to over 25 percent of total gas production. Along with shale gas, light tight oil (LTO) production has also developed rapidly. Current LTO production estimates for 2020 are between 5 and 10 million incremental barrels per day, although even higher numbers are possible. There are environmental dangers involved in this new wave of energy production but with the right regulation it should be possible to develop the oil and gas fields responsibly. It is expected that natural gas will be priced in the United States at \$4-6 per million BTUs, well below the \$12 price range in Europe and \$16 in Asia. Oil prices are set globally, but it is likely that US domestic prices will carry a differential below imported oil and the greater security of domestic supply will be an attraction for users. Cheap natural gas will also keep electricity prices down.

The energy revolution is already making America more competitive. Global companies are investing in new plants here to take advantage of the low price of energy and natural gas as a feedstock. For example, in 2012, Shintech Louisiana LLC, a Japanese company, invested an

² The United States also attempts to tax the foreign income of US companies, albeit with a deferral. Most other countries use a territorial-based system in which income is taxed only in the country in which it is earned.

additional \$1.3 billion in a PVC plant in Louisiana.³ Methanex Corp. (Canada) invested \$550 million in the United States in summer 2012 to construct a methanol production facility in Louisiana. This was the corporation's first US-based facility in over a decade.⁴ Sasol Ltd. (South Africa) agreed in December 2012 to build an "integrated gas-to-liquids (GTL) and ethane cracker complex" in Louisiana. This project alone is estimated to create 1,253 jobs directly, "with salaries averaging nearly \$88,000, plus benefits," and thousands of additional indirect job gains. Total investment is estimated to be between \$16 billion and \$21 billion, with ultimate value approximated at \$46 billion by a Louisiana economic impact study.⁵ Foreign direct investment is thus making an important contribution towards exploiting new energy sources for the benefit of the economy.⁶

Conclusion

The Obama Administration has been working to make it easier for foreign companies to build new plants and create jobs here. An interagency effort is underway to create one-stop-shopping for companies and I applaud the effort by this subcommittee to seek out ways to make America a more attractive location for foreign companies to invest. More needs to be done to coordinate federal agencies and states and localities in terms of permitting and meeting environmental requirements. Companies also report that the process of obtaining permits is much too slow and too complex.

On balance, foreign direct investment coming to the US economy has been beneficial, generating jobs, making-capital intensive investments and diffusing technology developed in other countries to our economy. There are legitimate concerns about protecting our technology and workers, but these challenges can be met. America is already an attractive place for foreign companies to invest and policymakers should make sure our competitiveness is sustained and enhanced.

³ Mark Crawford, "Hot United States FDI Sectors: Advanced Manufacturing," Area Development Online, <http://www.areadevelopment.com/LocationUSA/LocationUSA2012/US-FDI-sectors-advanced-manufacturing-262000987.shtml>.

⁴ "At the Epicenter of the U.S. Industrial Rebirth," Louisiana Economic Development, <http://www.louisianaeconomicdevelopment.com/led-news/articles/at-the-epicenter-of-the-us-industrial-rebirth.aspx>.

⁵ "Sasol Announces Largest Manufacturing Investment In Louisiana History, Creating More Than 7,000 Direct And Indirect Jobs," Louisiana Economic Development, December 3, 2012, <http://www.louisianaeconomicdevelopment.com/led-news/news-releases/sasol-announces-largest-manufacturing-investment-in-louisiana-history.-creating-more-than-7,000-direct-and-indirect-jobs.aspx?c=News%20Releases&id=39>.

⁶ There are exaggerated claims being made about the extent to which the energy boom will improve US competitiveness and create manufacturing jobs. The discovery of new ways to extract natural gas and oil may make the US self-sufficient in energy and reduce the trade deficit, but it will also increase the value of the US dollar, partially or fully offsetting the cost advantage of cheap energy. This is an example of the "Dutch Disease" that afflicted Dutch manufacturing some years ago when large gas reserves were discovered.

Mr. TERRY. Thank you very much, Dr. Baily.
And Ms. Drake, you are now recognized for 5 minutes.

STATEMENT OF CELESTE DRAKE

Ms. DRAKE. Thank you, Chairman Terry, Ranking Member Schakowsky, members of the committee. Good morning. I appreciate the opportunity to testify on behalf of the AFL-CIO on the critical issues of economic development and job creation. I have submitted written testimony for the record and will highlight a few key points here.

Any discussion of where our economy is going should begin with a discussion of where we have been. Between the Great Depression and 1980, America's economic strategy centered on policies designed to ensure a virtuous cycle of rising productivity, rising wages, and increase public and private investment that led to even greater productivity. Regulatory policy was critical to this strategy, including food, product, and workplace safety, a strong minimum wage, and the National Labor Relations Act giving workers the right to organize and bargain collectively. This national strategy led to the period of the highest sustained economic growth in American history and gave birth to the modern American middle class.

Since 1980, the United States has embraced a different economic strategy, one that has reversed the prior pattern of shared prosperity. We have sought to maintain our status as the world's largest consumer market while at the same time seeking to compete globally by lowering our labor costs. As part of this approach, the overall direction of regulatory policy since 1980 has weakened worker protections to reduce labor costs, left consumers and investors at the mercy of bad actors on Wall Street, and even promoted consolidation instead of competition in certain sectors. The result has been, not surprisingly, a series of financial bubbles and skyrocketing consumer debt.

As the Committee looks to increase foreign direct investment as one of the many tools we can deploy to help restore the American dream, the AFL-CIO would like to be a partner in that effort. We welcome foreign investment, as you do, but we caution that the review proposed in the discussion draft of the Global Investment in American Jobs Act of 2013 should be performed carefully, lest its recommendations prove more harmful than helpful.

While we welcome the changes made from last year's version of the bill, we continue to have serious concerns. For example, by not excluding from the review laws and regulations of general applicability, it is possible that those performing the review will consider financial services policies, such as Dodd-Frank, or important worker protections, including occupational health and safety rules, as near barriers to investment. Instead, we suggest that the review regard them as important to providing a good investment climate that includes a stable financial system and healthy and productive workforce.

As you know, the U.S. is a premier destination for foreign investment. In comparison to other countries in which investors are required to create joint ventures for nearly every investment or pressured to transfer important technology or intellectual property, the

U.S. has a very open system. There are, of course, a few important limitations on foreign ownership and control, such as those in the aviation and communication sectors. Again, the AFL-CIO encourages the Committee to ensure the review takes a balanced look at these limitations and consider their very important public purposes before simply categorizing them as barriers to investment.

These policies are designed with important purposes, including national security and domestic economic growth. In some cases they may even encourage investment as foreign enterprises seek to become American enterprises to expand their reach, which brings me to a final caveat. The AFL-CIO urges the Committee to ensure that the review recognize that while FDI can contribute to the creation and maintenance of high-skilled, high-paying jobs, such an outcome is not inevitable. State-owned and -controlled enterprises in particular may not invest with a goal to operate in the U.S. for the long-term, but instead, could acquire strategic technology that could, at worst, jeopardize our national security. They may also engage in predatory or anticompetitive behavior that our trade remedies cannot reach to their operations here, or they may operate their businesses in ways that could reduce average wages, benefits, and working conditions instead of lifting them up.

Given these risks, we also encourage the Committee to consider reversing the current policy of providing foreign investors with extraordinary legal rights through FTAs and investment treaties.

In sum, we look forward to working with you to promote the growth of the American economy through investment that creates high-wage, high-benefit jobs that restore the path to middle class. I thank the committee for its time and would be pleased to answer any questions you may have.

[The prepared statement of Ms. Drake follows:]

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BEFORE THE HOUSE SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

TESTIMONY FOR THE HEARING:
"DISCUSSION DRAFT OF H.R. ____, THE GLOBAL INVESTMENT IN AMERICAN
JOBS ACT OF 2013"

CELESTE DRAKE
THE AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

APRIL 18, 2013

The AFL-CIO is the umbrella federation for U.S. unions, with 57 unions representing more than 12 million working men and women in every conceivable sector and industry. We work to ensure that all people who work receive the rewards of their work—decent paychecks and benefits, safe jobs, respect and fair treatment. We work to make the voices of working people heard in the White House, on Capitol Hill, in state capitals across the country and in corporate boardrooms.

The AFL-CIO and its affiliate unions support the Global Investment in American Jobs Act's goal to create economic growth and good jobs by promoting investment. We support increased investment of all kinds, including foreign and domestic, so long as the investments help grow our economy and create good job opportunities.

We appreciate the changes the Committee has made to this bill as compared to last year's version and believe the changes will result in a more informative and useful report. However, we continue to have serious concerns about this legislation and very much welcome this opportunity to submit these comments regarding the proposed review of global investment in the United States.

At the outset, we note that the United States already attracts more foreign direct investment than any other nation in the world. The U.S. ranks 4th of 185 countries in the World Bank's 2012 Ease of Doing Business Index,¹ and has improved its score in the Organization for Economic Cooperation and Development's Regulatory Restrictiveness Index, in which 1 is the worst score and 0 is the best, from 0.116 in 2010 to 0.089 in 2012 (close to the current average for OECD countries and notably better than the average for non-OECD countries).

¹ "Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises," A Copublication of the World Bank and the International Finance Corporation, 10th Ed., October 23, 2012, <http://doingbusiness.org/reports/global-reports/doing-business-2013>.

**Sensible, Effective Regulations Create a Favorable Climate
For Investors, Existing Businesses, Workers, Families, and Communities**

At the present moment, the U.S. is already quite competitive in attracting FDI, and we would caution that efforts to help the U.S. attract even more FDI should be carefully crafted so that they do not undermine our existing strengths, which include a safe and adaptable financial sector, reliable transportation hubs, safe food and water, and accountable and transparent administrative and judicial systems. In order to avoid such an upside-down result, the AFL-CIO recommends that the study limit itself to reviewing policies that *uniquely apply to foreign direct investment*.

The reason for such a limitation is clear: as a nation, we have placed great value on having clean air, clean water, safe workplaces, safe food and stable financial markets. That is why we have adopted strong laws and regulations. Any review or discussion intended to increase FDI should be based on the premise that our system of regulatory protections is a prerequisite for growth and prosperity of this nation and its people—and that this system is part of what makes the U.S. attractive to investors who value reliable systems of finance, transportation, regulation, justice, and the like. We recommend a study focused on how to increase investment by increasing standards, protections and wages, not by rolling them back.

The AFL-CIO is deeply concerned that, as written, the proposed review could be used as a vehicle to undermine or weaken important safety, health, environmental, consumer and financial systems protections. For the past several years, we have seen an assault on a variety of regulatory protections, under the premise that regulations always cost jobs and hinder economic growth. However, experience has demonstrated that the opposite is the case.

Regulations address inequities and market failures and create a level playing field for new investment. They bring about technological change and innovation and help improve

productivity and growth. They bring stability and certainty to our economy. Reviews of the impacts of regulations have consistently found that the benefits of these protections in the form of lives saved, injuries and diseases prevented, reduced health care costs and increased productivity far exceed their cost of implementation. These regulations benefit individuals, businesses, and society as a whole and improve our overall quality of life. Thus, we urge the Committee to avoid including regulations of general application in this review.

To provide just one example of how ill-considered decisions to deregulate could harm, rather than help our economy, efforts to dismantle worker protections would have two seriously negative consequences for our economy. First, they would threaten to contribute to further downward pressure on wages and thus on aggregate demand and on Gross Domestic Product. Second, in a longer term strategic sense, this type of approach to regulation undermines key drivers of the types of physical and human capital investments necessary to sustain and propel a modern high wage economy.

If the Committee retains its interest in studying regulations of general applicability, we encourage you to ensure that the Department of Commerce will address the benefits of a strong and effective regulatory environment on attracting foreign investment instead of simply assuming that regulations generally impede such investment. Further, we would strengthen the safeguard in Section 4 (e) of the bill that currently reads “without undermining fundamental labor, consumer, or environmental protections” to read “without altering basic domestic labor, consumer, or environmental, financial and budgetary protections”.

Likewise, we encourage the Committee to ensure that the report analyze not just “innovative and noteworthy State, regional, and local government initiatives to attract foreign investment,” but also unsuccessful economic development subsidy programs in order to warn

sub-federal governments against poorly-designed incentives that fail to create good jobs and may even unwittingly create added social safety net costs.²

**The Few Limitations on Foreign Investment Are Critical to Maintaining
And Securing National Security, Good Jobs, and the Common Welfare**

In comparison to many other nations—including China, a key rival in the pursuit of foreign investment—the U.S. places relatively few limitations on foreign investment, ownership, and control of business entities. These few restrictions, however, play an important role in maintaining our economy and democracy.

Aviation

U.S. law limits certificates to engage in air transportation to citizens of the United States.³ The pertinent portion of the statute defines a “citizen of the United States” as an individual who is (1) a citizen of the United States; (2) a partnership of individuals who are citizens of the U.S.; or (3) a corporation organized under the laws of the United States or a state of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under “actual control” of citizens of the U.S., and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the U.S.⁴ In determining actual control, the Department of Transportation (DOT) reviews the totality of the circumstances of the relationship between the airline and any foreign entity or entities. No single factor is determinative in a finding of domestic control.

² For example, in “Money for Something: Job Creation and Job Quality Standards in State Economic Development Subsidy Programs,” (December 2011) by Philip Mattera, Thomas Cafcas, Leigh McIlvaine, Andrew Seifler and Kasia Tarczynska, the authors found that programs “without any wage requirement—which together cost more than \$8 billion a year—can potentially result in jobs that pay so little that workers must rely on social safety net programs such as food stamps, Medicaid, State Children’s Health Insurance and the Earned Income Tax Credit. These hidden taxpayer costs may also occur from wage requirements that are sometimes set *below market levels*” (emphasis added).

³ 49 U.S.C. § 41102(a).

⁴ 49 U.S.C. § 40102(a)(15).

Over the years, the DOT has become progressively more flexible in applying the actual control or “totality of the circumstances” test for foreign investments and management relationships between U.S. carriers and foreign entities. In the early 1980s, even a “shadow” of foreign influence over the key operational functions of a U.S. carrier was deemed prohibited. Now, arrangements such as that between Virgin Atlantic and Virgin America, which involve licensing of brands, up to 49 percent non-voting equity investment in addition to ownership of 25 percent of voting stock, meaningful board participation and selection of key officers by a foreign entity have been permitted. Even arrangements such as the former DHL-ASTAR relationship in which a foreign entity dictated the fleet composition and scheduling of the U.S. airline passed DOT review.

It is understandable that a foreign entity wishing to own a greater portion of a U.S. airline would decry these rules as barriers to greater investment—but they exist for very good economic and national security reasons, which is why the AFL-CIO strongly recommends that they not be targeted for elimination or degradation by this study.

Elimination or degradation of the foreign ownership and control rules would jeopardize the ability of the U.S. to maintain critical security interests. The Civil Reserve Air Fleet (CRAF) program relies on U.S.-flagged carriers to move troops and cargo during times of war mobilization. This program has saved the U.S. military tens of billions of dollars in aircraft acquisition costs. Aircraft made available under the program provided critical lift to the military during operations Desert Storm and Desert Shield. Allowing foreign entities to control U.S. carriers could raise questions about the participation of those carriers in the CRAF program and leave the U.S. unable to move personnel and equipment to mission critical areas when needed.

In addition, elimination of foreign ownership and control rules would jeopardize good jobs for thousands of aviation industry employees. The legal rights and benefits of airline workers are those provided by the laws of the country under which their airline is established. Elimination of the ownership and control rules would allow airline management to choose the country in which to establish an airline, to establish subsidiary airlines in different countries, to move an airline's headquarters from one country to another, and to establish multi-national airline holding companies with affiliated airlines in multiple countries. This would make it possible for a holding company to allocate flying from one affiliated airline to another based on which country's labor and related laws proved most favorable to the airline—even if the people of the country in which they were primarily operating had democratically established greater workplace rights and protections. As long as the laws governing labor relations are national (not international) in scope, there would be no effective way for the employees of the affiliated airlines to band together as a single collective-bargaining group. As such, it is likely that U.S. based workers would experience job losses and downgrades to pay, benefits, and working conditions in the jobs that remained.

Accordingly, the ownership and control rules in the aviation sector should be maintained as an essential safeguard against the development of “flag of convenience” airlines.

Communications

Likewise, Section 310 of the Communications Act of 1934 places limitations on the ability of foreign corporations or corporations with significant ownership by non-citizens to hold broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licenses.⁵

⁵ 47 U.S.C. § 310(b). This includes wireless personal communications services, cellular, microwave, fixed wireless, and mobile satellite services. Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses, Section 310 of the Communications Act of 1934, as Amended: Initial Authorizations and Transfers of Control and Assignments of Common Carrier and Aeronautical Radio Licenses, International Bureau, Federal

However, since the creation of the World Trade Organization (WTO), the Federal Communications Commission (FCC) now begins with a rebuttable presumption that foreign investment from a WTO member does *not* pose competitive concerns in the U.S. market.⁶ This change, combined with a relaxation over the years in media cross-ownership rules (as evidenced by the 1996 Telecommunications Act and subsequent regulatory rollbacks), and the expansion of new forms of media (including cable television and the Internet) that are much less regulated, has allowed foreign investors to own significant interests in influential U.S. media outlets. For example, even before reincorporating as a U.S. corporation in 2004, Rupert Murdoch's News Corporation had substantial U.S. holdings in this sector.

However, as with aviation, the AFL-CIO strongly believes the limitations that remain in the communications sector are important to maintain. They help to promote three goals acknowledged as important by the Commission and affirmed by the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*.⁷ These are: (1) viewpoint diversity: maintaining diverse and antagonistic media sources (including female and minority-owned sources) is vital for ensuring that people have access to the news and information they need to participate as citizens in a democratic society; (2) preserving and encouraging localism: local program service is a vital part of community life that the Commission has sought to promote and which is jeopardized by large media conglomerates, particularly if foreign owned or controlled; and (3) competition: competitive markets, free of monopolies or oligopolies, best serve the public because they result in lower prices, higher output, more choices, and more technological progress.

Communications Commission, November 17, 2004, DA 04-3610, p. 5 fn. 2, available at: http://transition.fcc.gov/ib/Foreign_Ownership_Guidelines_Erratum.pdf.

⁶ *Id.*, at p. 10 (citing Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign Affiliated Entities, Report and Order and Order on Reconsideration, 12 FCC Red 23891, 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-12 (1997) (Foreign Participation Order), *modified by* Order on Reconsideration, 15 FCC Red 18158 (2000)).

⁷ A case examining the FCC's media ownership concentration rules.

In addition, while some argue the foreign ownership rules in the media sector are a product of the Cold War, they were instituted well before the Cold War. While the FCC licenses use of the airwaves, it does not license such use permanently. The need for U.S. citizens to own and control the lion's share of the airwaves that form the "public square" of our democracy is not less today than it was in 1934.

In sum, while there are a few U.S. laws that do specifically limit foreign ownership, if these are to be included in the study, the AFL-CIO recommends they be evaluated in a balanced way that includes their important national security, economic, and public interest purposes, and not solely viewed as barriers to investment.

**All Foreign Investment Should Not Be Treated the Same:
The Study Should Evaluate Both the Costs and Benefits of Foreign Investment**

While FDI *can* contribute to the creation and maintenance of high-skill, high-paying jobs, such an outcome is not inevitable. What is most important to workers is not the nationality of the owners of the firm for which they work, but the conditions under which they work and how they are remunerated. Neither an "American" nor a "foreign" boss is inherently a better employer.

The potential failure of some FDI to create and sustain high-wage jobs—regardless of whether or not the investment received favored tax treatment or other subsidies—is a real concern. Not all investments are created equal, and the AFL-CIO recommends that this study incorporate this distinction. The goal of some FDI may not be to make a long-term or even medium-term investment in the U.S., but rather to drive existing U.S. competitors out of the market or to transfer valuable technology, equipment, intellectual property, and other assets to the home country or other points abroad. Either goal is likely to ultimately lead to job loss in the

U.S.; therefore, the AFL-CIO recommends that the Committee recognize this nuance and structure the study accordingly.

The acquisition of Saginaw-based Nexteer by the Chinese state-owned enterprise AVIC provides an apt example of an investment that may have been made for reasons other than long-term production in the U.S. Nexteer is a former division of General Motors that is a world leader in electric power steering, an important fuel-saving technology. The core of the technology is very-sophisticated, light-weight electric motors with very precise control systems. These motors are already being marketed in the solar and medical device industries, but they very likely have applications in military goods as well. Perhaps not coincidentally, AVIC is a major producer of military goods in China.

Finding out whether AVIC is transferring Nexteer's electric-motor technology to Chinese military production is difficult: we understand that Nexteer's extensive intellectual property was transferred to an AVIC subsidiary in China and that the relevant files and computer records are no longer physically in the United States. Therefore, the benefits to Nexteer's U.S. employees are unclear—does AVIC intend to produce in the U.S. long-term, creating jobs that help grow our economy, or was the investment part of an effort to gain technology at the expense of America's workers and U.S. economic and military security?

Increased outward investment by Chinese state-owned and state-influenced enterprises (collectively, SOEs) is becoming a greater issue every day.⁸ Several Chinese entities have already entered into or announced transactions that could pose problems for U.S. producers and their employees. Tianjin Pipe, a Chinese SOE, has broken ground on a \$1 billion seamless pipe facility in Texas—its products will be used to transport oil and gas, a thriving business given the

⁸ Daniel Rosen and Thilo Hanemann predict that China's cumulative outward bound FDI will reach \$1-2 trillion by 2020. Chinese Direct Investment in California, Daniel H. Rosen and Thilo Hanemann, Asia Society Special Report, October 2012.

shale oil boom. However, as an SOE, it is likely that Tianjin has received from the Chinese national or sub-national governments a variety of benefits unavailable to its U.S.-based private sector competitors, including low-cost or no-cost capital, favorable regulatory and tax treatment, and even inputs at below-market rates.

If Tianjin were exporting to the U.S., such preferential treatment—if proved—could be addressed through anti-dumping and countervailing duty laws, but such laws do not apply to goods made in the U.S. by foreign investors, which leaves injured U.S. competitors at a disadvantage. Moreover, if any SOE's goal in investing in the U.S. is to drive U.S. competitors out of business through predatory—rather than commercially competitive—behavior, the long-term effects on the U.S. economy and its workers could be devastating. The result will be fewer jobs as firms are driven out of business and higher prices as competition is reduced.

This study, therefore, should consider whether the existing screening mechanism for FDI is adequate to the task. The existing mechanism through which foreign investments are screened is the interagency Committee on Foreign Investment in United States (CFIUS). Though CFIUS rarely makes the news, the few times that it does make it appear that CFIUS is constantly busy blocking foreign investment into the U.S.⁹ Nothing could be further from the truth. On the contrary, CFIUS's charge is quite limited: it reviews mergers and acquisitions (as opposed to “brand new” investments, known as “greenfield” investments), and it assesses threats to national security (as opposed to economic security).

In its 2012 Report to Congress, the U.S.-China Economic and Security Review Commission (the Commission) recommended, among other things, that:

⁹ E.g., the potential investments by the Ralls Corporation (2012) and Dubai Ports World (2006) brought the usually anonymous CFIUS to the fore of the news even though only in the former case did CFIUS recommend that the President prevent an acquisition.

Congress examine foreign direct investment from China to the United States and assess whether there is a need to amend the underlying statute (50 U.S.C. app 2170) for the Committee on Foreign Investment in the United States (CFIUS) to (1) require a mandatory review of all controlling transactions by Chinese state-owned and state-controlled companies investing in the United States; (2) add a new economic benefit test to the existing national security test that CFIUS administers; and (3) prohibit investment in a U.S. industry by a foreign company whose government prohibits foreign investment in that same industry. (p. 23)

The AFL-CIO strongly supports these and other recommendations in the Commission's report.¹⁰ While, as previously stated, we welcome foreign investment, we do not believe the current mandate of CFIUS adequately secures the economic interests of U.S. workers or the firms that employ them.¹¹ Inclusion of these and related recommendations within the scope of the study could provide Congress with relevant and timely advice as it considers not only national security, but also economic security issues.¹²

An additional, but no less important, concern about FDI relates to the extent to which some foreign investors, by actively avoiding unionization, are able to drive down labor standards, wages, benefits, and conditions of work in both the union and non-union sectors of a particular industry. The auto industry is a good example of this phenomenon. Japanese auto manufacturers in the United States have consistently invested in so-called "right to work" states and thereafter employed aggressive anti-union campaigns, allowing them to establish lower labor standards than the UAW-represented plants of American-owned firms.

¹⁰ It is important to note that, while the examples used in this section were China-based enterprises, the AFL-CIO is concerned with the question of how particular investments will help create or hinder sustained economic growth—not with the country from which they originate. The AFL-CIO urges the Committee to consider the Commission's recommendations to expand CFIUS with respect to foreign investors of *any national origin*. An expanded review CFIUS review that considers America's economic security would be most helpful if it focused on job and economic impacts—not simply on the geographic source of the investment.

¹¹ We also note that Derek Scissors of the Heritage Foundation shares some of the Commission's concerns regarding national security, and has recommended that CFIUS be authorized to review "greenfield" investments and certain equipment contracts (particularly given cybersecurity issues). "A Better Committee on Foreign Investment in the United States," Derek Scissors, PhD, The Heritage Foundation Issue Brief No. 3844, January 28, 2013.

¹² Given the bill's current exclusion of CFIUS from the proposed study, the Committee may wish to charge the Department of Commerce with only making recommendations designed to strengthen (and not weaken) CFIUS.

This is most notable in the high level of long-term temporary workers employed by Japanese and other foreign-based firms manufacturing in the U.S. The effect is to lower the labor costs of the Japanese-owned facilities, which creates both insecurity and hardships for their workers, who are paid far below their average productivity. This practice in turn creates competitive pressure for U.S.-owned producers, who must then find a way to lower their own labor costs, thereby dragging down standards in the rest of the industry.

In light of this practice, the study should examine whether, and the extent to which, foreign investors drive down domestic wages and labor standards in particular industry sectors (such as automobiles) when foreign-based producers set up shop in the U.S. To be most informative, this aspect of the study should examine real wages and benefits over a long period that would show what happens to labor standards when foreign firms establish a significant presence in particular industry sectors. Certainly, all Americans can agree that if certain types of investment bring down, rather than lift up, average wages, benefits, and conditions of work, then it is not in the long-term interest of America to let such a trend continue. As such, if such a pattern is found, the study should recommend next steps to reverse the trend.

**Rights Provided to Foreign Investors Should Not Exceed
Rights of Domestic Investors**

As a final note, the AFL-CIO encourages the Committee to consider the unintended consequences of advantaging foreign investors *vis-à-vis* domestic investors. Past U.S. “free trade agreements” (FTAs) and bilateral investment treaties (BITs) have provided broad legal rights to foreign investors—rights that foreign investors can pursue in international arbitration tribunals, outside the Article III Courts set up by the Constitution. These rights protect broader concepts of property than apply under 5th Amendment jurisprudence, provide wider latitude for determining whether an “indirect expropriation” has occurred, and have included the obligation

to provide “fair and equitable treatment” as part of a “minimum standard of treatment” that domestic investors have no claim to. Together, these provisions grant foreign investors with enhanced opportunities to seek compensation from the public purse for a variety of real or perceived injuries, a clear advantage over domestic firms. The AFL-CIO urges the Committee to consider the cumulative negative impact of these extraordinary rights as it considers the best ways to grow the American economy and create good jobs.

The right to bypass domestic state and federal courts and proceed directly to international arbitration (a forum known as the investor-state dispute settlement mechanism, or ISDS) is one of the most troublesome of these extraordinary rights. ISDS provides a foreign investor the right to challenge a given local, state, or federal law, regulation, or administrative or judicial decision that the investor believes interfered with its expected profits or violated its minimum standard of treatment. Ordinary considerations that would apply in state and federal courts (such as the possibility of sovereign immunity and the application of the “rational basis” standard), need not apply—nor is a panel required to consider whether the good of the public should outweigh the foreign firm’s private right to make a profit. The only question to be determined is whether the governmental entity in question violated the investor’s right—even though the foreign investor undertakes no corollary obligations to the governmental entity.

Although it has not yet lost a case, the U.S. has been named as a defendant in numerous such cases, expending valuable public monies to defend itself. Other nations have lost claims based on challenges to local toxic dump permitting decisions, the operation of a domestic court system, and even decisions to terminate government concessions due to inadequate performance. By the end of 2012, the total number of known (not all cases are public) treaty-based ISDS cases

initiated increased to 518; among the public cases completed last year was the highest award in history, a \$1.77 billion judgment against Ecuador.¹³

Unfortunately for U.S. taxpayers, the principle of *stare decisis* does not apply, so a foreign investor is always free to pursue a failed but potentially lucrative challenge, and a subsequent panel is free to rule favorably.¹⁴ What makes these extraordinary foreign investor rights even more controversial is why the U.S. would so willingly surrender the jurisdiction of Constitutional courts to attract foreign investment dollars when even the WTO was unable to find a significant relationship between the grant of ISDS to foreign investors and an increase in foreign investment.¹⁵

The AFL-CIO thus urges the Committee to consider whether such extraordinary grants of legal rights are necessary to grow the economy and create good jobs.

Conclusion

The AFL-CIO shares the Committee's assessment that it is an urgent national priority to improve economic growth and create new jobs. The AFL-CIO would add that it is important to focus particularly on the creation of high-paying, high-skills jobs, the kind that helped build the middle class and have been disappearing from the U.S. economy not only since the onset of the financial crisis of 2008, but less obviously for the two decades prior.

¹³ "Recent Developments in Investor-State Dispute Settlement (ISDS)," United Nations Conference on Trade and Development, IIA Issues Note No. 1, March 2013. Available at: http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf.

¹⁴ Of course, the lack of *stare decisis* may cut in the opposite direction as well because it can result in a decision favoring government action even where a prior panel found for a private party. In the long run, however, the lack of binding precedent seems likely to generate more challenges, greater costs to the public, less certainty for policymakers, and a stronger chilling effect against measures similar to those which attracted prior challenges.

¹⁵ Do Trade and Investment Agreements Lead to More FDI? Accounting for Key Provisions Inside the Black Box, Axel Berger, Matthias Busse, Peter Nunnenkamp, and Martin Roy, World Trade Organization Staff Working Paper ERS-D-2010-13, September 2010, at p. 12-13, available at http://www.wto.org/english/res_e/reser_e/ersd201013_e.pdf.

We continue to support investments in infrastructure and human capital, the restoration of workers' bargaining power, tax and trade policies that promote manufacturing here instead of incentivizing production abroad, and effective financial regulations that will right-size our bloated financial sector and make it serve the real economy again. Instituting these policies will spur demand-led growth, prompt new business investment and start a virtuous cycle that benefits the whole economy. We believe the study proposed in the Global Investment in American Jobs Act of 2013 could be a useful step in creating new policies to help turn the economy around, but only if critical improvements are made to ensure the study takes a balanced look at existing policies.

The AFL-CIO is grateful for the opportunity to appear before this Committee on such a critical subject for our nation's future, and I look forward to your questions. Thank you.

Mr. TERRY. Thank you, Ms. Drake.

And now, we go to the question part of our hearing.

And so my first question will be to Ms. McLernon, Ms. Dempsey—well, we will just go right down the panel. Give me your opinion in helping us prioritize what is the most significant barrier/incentive that is either blocking or helping foreign investment in the United States. In essence, what is the low-hanging fruit? Ms. McLernon.

Ms. MCLERNON. Great question. So I think what is really important about this bill is that it seeks to uncover those very things. We mentioned all the macro issues here today that, in general, can provide a better business opportunity. But our policies over the long haul don't really take a look at the impact that they will have on companies that are not headquartered outside the United States, what type of impact it will have on them that it does not have on companies that are headquartered here.

Mr. Pompeo talked about something that was simple in terms of getting executives in and out. But there are also more direct hits in terms of government contracting, access to grants. We want a level playing field for these companies and, as I said, not to just win the investment, but ensure once they are here that they have every opportunity to succeed. And sometimes that discrimination is direct and obvious, but many times it is inadvertent.

And what I think that this legislation and what this study can do is it puts investment policy front-brain. We can think about these things before policies are enacted so that we don't have to go and patch things up afterwards in order to make it OK for a foreign company to be here.

Mr. TERRY. Ms. Dempsey.

Ms. DEMPSEY. Thank you. I agree a lot with my colleague on the FDI side, but I think we cannot lose sight as this legislation does not, that there are business climate issues that affect both domestic and foreign manufacturers. And this legislation, I think, will be important, frankly, to both. Some of these issues will be foreign investors looking at the U.S. market. But there are other issues that will impact, I think, manufacturing more broadly in the United States and are relevant.

Mr. TERRY. Mr. Slaughter.

Mr. SLAUGHTER. I echo the previous two comments. I would add, I think, one of the most immediate things the U.S. can do to improve the investment climate would be reform our tax code. On a lot of indicators we have one of the highest-burden tax codes in the world, both in terms of the statutory effect of tax rates and the complexity of our tax code. So I would put that at the top of the list.

Mr. TERRY. Mr. Baily.

Mr. BAILY. The three things that I hear most from companies: number one, that they have to spend a lot of money on training and skills so that they would like to see a better job. And that is, obviously, a state and local function to an extent. The second is taxes, which you have mentioned. And again, it is not that our corporate tax collects a whole a lot of revenue, but I think the complexity and the marginal tax rates are a concern. And then the third thing I hear is really the complexity of, sort of, permissions

and environmental rules, and it is not—a want to make clear, I don't want to dismantle our environmental rules—

Mr. TERRY. No.

Mr. BAILY [continuing]. But the speed of getting permissions, the ability to coordinate across agencies and between the federal, state, and local government makes for a lot of complexity and a lot of delay. And that is what I hear is a concern.

Mr. TERRY. Ms. Drake.

Ms. DRAKE. Thank you. We think one of the main things inhibiting investment here is the misperception that it is too expensive to invest in manufacturing in the United States. And we hear this from firms that have re-shored and explained that they thought it was going to be so much cheaper to invest and produce elsewhere. And when they really that looked at the numbers and the extra cost of producing elsewhere and shipping back to the United States, they found that it is a good deal and there is a good value here. So I would echo what Undersecretary Sanchez said about getting the word out and doing promotion.

Mr. TERRY. OK. Ms. Dempsey—well, I tell you what. We can't answer this in 50 seconds so I will put the rest of my questions in written form to you all.

And at this time, I will recognize Jan Schakowsky for her questions.

Ms. SCHAKOWSKY. Thank you. I wanted to ask Ms. Drake. A portion of your testimony is rights provided to foreign investors should not exceed rights of domestic investors. Can you elaborate on exactly what you mean by that?

Ms. DRAKE. Absolutely. So a foreign investor, if the foreign investor is from a country with which the United States has an FTA, a Free Trade Agreement; or a BIT, a Bilateral Investment treaty, has certainly legal rights through the investment chapter and through the process guaranteed by the investment chapter, which is investor-state dispute settlement, to have a complaint that may have reduced the expected profit or somehow didn't provide what the international law calls the minimum standard of treatment, and skipped domestic court, so skipped state courts and federal Article III constitutional courts—go to an international arbitration panel and pursue this challenge. And it is, in some ways, similar to the 5th Amendment takings challenge under the Constitution, but it has got a broader definition of what property is; it has got a broader definition of what a takings would be.

And we hear from small domestic manufacturers that they simply can't challenge their complaints about local, state, and federal regulations and laws in the same way. And they feel that all investors in the United States should have to go through the same system that respects our democratic process and democratically enacted laws and regulations.

Ms. SCHAKOWSKY. So let me ask just a broader question then. How would you revise, including, I imagine, taking what you just said into account, that the current draft of the Global Investment in American Jobs Act to achieve the goals that will not only attract foreign investment but also look at our domestic workers.

Ms. DRAKE. For that particular issue, we would add a provision that asked the Department of Commerce to really look at the FTAs

and BITs that we have made and whether the extraordinary legal rights given to foreign investors somehow inhibit or discourage domestic industries and make an unlevel playing field. So just with that addition of something to look at, we think it could be very useful.

Ms. SCHAKOWSKY. In your testimony, Dr. Baily, you draw a distinction between greenfield investment and investment that stems from merger and acquisition, and I asked Secretary Sanchez about that, too. Do you think there would be merit in the following one: BEA, once again, conducting a survey that distinguishes between greenfield investment to having the review and report and the draft bill under consideration take this difference into account?

Mr. BAILY. I would certainly like to see that additional data. I think it would be very helpful. So yes, I would. I do think that there are advantages that you can get from takeovers. There are obviously some takeovers you don't want and you mentioned those about proprietary technology and so on. You have to be careful. But in many cases a company that gets taken over may have been in difficulty. The new company may bring in investments, and we have seen that in the steel industry and other places.

So I am not against takeovers, necessarily. But I agree; it would be helpful to know what is what and what the data says.

Mr. SCHAKOWSKY. There was one other section, Ms. Drake, that was of interest to me that had to do with a Chinese company and somehow our, not inability, but making it difficult for CFIUS to actually secure the information that we need to make sure that information they get from American companies isn't used in the wrong way and counter to CFIUS rules. I wonder if you could talk a little bit about that?

Ms. DRAKE. CFIUS actually has a very small mandate and it doesn't really look at greenfield investment. It doesn't look at equipment sales contracts. And so there are various ways that it may not be catching all of the investments or equipment purchases or other contracts here that could have an impact on our national security. So consistent with some recommendations made by the U.S.-China Economic and Security Commission and even the Heritage Foundation, which you won't find me quoting a lot, we would recommend that that the Committee take a look at possibly expanding the mandate of CFIUS so that they can really look at all of their potential investments that they need to not with an eye of stopping FDI at all but just to make sure that we are protecting our national security and economic security in the way that we need to.

Ms. SCHAKOWSKY. Things that have dual purpose, for example?

Ms. DRAKE. Yes. There is an example in my written testimony of AVIC acquiring Nexteer and it is this steering technology that also has a military purpose, and that transaction has already gone through, but there is some question now about the technology being transferred to China. Will it be used for military purposes? And the information seems to all be in China, and there is no way, at this point, to really know if it will be used against the United States in a military way or it won't be.

Ms. SCHAKOWSKY. OK. I thank you for your testimony and your suggestions.

Mr. TERRY. Thank you.

At this time, I recognize the vice chairman of the committee, Mr. Lance.

Mr. LANCE. Thank you, Mr. Chairman.

To Dean Slaughter, in your testimony you indicate that there are two worrisome trends. First, although many related to non-employment activities, U.S. employment flatlined from 2002 to 2010 and then dipped from 2007 to 2010. Would you elaborate briefly to us on that?

Mr. SLAUGHTER. Sure. So over much of the past 10 to 20 years before the decade of the 2000s the presence of the U.S. affiliates of foreign multinational companies had grown on a lot of dimensions, employment being an important one. Employment had almost doubled over about a 15-year period. But employment has not been growing, and I think again from the broad policy perspective that, I think, many of us share of trying to have good jobs and good wages, one of the really important things is these global companies tend to have a whole nexus of productivity enhancing things of investing a lot in human resources, investing a lot in capital of new ideas through R&D. So those tend to be good jobs at good wages.

And so thinking about, per the topic of this hearing, policies that could try to allow that employment to increase would be great.

Mr. LANCE. And Ms. Drake, might you respond to that as well? I would certainly be interested in the position of your great organization.

Ms. DRAKE. Thank you very much. The data on, for instance, the high wage rates paid by foreign investors is really good information. We would like to see further expansion to get down into the weeds on that information because foreign investment, approximately, it is—roughly 40 percent of all foreign investment is in manufacturing.

Mr. LANCE. Yes.

Ms. DRAKE. Manufacturing tends to have higher wages anyway. And in the U.S. economy overall, there is only about 10 percent of the employment is in manufacturing. So there—I think there are some deeper questions about whether it is really bringing wages up. And if it is, we should do everything that we can to promote it. But if we find that in certain sectors foreign investment is negatively affecting wages and benefits, we should look at that and see if we can do anything in a policy way to turn that around so that all foreign direct investment would be good for workers in bringing wages and benefits up.

Mr. LANCE. What sectors in particular are you referring?

Ms. DRAKE. Well, one particular concern is auto manufacturing. And there has been a trend for foreign auto manufacturers to hire a lot of temp workers. And there is an article from the Washington Post that I would like to submit for the record that talks about this use of temp workers. And what it has done is it makes it less competitive than for existing American auto manufacturers to not do the same thing. So as there are competitive forces on wages and we want those competitive forces to be bringing wages up rather than down.

Mr. LANCE. Dean Slaughter, would you comment?

Mr. SLAUGHTER. I just echo Ms. Drake on the concern about measurement, but some of the best academic and policy work that has been done on this shows that when you control for industry, you control for location in the U.S. of manufacturing plants that are part of multinational companies, they tend to pay consistently about 10 to 15 percent more. And not just for the non-production workers but for the production workers as well. We can up measurement on these things. As always, it is really important and more data would be great. But there is a lot of evidence that these wages are high.

Mr. LANCE. And then, Dean Slaughter, you say secondly, a worrisome trend is that the U.S. share of global FDI has fallen sharply. And we are working in a bipartisan way on this issue. Could you elaborate briefly on that aspect of your testimony?

Mr. SLAUGHTER. Sure. I picked up on something that Dr. Baily said, which is I think as there is faster economic growth in China and India and a lot of parts the world, I think it is inevitable that that faster growth will bring some decline in the U.S. share of world FDI flows.

Mr. LANCE. Yes.

Mr. SLAUGHTER. But what is striking is how much more dramatic the fall in FDI shares for U.S. have been compared to our share of GDP or other economic measures. And so that gets to the need to have a policy environment that supports the growth of these companies here.

Mr. LANCE. And this is a relatively new trend only in the last decade, your second point, and that is why we are trying to work through this issue in a bipartisan capacity?

Mr. SLAUGHTER. Yes. So in the '90s, it was the opposite.

Mr. LANCE. And was that due to the stronger economy in our country in the 1990s in your judgment?

Mr. SLAUGHTER. So that had a lot to do with it. We had a strong productivity boom in the second half of the 1990s and that overall strong growth and jobs and incomes was part of what attracted these companies here.

Mr. LANCE. And might I respectfully suggest that was due to bipartisan cooperation, a Democratic president, and Republican control of the House in the late 1990s.

Mr. POMPEO. Do it again.

Mr. SLAUGHTER. Absolutely.

Mr. LANCE. I hope that is possible. Thank you, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Lance. Let's see, Mr. Long.

Mr. LONG. I am hard to miss. What do you mean let's see?

Mr. TERRY. Yes, I meant get out of the way.

Mr. LONG. OK. Thank you, Mr. Chairman.

Ms. Drake, you just mentioned temporary workers, hiring a lot of temporary workers. Describe to me what a temporary worker is.

Ms. DRAKE. A temporary worker is hired through a temp agency and many of them very large the United States. And the temp agency is then the actual employer of record, responsible for the wages and taxes and benefits of that worker. And they can be on a short-term—when these agencies started, it was your secretary is sick; you need a temp for the day. As this Washington Post arti-

cle describes—and it is not just foreign employers that are doing that, it is an economy-wide trait——

Mr. LONG. What date is that? What date was that that came out?

Ms. DRAKE. Oh, this is an older article. It is Monday, October 11, 2004. But this is still the pattern. Temporary workers can be hired from anything to——

Mr. LONG. I think I was still in high school.

Ms. DRAKE. That makes you younger than me. They can be hired for 30 days, 90 days. Some are temps for 2 years or longer in many places. It makes it—typically, the temps are paid less, have lower benefits than the permanent workers, and their goal is to someday be hired on as a permanent employee.

Mr. LONG. OK. I am actually, if I decipher and tried, 4 or 5 months older than the AFL-CIO. So we both came along in the same year.

I had a constituent come to me the week before last, I believe, maybe 2 weeks ago. I was home and they said we are coming to see Roy Blunt, our Senator; we are coming to see Claire McCaskill, our Senator; and we are coming to see you because we want you to understand, Congressman, how onerous this ObamaCare, Affordable Care Act, whatever you want to call it. I don't think ObamaCare is a pejorative anymore or ever was or whatever because the President calls it that. But anyway, let us call it ObamaCare. And they said we want you to know what this is doing. And I said, well, what do you mean? He said, well, we have 53,000—this is a local employer. Obviously, they have tentacles across United States. They have places of business in several States. He said we have 53,000 employees and the best we can decide is we are going to have to take those employees and go—not have anyone over 30-a-hour-a-week employee.

Is this of concern to you at the AFL-CIO that—are you hearing these types of things about complying with ObamaCare and how we are going to get it done by 2014?

Ms. DRAKE. I don't work in the healthcare department but from what I know of we are not hearing those complaints. We are concerned that those complaints are being made. We think that the Affordable Care Act was a bipartisan compromise. I know that there were a lot of Republican ideas incorporated into the bill and every attempt was made to make it affordable for employers, for workers, for the country. And we would hope that employers would do their best to provide the healthcare for their workers through the system in the ACA so that they have healthy productive workers.

So we wouldn't want to prejudge that it is going to be something that is unaffordable or is not to work. We strongly believe the opposite.

Mr. LONG. I had you define temporary worker for me but I don't think I am going to ask you to define bipartisan because we might have a different understanding of that if ObamaCare was a bipartisan effort.

But I want to read from an article in the Wall Street Journal. It wasn't back in 2004; it was the day before yesterday. A labor union representing roofers is reversing course and calling for the repeal of the federal healthcare law citing concerns the law's cost

for ensuring members. Organized labor was instrumental in getting the Affordable Care Act passed in 2010 but more recently has voice concerns that the law could lead members to losing their existing health plans, which is what my constituent told me. He said, Billy, we provided much better healthcare. Now, we are going to have to cut everyone back to a temporary status or less hours.

The United Union of Roofers, Waterproofers, and Allied Workers is believed to be the first union to initially support the law and later call for its repeal. And on the Republican side, we have tried several different ways, which is debatable whether those will work or not. Whenever you vote 32 different ways to defund the Act and do away with it, and when you don't have the White House and you don't have the Senate. But now that it has gotten through the Supreme Court and they have ruled that it is the law of the land and it is coming to fruition, I am just going to ask you to be on guard because when you start having people that employ 53,000 people telling these stories—and they are not uncommon. This is not some far out there, somebody in a tinfoil hat—I hear tapping—

Mr. TERRY. That is not hearing things.

Mr. LONG [continuing]. That is dreaming these things up. So in all honesty, I think this is just going to compound until we find out that we at least need to delay implementation at the least. When you have roofing unions that supported the thing saying it is not doable. So I am not trying to pick on you but I am just—the AFL-CIO, I want to see what you are hearing. And thank you all for your testimony here today.

Mr. TERRY. Thank you, Mr. Long.

Ms. Drake, you suggested an article be entered into the record. Was that already part of your statement that is part of the record?

Ms. DRAKE. It was not.

Mr. TERRY. OK. So ordered.*

Ms. DRAKE. Thank you very much.

Mr. TERRY. At this point, the gentleman from West Virginia.

Mr. MCKINLEY. Thank you, Mr. Chairman.

In Ms. Schakowsky's earlier remarks she was talking about the jobs in our manufacturing and how important it is for our middle class. And if you were here during my comments with Secretary Sanchez was the concern about the loss of our steel industry in northern West Virginia. We have, indeed, both of those were owned—they were foreign investments, major foreign investments. One of the prime reasons that we lost both of those 30,000 jobs was because of trade. So I am just curious. Ms. Dempsey, maybe you can—and Ms. Drake, you can ply into this.

But in some consideration to try to encourage more further investment in America, how conceivable would it be, and what would be the effect for people considering investment if they were made aware that through a trade agreement or a trade settlement that a company is found to be coming in inappropriately putting business out? As I understand, that money, those penalties now go to the U.S. Treasury. What would be the message if we could put it in this bill or in this study to see that that money goes back to the

*[The information was unavailable at the time of printing.]

individual companies that are aggrieved, and not only the companies that are aggrieved but also to the employees that have lost their job as result of this. I think it is far more helpful to our middle class if we are helping the people that have been hurt rather than the Federal Government getting the largess of that.

What would be the effect of that, do you think, if investors knew that their companies could be protected?

Ms. DEMPSEY. Perhaps I can start, Congressman. Thank you. You know, I started my career as a trade remedy lawyer bringing it cases for the last U.S. fan manufacturer here in the United States for the U.S. steel industry in the 1990s. And these are important issues and we at the NAM take enforcement of our own trade laws just as importantly as we take enforcement of other countries' obligations and trade agreements and everywhere else.

The issue you raise about where the disbursement of the funds goes is something that had been tried in the United States and we lost the WTO ruling on this. It is not something that is viewed in the international rules as a way forward.

I will say that I believe that the strong enforcement you generally see in the United States for our trade remedy laws—not that it is perfect—but the strong enforcement is something that attracts companies here, that they know that there is a better chance that they will be operating on a level playing field, that the competition from imports will be on a level playing field. The one issue we have heard the most, though, from our companies right now is an issue that is before the Ways and Means Committee which is if there is circumvention of those anti-dumping and countervailing duty orders, they take too long to get enforced. And so we support something called the Enforce Act so that those rules are enforced.

But the issue of the payments back is a complicated one. I think there are other things in terms of domestic manufacturing we need to do to improve the opportunities for those companies, as well as the manufacturing community at large.

Mr. MCKINLEY. Ms. Drake.

Mr. BAILY. Can I make a quick comment on that? Would you give me 30 seconds? No, you want to talk to her.

Mr. MCKINLEY. After her.

Mr. BAILY. Excuse me.

Ms. DRAKE. Thank you. I think your idea on remedies is a good one. And as the AFL-CIO tends to disagree with many of the strictures sent down by the WTO—so maybe that is something that can be addressed with WTO reform.

To get to your earlier question to Undersecretary Sanchez about who can bring a case and is there adequate assistance for cases, we would support a broader definition that cities and communities could bring cases, that workers could work together with cities and communities and the employers to get the resources needed because these cases are very expensive. And we would support the Department of Commerce providing additional assistance beyond what they are currently doing.

And I think one other thing with regard to your dumping concerns, with these state-owned enterprises investing and operating in the United States, it is possible that they are getting subsidized inputs, tax rebates, no-cost financing so that they can be here es-

entially producing what would be a dumped product if they made it in their home market, but they are producing here and our current trade remedy laws can't reach them.

Additionally, there has been some recent investments by Chinese state-owned Corporations, SinoPac, for instance, in oil investment. And I am not a practicing trade remedy lawyer but I spoke to some before this hearing and it is not clear that if they import what would be dumped product to themselves that our trade remedy laws could get at that because if it is within the same company, it may not enter commerce, and it may not be subject to our anti-dumping laws.

So there are a lot of interesting things to look at here in order to make sure that competition is level and balanced and that domestic companies and domestic jobs are really strengthened rather than put at risk.

Mr. MCKINLEY. Thank you.

Mr. TERRY. I would request, respectfully, a unanimous consent for an additional minute so that Mr. Baily can answer.

Mr. BAILY. Thank you so much.

While it is clear that we need to enforce our trade laws and it is true that trade has been an important issue in the steel industry, with all due respect, I would say that I doubt if the loss of almost 30,000 jobs is really attributable to trade, because if you look at a steel plant today compared to one some years ago, now you see, you know, four people and some computer monitors, whereas before, you saw lots of people down on the production lines. It has become a very automated company that doesn't hire a lot of people.

And the second thing is, is that we have had a terrible recession so that the demand for steel, it really collapsed in the recession. It is coming back now, but I don't think it is where was. So I think there are some domestic issues also associated with some of those jobs.

Mr. MCKINLEY. When China is producing six times the amount of steel that we have, and just a few years ago we were both producing the same quantity of steel, it tells me something is going on in China, whether it is currency manipulation or what.

Mr. TERRY. All right. Thank you, Mr. McKinley.

And now, Mr. Johnson of Ohio is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Dr. Baily, before I ask my question, I am not sure—I live in steel country, as Mr. McKinley does. I don't know what steel plants you go to where you have got four, five people running computers that produce steel. That is not the way it is produced along the Ohio River in the plants that are in my district. You have got hundreds and hundreds and hundreds of people that are employed in those.

But let me get to my question. I like trade also. I believe in fair trade. You know, the idea of free trade to me is a vernacular that troubles the American people. You say the term free trade; it conjures up ideas of Chinese ships pulling up to docks and offloading technology and products that disadvantage of our workers back here at home. I have advocated for a while changing the vernacular to talk about export optimization agreements rather than free trade agreements, because that is really what we are trying to get to. We make it here, we innovate here, we sell it there.

So with that in mind, you recommend that the U.S. enter more free trade agreements. Where do we stand relative to similarly situated nations in terms of the number of trade agreements enforced?

Mr. BAILY. I will make a quick comment and then I am going to defer to my friend Matt Slaughter, who can probably give you a much better answer than I can. Yes, to say it is only four people, obviously, that was a bit of an exaggeration. But productivity really has gone up.

Mr. JOHNSON. Oh, I agree with that. I agree with that.

Mr. BAILY. And you got the electric arc furnaces and so on—

Mr. JOHNSON. I am sorry. I have got 5 minutes so let's go to the free trade questions.

Mr. BAILY. So let me defer the answer to the free trade question if I may to—

Mr. JOHNSON. OK.

Mr. BAILY [continuing]. Dean Slaughter.

Mr. SLAUGHTER. So the U.S. has about 23 trade agreements enforced with other countries in the world. Many of them are older, many of them are—no disrespect to our trading partners—with relatively small countries for which—and you want to talk about export optimization; they are not large markets. So part of how we ideally get out of the world financial crisis is build more jobs and activity in America, link to selling things to the rest the world. I think there is a tremendous opportunity for the United States to expand the free trade access that we have to a number of other growing countries.

Mr. JOHNSON. And in terms of export, increasing exports, right?

Mr. SLAUGHTER. Absolutely.

Mr. JOHNSON. Yes.

Mr. SLAUGHTER. Imports have a lot of values as well but absolutely on growing exports.

Mr. JOHNSON. We are on the same page. The administration is currently engaged in TPP negotiations and plans to enter negotiations with the EU this summer. Are there other glaring omissions other than TPP and EU in our stable of free trade agreements in your mind?

Mr. SLAUGHTER. Sir, what I will add, I guess, is we can think about organizing not only on country lines but industry lines as well.

Mr. JOHNSON. Um-hum.

Mr. SLAUGHTER. So if we think about manufacturing deftly managed through United States, but we have a lot of large and growing industries and services for which there is a lot of barriers in trade and investment around the world. So as a complement to think about negotiating with countries, I think there is great value in thinking about finding industries in which a lot of Americans work throughout a lot of districts where we could open up foreign markets.

Mr. JOHNSON. Sure. Dr. Baily, you also testified that we should take advantage of the natural gas energy boom, and I certainly agree with that. Much of that steel manufacturing that I talked about in eastern and southeastern Ohio is a result of that. If production were to slow or to be stopped altogether in oil and natural

gas, in your opinion, how would that impact our ability to attract or retain FDI?

Mr. BAILY. It feels a little like a leading question but I think there is no question as to the answer, which is that if it were—

Mr. JOHNSON. She mentioned lawyers earlier. A lawyer doesn't ask a question they already don't know the answer to, right?

Mr. BAILY. But it certainly would make the U.S. less attractive for investment for both domestic companies and foreign companies.

Mr. JOHNSON. Great. Great. What do you think, as it relates to trade, as it relates to manufacturing, if you could name three things that we should do to bring manufacturing back here to America—I met with a bunch of labor folks this morning that are concerned about their jobs being outsourced. If there were anything that we could do, two or three, what would be the top three things that you would recommend we do to improve our position where our trade is concerned and retain manufacturing?

Mr. BAILY. Well, Chairman Terry asked us a somewhat similar question and I think I give the same answer here. I think we do need to do more to make sure we have the skills in the production workers. We have the finest universities in the world, but many particularly of our young men are not going to—

Mr. JOHNSON. So workforce development?

Mr. BAILY. Workforce development. Number two is harmonizing our corporate tax with the rest of the world so that it is less complex and the marginal rate is lower.

Mr. JOHNSON. We are on board.

Mr. BAILY. And then the third is around—as I said, I am strongly in favor of our environmental standards; we need those. And I am concerned about global warming but we need to make sure that you can get permissions and there is coordination between States and the Federal Government and among federal agencies and that that process can move more quickly.

Mr. JOHNSON. Thank you, Dr. Baily.

Mr. Chairman, thank you for the time.

Mr. TERRY. Thank you, Mr. Johnson.

And that concludes the members from asking questions. No one is left.

So I want to thank all of our panelists for your incredible testimony and help today. It really has been a great assistance to us. You gave us more to think about including, Ms. Drake, where I think you turned around a few conceptions. We were under the impression that we should be exempting from any consideration of labor laws, and I think you are suggesting that we need to have that discussion in this. So we will have to vet through that, which means we also have the opportunity to submit written questions to you, which my members will have only 10 days to get to you.

So that is my admonition to my colleagues is they have 10 days to get their questions put together. We would appreciate a quick turnaround in your answers for those questions.

And at that, that concludes this hearing.

[Whereupon, at 11:27 a.m., the subcommittee was adjourned.]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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October 2, 2013

The Honorable Francisco Sanchez
Under Secretary of Commerce
For International Trade
Department of Commerce
International Trade Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Under Secretary Sanchez,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Thursday, April 18, at 9:30 a.m. in 2322 Rayburn House Office Building, at the Subcommittee on Commerce, Manufacturing, and Trade hearing entitled "Discussion Draft of H.R. __, the Global Investment in American Jobs Act of 2013."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, October 16, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Kirby.Howard@mail.house.gov and mailed to Kirby Howard, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade
Attachment

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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October 2, 2013

Mr. Matthew Slaughter
Associate Dean
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Hanover, NH 03755

Dear Mr. Slaughter,

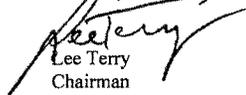
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To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, October 16, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Kirby.Howard@mail.house.gov and mailed to Kirby Howard, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade
Attachment

Response of Mr. Matthew Slaughter
Associate Dean, Tuck School of Business

Additional Questions for the Record

The Honorable Jan Schakowsky

During the Subcommittee hearing on April 18, 2013, you mentioned reforming the tax code as one of the first initiatives that should be done to spur foreign direct investment. Of course, such reform would affect domestic and foreign firms alike. The subject of this hearing was whether there should be a study undertaken on foreign direct investment. I would like to understand whether there are issues that are unique to foreign firms.

1. Can you list the significant competitiveness factors that uniquely apply to foreign investors in the United States? How important are these factors compared to the factors on which they make business decisions that they *share* with domestic firms?

Perhaps the most important tax consideration for foreign firms relative to purely domestic U.S. firms is the *tax rate* these companies face in America. For most companies, tangible business decisions are based on what is commonly called the *effective tax rate* that combines both the statutory marginal tax rate (which for most companies with profits is today 35%) with any tax credits and expenditures that these companies might realize in America (e.g., tax abatements for research and development expenditures) that reduce their actual tax burden below the statutory rate.

Purely domestic companies, so long as they choose to remain operating, will largely take as a given their federal tax rate. The same is not true for foreign companies. By virtue of being part of a multinational company, these foreign companies can choose to operate in other countries. Of course, these location choices are not instantaneous, and neither are taxes the only consideration for these companies. But it is well researched that America's tax rates shape both the location, scale, and scope of U.S. operations that foreign companies undertake in America. *All else equal, high U.S. tax rates—especially relative to the tax rates of other countries, which generally have been falling in dozens of countries for many years—deter the U.S. operations of these foreign companies to an extent much more pronounced than for the U.S. operations of purely domestic companies.* In particular, high U.S. tax rates mean less capital investment, reduced research and development, and fewer jobs.

There are other features of current U.S. tax code that affect foreign companies different from purely domestic companies; for example, rules that limit how much their U.S. subsidiaries can borrow from their foreign parents (and thereby reduce their U.S. tax liability). But these foreign-company-specific tax features are not as fundamentally important to overall U.S. economic success linked to these companies as are our tax rates. The world and the options it presents to global firms have changed dramatically in recent years. The United States cannot rest on past success and take for granted a large and rising U.S. presence of foreign companies. U.S. policies—especially its tax policies—must acknowledge this economic reality to keep the country a competitive location for creating good jobs linked to the dynamic world economy.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-2927
Minority (202) 225-3641

October 2, 2013

Mr. Martin Baily
Senior Fellow
Brookings Institute
1775 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Baily

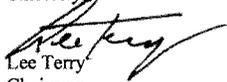
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Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

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Additional Questions for the Record and Response of Martin Baily, Brookings Institute

The Honorable Jan Schakowsky

In your written testimony, you said, “[m]aking America a location that attracts good foreign companies is very important and, by the way, those same factors will also make it more attractive for US multinational companies to locate more of their investment here at home.” During the hearing you mentioned three specific complaints you frequently hear from foreign companies, regarding an educated workforce, taxes, and permitting in the United States. All three of these complaints affect domestic and foreign firms alike.

1. The subject of the hearing was whether there should be a study undertaken on foreign direct investment. I would like to understand whether there are issues that are unique to foreign firms. Can you list the significant competitiveness factors that uniquely apply to foreign investors in the United States? How important are these factors compared to the factors on which they make business decisions that they *share* with domestic firms?

Answer from Martin Baily

Many of the issues that are important for the competitiveness of American companies are also important for attracting foreign investment, such as the skills of the workforce and the quality of the infrastructure.

Other issues may affect domestic companies but are of particular interest to foreign companies. For example, regulation and permitting are more difficult for foreign companies that have limited experience with operating in the United States. There may be several federal agencies involved and then there are state and local governments. As you know, the Commerce Department is working to simplify the process and create a one-stop shop for foreign investment.

Trade and visa issues are likely to be of particular importance for foreign companies. They will need to bring foreign nationals to work here as they establish operations and obtaining visas can be difficult. A foreign manufacturing company will want to bring parts and components in from its home base and trade rules can be complex. They may also want to export from a manufacturing base in the United States either to third countries or back to their home country. Improving trade agreements bilaterally and multilaterally would help make this an economic choice.

In a time of budget stringency, Congress must weigh each spending choice carefully. I would not support a expensive study, or a highly politicized study. A limited and careful study would be helpful, particularly to know what has been the experience of companies that have come here and what barriers they found to be the most difficult to overcome. Talking to companies that have decided against making an investment would be valuable also, to see what made them decide against producing here.

FRED UPTON, MICHIGAN
CHAIRMAN

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October 2, 2013

Ms. Celeste Drake
Policy Specialist
Trade and Globalization
AFL-CIO
815 16th Street, N.W.
Washington, DC 20006

Dear Ms. Drake,

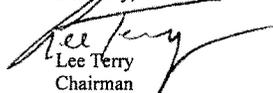
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Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

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Attachment

Additional Questions for the Record and Responses by Celeste Drake, AFL-CIOThe Honorable Jan Schakowsky

1. In testimony submitted prior to the Subcommittee hearing on April 18, 2013, you wrote that “rights provided to foreign investors should not exceed rights of domestic investors.” At the hearing, you expanded on this statement with a discussion of the legal impact of investor-state dispute settlement (ISDS) mechanisms and other provisions of international trade agreements that could place U.S.-based companies – especially small and medium-sized enterprises – at a disadvantage.
 - a. I am interested in understanding in greater detail the potential consequences of such provisions. For instance, I have heard that it might be possible for a foreign firm to challenge a domestic regulation, enacted by democratically-elected leaders, because the regulation would have an impact on future expected earnings. Is this an example of a where a foreign firm essentially could have greater rights than a domestic firm? On what claims – specifically, claims domestic firms could not make in the courts in which they have standing – could foreign firms base legal action at an international body?

ANSWER:

Yes, foreign investors whose “home country” is a country with which the United States has a “bilateral investment treaty” (BIT) or “free trade agreement” (FTA)¹, in addition to using all domestic avenues available (including lobbying at the federal, state, and local levels; participating in rulemaking, such as through the Administrative Procedures Act; and accessing state and federal courts), can pursue claims before a private, unaccountable, undemocratic arbitration panel. The types of property interests that a foreign investor may seek to protect in the arbitration go far beyond U.S. law, and include such speculative concepts as the “expectation of gain” and the “assumption of risk.” A typical, *non-exhaustive* list of the forms an investment may take is included in the Peru FTA:

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, **including such characteristics as** the commitment of capital or other resources, the expectation of gain or profit, **or** the assumption of risk. Forms that an **investment may take include:**

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;^{12, 13}
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;^{14, 15} and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

¹ With the exceptions of the U.S.-Australia and U.S.-Jordan FTAs.

¹² Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

¹³ Loans issued by one Party to another Party are not investments.

¹⁴ Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

¹⁵ The term “investment” does not include an order or judgment entered in a judicial or administrative action.² (emphasis added)

The types of property rights potentially protected here are extensive, and the provisions open the door to “regulatory takings” not compensable under U.S. takings law. For example, In *Metalclad v. Mexico* (2000), a panel awarded a U.S.-based company more than \$15 million from the Mexican government after municipal authorities refused to allow Metalclad to build and operate a toxic waste facility on environmentally-sensitive land. Local residents opposed the facility, arguing that it threatened their water supply. In the end, Mexico was punished for responding to its public as a democratic government should. Foreign investors should not have access to challenge such land use, zoning, and permitting decisions in ways that domestic investors cannot. These disadvantages for domestic investors are compounded for small and medium sized domestic businesses, which may lack the resources to even use the variety of domestic legal options available.

In 1999, the Canadian company Methanex used NAFTA’s ISDS provisions to bring a claim for \$970 million in damages against the U.S. government because California had banned a chemical additive (MTBE) in order to protect the water supply. As the company’s lawyer explained, the corporation chose ISDS because NAFTA “clearly create[s] some rights for foreign investors that local citizens and companies don’t have ... that’s the whole purpose of it.”³ Corporations that lose U.S. court cases can even seek compensation for adverse decisions, including jury awards that they consider excessive. This provides foreign investors with an opportunity to attack domestic court decisions in a private process—something domestic investors cannot do.⁴

In a particularly outrageous claim, Veolia has used the ISDS mechanism to launch a case against Egypt, complaining that changes to local labor laws—including increases in the minimum wage—adversely affected the company.⁵ Such a claim made against a state or local decision to

² The full text of the Peru FTA is available here: <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>.

³ William Greider, *The Right and US Trade Law*, *The Nation*, 2001 <http://www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#>.

⁴ “Loewen” NAFTA Case: Foreign Corporations Unhappy with Domestic Jury Awards in Private Contract Disputes Can Demand Bailout from Taxpayers, *Public Citizen* Available at <http://www.citizen.org/documents/Loewen-Case-Brief-FINAL.pdf>

⁵ Little is known about the case given the secretive nature of ISDS tribunals. The case is mentioned in *International Arbitration Reporter*, Jul. 1, 2012 (Vol. 5, No. 12), available by subscription only here: <http://www.iareporter.com/categories/20120214>.

increase minimum wages in the U.S. could the federal government responsible for paying a ransom to foreign investors who objected to the increase and is inconsistent with U.S. property law.

- b. The current policy statement of the National Conference of State Legislatures (NCSL), "Free Trade and Federalism," which is enclosed for your review, states that the organization "will not support Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) with investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution." Please review the enclosed document and comment. In your opinion, what is the importance of this policy statement, and what does it indicate about the potential impact of ISDS on U.S. states, their small and medium-sized enterprises, and their workers?

ANSWER:

This NCSL policy statement is of particular importance because it demonstrates that state-level elected officials recognize the dangers to democratic decision-making of providing foreign investors with a special forum in which to bring extraordinary claims. Procedural rights are as important as substantive rights; the ability to access a different process (private investment panels) means that foreign investors, by design, also have access to different substantive rights. Foreign investors can and do bring "regulatory takings" claims and claims that the U.S. (through state or local governments) has violated an investor's right to a "minimum standard of treatment"—a substantive concept that only exists in international law. These private investment panels need not consider legal concepts commonplace under domestic law, such as "sovereign immunity" or whether a law has a "rational basis."

Many of the measures and decisions challenged by foreign investors—including those referenced above (*Methanex* and *Metalclad*) are state and local measures. Even though it is the responsibility of the federal government to defend such claims, states that want to defend their choices and protect future policy space expend precious resources to help mount defenses—resources that could be better used serving their residents. The NCSL statement recognizes that every ISDS challenge, even unsuccessful ones, can contribute to a "chilling effect" on state policy makers, who would prefer to expend scarce state resources on activities other than defending democratic choices against claims by foreign investors. Moreover, the NCSL policy statement recognizes that home-grown enterprises and foreign enterprises should have a level playing field and access to the same forms of democratic participation and legal redress. The AFL-CIO shares the NCSL's concerns about "investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution."

2. At the Subcommittee hearing on April 18, 2013, a member of Congress expressed concern over foreign firms dumping goods into the U.S. market, and asked you to comment. If you did not have time to answer in full, please do so in writing.

ANSWER:

"Dumping" is a type of predatory pricing behavior in international trade that occurs when an entity sells a good in a foreign market below its price in its home market or below its cost of

production. A good may also be underpriced because it has been subsidized by its home government in ways violate international trade law. The U.S. prohibits such behavior, provides a forum in which to bring complaints, and, when applicable, provides redress in the form of “anti-dumping” or “countervailing” duties.

However, if instead of sending a dumped or subsidized good produced in country X through international commerce to the U.S. for sale at a below-market price, a producer based in country X could decide to invest in the U.S. and produce the product here. In doing so, the producer may still continue to receive illegal subsidies from its home government, including, for example, low- or no-cost capital or intermediate inputs. Even if the producer from country X imported the subsidized capital or dumped components parts into the U.S., it is not clear that U.S. trade law could reach such behavior: the behavior may not necessarily violate domestic laws when the final product is offered for sale. It is also unclear when the subsidized or dumped component parts, which do not change ownership when they cross the U.S. border, have “entered U.S. commerce.”

How would a domestic, U.S. manufacturer bring a dumping or illegal subsidy claim against a producer that is producing down the street instead of across the ocean? As the U.S. seeks to promote additional foreign investment, in particular from countries with very different economic models than our own, lawmakers should consider how to address this very important predatory pricing issue. In addition, the proposed review in Section 4 of the Global Investment in American Jobs Act of 2013 should include an analysis of whether CFIUS should be expanded to cover economic impact issues such as those discussed in this answer. Failure to include an economic benefits test in CFIUS could disadvantage U.S.-based producers.

3. At the Subcommittee hearing on April 18, 2013, you spoke about the particular impact of foreign direct investment on the U.S. auto industry. After considering that example, it is clear that foreign direct investment could presumably have very different effects on different parts of the U.S. economy. Do you believe that the proposed review in Section 4 of the Global Investment in American Jobs Act of 2013 should assess the differing impact of foreign direct investment on different parts of the U.S. economy? If so, how do you believe that this part of the review would improve understanding of the impact of foreign direct investment?

ANSWER:

The review proposed in Section 4 of the Global Investment in American Jobs Act of 2013 should assess the differing impact of foreign direct investment on different parts of the U.S. economy. Generalized statements about average wages paid by foreign investors can hide as much information as they disclose. For example, averages can be pulled up by extraordinary performance in a single industry (just as Bill Gates’ presence in a room brings up the average income of the room’s occupants). Accurate statements about averages can also fail to provide specifics about various regions or industries.

Just as it is important to study the progress of relevant ethnic and socioeconomic subgroups when describing student learning, it is important to study the impact of foreign investment on the wages and benefits paid in various industries or in various regions of the country. By looking at the finer detail, if we discover that foreign investment is actually pulling down wages in a particular sector (or sectors), lawmakers can then consider how to address this negative impact

(for instance by providing greater resources to address the use false “independent contractors”) even while maintaining the positive impacts of foreign investment in other sectors. Without this additional, more granular data, lawmakers may be oblivious to the potential harms being caused to industries in their home states.

4. In your written testimony, you suggested that the Department of Commerce should analyze not only best practices in attracting foreign direct investment but also those unsuccessful state, regional, and local efforts to subsidize foreign investment that, in your words, represent “poorly-designed incentives that fail to create good jobs.” What are some examples of these unsuccessful incentives, and what would be the importance of requiring an assessment of their impact through the review and report under Section 4 of the legislation?

ANSWER:

In the 2011 report, “Money for Something: Job Creation and Job Quality Standards in State Economic Development Subsidy Programs,”⁶ the authors found that programs “without any wage requirement—which together cost more than \$8 billion a year—can potentially result in jobs that pay so little that workers must rely on social safety net programs such as food stamps, Medicaid, State Children’s Health Insurance and the Earned Income Tax Credit.”

Even those program *with* a wage requirement (such as Oklahoma’s Investment/New Jobs Tax Credit, which has had an annual wage floor of only \$7,000—less than half of the federal minimum wage—since 1980) can leave the state on the hook for social safety net programs in addition to the outlay of \$8 billion in direct costs. Program with low or no wage floors and no “fringe benefits” requirements, may create some jobs, but are unlikely to “create **good** jobs.”

Moreover, in the 2013 report, “The Job Creation Shell Game: Ending the Wasteful Practice of Subsidizing Companies that Move Jobs from One State to Another,”⁷ the authors conclude that:

What states euphemistically call “business recruitment” is often nothing more than the pirating of jobs by one state from another. This piracy is bankrolled by property, sales and income tax breaks, land and infrastructure subsidies, low-interest loans, “deal-closing” grants, and other subsidies to footloose companies. . . . Worse than zero-sum, this is a net loss game, with footloose companies shrinking the tax base necessary for the education and infrastructure investments that benefit all employers.

The authors provide several examples of wasteful spending on this shell-game, including businesses that move repeatedly across the Missouri-Kansas border in the Kansas City metro area and businesses lured from Memphis, Tennessee by nearby Mississippi.

The Department of Commerce, in its analysis, should investigate not only programs that “create jobs,” but programs that save the state social safety net costs and that do not simply poach jobs from nearby cities or states. Good Jobs First, the publisher of both reports cited here, provides some useful recommendations that the Department of Commerce may wish to consider as part of its work.

⁶ The complete report is available here:

<http://www.goodjobsfirst.org/sites/default/files/docs/pdf/moneyforsomething.pdf>.

⁷ The complete report is available here: <http://community-wealth.org/content/job-creation-shell-game-ending-wasteful-practice-subsidizing-companies-move-jobs-one-state>.

5. In written testimony submitted to the Subcommittee, you wrote:

[T]he AFL-CIO recommends that the study [required by Section 4 of the legislation] limit itself to reviewing policies that *uniquely apply to foreign direct investment*.

The reason for such a limitation is clear: as a nation, we have placed great value on having clean air, clean water, safe workplaces, safe food and stable financial markets. That is why we have adopted strong laws and regulations. ...

Thus, we urge the Committee to avoid including regulations of general application in this review. ...

If the Committee retains its interest in studying regulations of general applicability, we encourage you to ensure that the Department of Commerce will address the benefits of a strong and effective regulatory environment on attracting foreign direct investment instead of simply assuming that regulations generally impede such investment.

In response to a question at the hearing, you mentioned that if we found that in certain sectors foreign investment was negatively affecting wages and benefits, we should change our policy so that foreign direct investment would be beneficial for workers. Perhaps this response led a member of Congress to conclude that you may want the Global Investment in American Jobs Act of 2013 to review labor laws.

Please clarify what you believe to be the appropriate scope of the review and the report that would be required by the legislation.

ANSWER:

I appreciate the opportunity to clarify my answer. For the reasons explained in my written testimony, the AFL-CIO strongly recommends that the policies under review include those that *uniquely apply to foreign direct investment*. The AFL-CIO does not view labor laws, health and safety laws, financial services regulations, or other public interest measures as impediments to investment. Rather, they make the U.S. an attractive place to do business.

Separately, if, after studying the impacts of foreign investment as proposed by Section 4 of the bill, Congress learns that foreign investment overall, or, more likely, in a particular industry, sector, or region, is hurting rather than helping workers, Congress may wish to consider additional *compensatory measures or enforcement regimes* that would ensure that foreign investors are not skirting labor, environmental, or other public interests laws, nor are such investors driving wages down instead of up.

Therefore, rather than including in the review laws of a general nature that apply to all employers equally, the AFL-CIO is recommending that, if the review recommended in Section 4 produces information regarding negative impacts on workers as a result of foreign direct investment, that Congress consider ways to prevent FDI from inflicting those negative impacts or to fully compensate workers for such impacts.