

United States Senate

WASHINGTON, DC 20510

October 13, 2022

The Honorable Antony J. Blinken
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Mr. Secretary:

As the growing risks posed by global conflict and instability are driving strategic industries to relocate closer to the United States and neighboring nations, nearshoring opportunities increasingly abound for Honduras and other countries in Central America. Nearshoring will de-risk supply chains for U.S. firms. Investments in nearshoring also will help alleviate the poverty that encourages illegal migration to the United States and to provide new employment opportunities for talented young Hondurans. That said, we are gravely concerned that the Honduran government is advancing policies and actions that are inconsistent with this promising future.

Our concerns stem, in part, from the tone and content of Honduran President Xiomara Castro's speech before the United Nations General Assembly on September 20, 2022, and a large U.S.-based company's announcement on September 27 that it is closing one of its major facilities in Honduras. The damaging reputational effects of these and related events risk becoming irreparable if compounded by the Honduran government's potential violation of the 50-year legal stability guarantee that protects U.S. investments in Honduran Economic Development and Employment Zones (ZEDEs) under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

As you know, ZEDEs provide a uniquely attractive platform for incoming U.S. investment and Honduran economic development. As Dr. Ryan C. Berg and Dr. Evan Ellis wrote in a recent commentary published by the Center for Strategic and International Studies (CSIS):

It is likely that ZEDEs, by contributing to greater rule of law, expediting processes, improving the efficiency of public administration, and otherwise increasing the attractiveness of the investment climate, can serve as an accelerator of nearshoring and friendshoring, attracting more badly needed investment to Honduras. In the process, ZEDEs can also facilitate deployment of the type and requisite volume of private sector capital to strengthen the integration of the Honduran economy with that of the United States, producing positive economic results that not only fortify democracy and political stability in the country and help address the "root causes" of immigration, but also help reduce the government's temptation to change diplomatic relations to the PRC out of economic necessity.

Protecting the rule of law, which is so important to U.S.-Honduras relations, is also at issue. Attorneys from well-regarded international law firms have judged that violating the 50-year legal stability guarantee would breach the most favored nation clause of Article 10.4 of CAFTA-DR; Article 10.5 of CAFTA-DR, which states “[e]ach Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security”; and Article 10.7 of CAFTA-DR, which states “[n]o Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization.” Any direct or indirect expropriation of U.S. investments in Honduran Economic Development and Employment Zones would be regarded as a direct assault on the guarantees of CAFTA-DR and surely trigger a devastating loss of private sector confidence. In turn, this would dramatically undermine the strong U.S. interest in encouraging significant new private sector investment in Honduras and the region.

We therefore urge your Department to encourage Honduras to respect this 50-year legal stability guarantee that protects U.S. investments in Honduran Economic Development and Employment Zones under CAFTA-DR. Given these stakes, moreover, we are considering proposing enhancements to the U.S. investor protections of 22 U.S.C. §2370(e), commonly known as the “Hickenlooper Amendment,” to address any threats of expropriation or actions of the Honduran government relative to U.S. investments. These enhancements will be designed, among other things, to strongly encourage the commencement of good faith consultations and negotiations with U.S. investors in ZEDEs, as is required by Article 10.15 of CAFTA-DR.

We look forward to engaging with you closely on these matters.

Sincerely,



Bill Hagerty
United States Senator



Benjamin L. Cardin
United States Senator

CC: U.S. Ambassador to Honduras Laura F. Dogu
Assistant Secretary of State for Western Hemisphere Affairs Brian J. Nichols