
2019

Proceedings of the 42nd Canada-United States Law Institute Annual Conference: Back to the Future - The Canada-United States Relationship at a CrossRoads

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PROCEEDINGS OF THE 42ND
CANADA-UNITED STATES LAW INSTITUTE
ANNUAL CONFERENCE:
BACK TO THE FUTURE -
THE CANADA-UNITED STATES RELATIONSHIP
AT A CROSSROADS

APRIL 12-13, 2018

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CONFERENCE SPEAKERS

The Hon. James J. Blanchard

Former Governor of Michigan
U.S. Representative
U.S. Ambassador to Canada

Governor James Blanchard joined DLA Piper upon the conclusion of his duties as United States ambassador to Canada in April 1996. In recognition of his outstanding performance as ambassador, Secretary of State Warren Christopher presented Governor Blanchard with the Foreign Affairs Award for Public Service in a ceremony at the Department of State, making him one of only a handful of ambassadors to receive this prestigious award. James was named ambassador to Canada in May 1993, after serving two terms as governor of Michigan (1983 – 1991) and four terms as a member of the United States Congress (1975 – 1983). In 1992, he chaired President Bill Clinton's successful campaign in Michigan. Governor Blanchard is also former chairman of the Democratic Governors Association and the National Democratic Platform Committee, as well as a former

member of the National Governors Association's executive committee. During his tenure as ambassador, James managed a broad range of trade, natural resources, environmental and national security issues between the United States and Canada, providing support critical to the passage of both NAFTA and the Open Skies Agreement. Governor Blanchard's eight years as Michigan's chief executive were notable for his success in turning around Michigan's finances, working with the private sector to attract business investment and trade from around the world. He won national acclaim for his innovative approaches to economic development, education, crime fighting, environmental protection and helping children and families. James Blanchard completed his work as Michigan's 45th governor having balanced eight consecutive state budgets, boosted the state's credit rating to AA, established a \$422 million "rainy-day fund" and produced a solvency dividend of more than \$1 billion in savings from reduced borrowing costs. His aggressive small business and economic development efforts helped create more than 650,000 net new jobs, improve the business climate, increase companies' global competitiveness and make Michigan's economy 35 percent more diversified than it had been a decade earlier. Newsweek credited Governor Blanchard with leading "one of the most dramatic economic turnabouts in the recent history of state government," and national publications such as US News and World Report listed him among the best governors in America, one of the innovators and energizers who made things work in an era of declining federal aid. Before running for governor, he served in Congress. During his four terms in Congress, he distinguished himself for his work to save the Chrysler Corporation, restore America's economic competitiveness, and oversee financial, monetary, trade and energy issues. Major assignments included the House Banking, Finance and Urban Affairs Committee, including its subcommittees on Economic Stabilization, Housing and Urban Development, International Trade and Domestic Monetary Policy, and the Science and Technology Committee. He performed oversight of the Federal Reserve Board and participated in meetings of the International Monetary Fund. Prior to his election to Congress, from 1969 to 1974 Governor Blanchard was assistant attorney general of Michigan. Jim Blanchard remains active in Michigan and in US-Canada relations. In 2010, he was named co-chair of the Canada-United States Law Institute, a forum where the two countries' governments, business communities, legal professionals, academics, non-governmental organizations and the media address issues confronting US-Canada relations. In 2008, at the invitation of Jean Chrétien, he was a special guest at the InterAction Council's 26th Annual Plenary Meeting in Stockholm. The InterAction Council brings together former world leaders who look beyond the immediacy of current issues and the limitations of national interests to focus on the long-term structural factors driving the global agenda. Its three priority areas are peace and security, world economic revitalization and universal ethical standards. In 1997, Governor Blanchard authored *Behind the Embassy Door*, a book highlighting his experiences as ambassador. He serves on the board of directors of several corporations and, in February 2005, co-chaired the American Assembly project on US-Canada relations, hosted and sponsored by Columbia University.

Chios Carmody

Associate Professor, Western University Faculty of Law
Canadian National Director, Canada-United States Law Institute

Chios Carmody has taught at the University of Western Ontario Faculty of Law since 1999, where he teaches courses in public international law, international trade law and international business transactions. He also serves as Canadian Director of the Canada-United States Law Institute. He has been a visiting professor at Georgetown University Law Center and an Emile Noël Fellow at the Jean Monnet Center for Regional and International Economic Law & Justice, NYU Law School.

Peter Clark

President of Grey, Clark, Shih and Associates, Limited.

Mr. Clark is one of Canada's most active international trade practitioners. His clients, in Canada and around the world, include governments, corporations and trade associations. He is active in the North American Free Trade Agreement (NAFTA) and World Trade Organization (WTO) dispute settlement both as Counsel and as an Arbitrator.

Mr. Clark joined the Government of Canada, in 1965, where he worked primarily in the Department of Finance on a wide range of trade policy issues. He was seconded to the Department of External Affairs as Counselor at the Canadian Permanent Mission to the United Nations (Geneva) where he was Canadian Liaison to the GATT, Chairman of the GATT Standing Committee on Budget, Finance and Administration and a founding member of the Textile Surveillance Body.

Through CIDA, the UNDP and UNCTAD he has been an advisor to developing countries on how to adapt to and implement international trade agreements and to cope with trade remedy actions against their exports.

Mr. Clark is a frequent media commentator and appears regularly before Parliamentary Committees, analyzing trade and commercial policy issues. His government relations expertise has received public recognition in various publications including the *The Hill Times*' "Top 100 Lobbyists List" and "Top 50 Consultant Lobbyists List."

Dick Cunningham

Senior International Trade Partner, Steptoe & Johnson LLP

Dick Cunningham has been recognized for more than 40 years as one of America's leading international trade lawyers. His practice includes the handling of antidumping and countervailing duty cases for both petitioning US industries

and respondent exporters and governments, as well as advising corporate and governmental clients in trade negotiations and other trade policy matters. Dick also litigated some of the most significant WTO dispute settlement cases.

Dick has helped numerous US and foreign companies develop and implement international trade strategies to overcome market access barriers, to use US and international trade laws to address competitiveness issues, to maximize the benefits of intellectual property rights and to obtain assistance (including relief from imports) in competing with international rivals.

Consul General Douglas George

Consul General of Canada, Detroit

Douglas George is the Consul General of Canada in Detroit, and is responsible for the States of Michigan, Ohio, Kentucky and Indiana. He is a career diplomat with over 30 years of experience, and most recently served as Canada's Ambassador to Kuwait. Recognized as a trade policy expert, Mr. George has worked in numerous economic posts at Global Affairs Canada, including the Commercial Policy Division, the GATT Division, and the US Trade and Economic Policy Division. He served as Senior Departmental Advisor to Canada's Minister of International Trade as well as Director of the Softwood Lumber Division, the Intellectual Property Trade Policy Division, and the Tariffs and Goods Market Access Division. Abroad, Consul General George has directed trade policy issues at the Canadian Mission to the European Union in Brussels as well as serving as a negotiator at the Canadian mission to the GATT/World Trade Organisation in Geneva. He also served in Kingston, Jamaica. He has a Bachelor of Science Degree (Zoology) from the University of Toronto and his Masters of Business Administration from Queen's University in Kingston, Ontario

Lourenco Goncalves

Chief Executive Officer, Cleveland-Cliffs Inc.

Lourenco Goncalves was appointed Chairman, President and Chief Executive Officer of Cleveland-Cliffs Inc. in August 2014. Since joining the company, he has implemented and has been executing a strategic initiative designed to strengthen Cleveland-Cliffs' position as a major supplier of iron ore pellets to the U.S. steel industry.

Mr. Goncalves brings more than 30 years of experience in the metals and mining industries, as well as extensive Board experience, in the United States and abroad. He served as Chairman of the Board, President and Chief Executive Officer of Metals USA Holdings Corp., a leading American manufacturer and processor of steel and other metals, for over 10 years. He currently sits on the Board of the American Iron and Steel Institute, and served as a board member of Ascometal SAS, a manufacturer of special steel headquartered in Paris, France, from October

2011 to April 2014. He is also a Distinguished Member and Fellow of the Association for Iron and Steel Technology.

Prior to Metals USA, Mr. Goncalves served as President and Chief Executive Officer of California Steel Industries, Inc. from March 1998 to February 2003. From 1981 to 1998 he was employed by Companhia Siderúrgica Nacional, a leading steel and mining company in Brazil, where he held several positions in operations and sales.

Mr. Goncalves earned a Masters of Science degree in Metallurgical Engineering from the Federal University of Minas Gerais in Belo Horizonte, Brazil and a Bachelor's degree in Metallurgical Engineering from the Military Institute of Engineering in Rio de Janeiro, Brazil.

James Graham

Executive Vice President, Chief Legal Officer & Secretary, Cleveland-Cliffs Inc.

James Graham is Executive Vice President, Chief Legal Officer & Secretary of Cleveland-Cliffs Inc., responsible for ensuring coordinated legal advice and counsel, and overseeing public reporting requirements and administration of Cliffs' code of business conduct and ethics compliance program. He also provides direct corporate secretarial support to the Board of Directors and its Committees.

Mr. Graham joined Cliffs in 2007 as Assistant General Counsel, and prior to his current position, advised Cleveland-Cliffs' operating and acquisitions units on legal matters as Vice President & General Counsel, Global Operations. Before his tenure with Cleveland-Cliffs Inc., Mr. Graham worked as an associate with the law firm of Calfee Halter & Griswold.

Mr. Graham earned his J.D. degree from Case Western Reserve University, his M.A. in French Literature from the University of Michigan, and his B.A. degree in English and French from Hiram College.

Basil (Buzz) Hargrove

Distinguished Visiting Professor, Ted Rogers School of Management,
former National President of the Canadian Auto Workers Union

Basil (Buzz) Hargrove served as National President of the Canadian Auto Workers Union from 1992 until his retirement in September 2008. One of the most recognized labour leaders in Canada, Hargrove has been a figurehead in the fight for workplace and social justice. Since January 2009, Hargrove has been bringing his experience into the classroom as a professor of distinction at the Ted Rogers School of Management. Hargrove teaches undergraduate and MBA students on current economic and labour issues from a union perspective.

In recognition of his many contributions to society, Hargrove was named an officer of the Order of Canada in 2008, and received an honorary Doctorate of Laws degree from Brock, as well as doctorates from the University of Windsor, Wilfred Laurier University and Ryerson University.

A distinguished author, Hargrove co-authored an autobiography entitled, "*Labour of Love: The Fight to Create a More Humane Canada*," with Wayne Skene and is the author of "*Laying on the Line*."

Hargrove is co-director of the Centre for Labour Management Relations at the Ted Rogers School of Management. The Centre promotes collaborative, ethical, proactive and sustainable best-practice labour management relations through sponsoring ground breaking academic research and transferring knowledge to receptor communities. Hargrove also holds lunch and learns with faculty and students on such topics as collective bargaining, social media and mental health in the workplace.

Lawrence L. Herman

Herman & Associates

Lawrence L. Herman is a graduate of the University of Saskatchewan (B.A., 1966) and the University of Toronto Law Faculty (1969).

After being called to the Bar in 1970, he served in the Canadian Foreign Service in the 1970's in a variety of posts, at the United Nations in Geneva and in Ottawa, representing Canada in numerous international conferences and meetings, including the GATT, OECD and the UN Conference on the Law of the Sea. Prior leaving the External Affairs Department in 1980, he was the head of the Department's Economic and Treaty Law Section in the Legal Bureau. In private law practice, Mr. Herman appeared on behalf of Canada in the International Court of Justice in the Gulf of Maine boundary case in 1984.

For many years, he has concentrated his legal practice on international trade and business transactions, representing private sector clients, governments and international agencies, dealing particularly with the GATT/WTO, FTA and NAFTA (where he acts as counsel before dispute-resolution bodies). He regularly represents clients at the Canadian International Trade Tribunal (CITT), in the courts and before Parliamentary committees.

Mr. Herman is Chair of the CITT's National Advisory Committee and a member of the Trade Expert Advisory Council of the Canadian Department of International Trade. He had been a member of the Market Access Advisory Group (MAAG) of the International Trade Department providing advice on business issues in the WTO Doha Round negotiations. He has been a member the Executive Board of the Canada-US Law Institute since 2009.

Mr. Herman was on the Council of the International Bar Association's Energy Section for many years and served as chair of the Trade Policy Committee of the Canadian Manufacturers and Exporters and a member of the International Affairs Committee of the Canadian Chamber of Commerce and several other business and government trade policy organizations. From 1990-1993, he was the Chairman of the Canada-Taiwan Business Association.

In 2007, he was appointed Director, Task Force on Trade and Investment Rules of the World Energy Council, London, UK. He was named a Senior Fellow of the C.D. Howe Institute in 2011 and sits on the International Economic Policy Council and the National Policy Council of that well-respected think-tank. Lawrence Herman has been recognized as a leading lawyer by the Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada, the Canadian Legal Lexpert Directory, the Lexpert Guide to the Leading US/Canada Cross-Border Litigation Lawyers in Canada, Best Lawyers in Canada and Chambers Global.

Together with numerous articles in legal and business journals, Lawrence Herman has written several text books: Canadian Trade Remedy Law & Practice (1997), Canadian Trade Law (2008) and, most recently, Export and Import Controls, Sanctions and Other Trade Restrictions (2010).

Maureen Irish

Professor Emeritus, University of Windsor Faculty of Law

Professor Irish has taught International Economic Law, International Business Transactions, Canada-United States Legal Issues, Transportation Law, International Dispute Resolution, Conflicts (Private International Law), Public International Law, Judicial Review, Commercial Law, Property, and Statutory Interpretation. She publishes regularly on trade and development, WTO law, climate change, regionalism, NAFTA, and Canadian customs tariff law. Professor Irish has served on dispute settlement panels under the Canada-United States Free Trade Agreement and the North American Free Trade Agreement.

Honorable David Jacobson

Vice Chair, BMO Financial Group
former United States Ambassador to Canada

David Jacobson became Vice Chair of BMO Financial Group in October 2013. Prior to joining BMO, Jacobson served as the 22nd U.S. Ambassador to Canada, holding the role from 2009 to 2013. As Ambassador, Jacobson worked to expand the bilateral trading relationship between the United States and Canada, which resulted in a 43% increase in two-way trade, raising it to the highest level between any two countries in history. In 2012, in recognition of his service, Jacobson received the State Department's Sue M. Cobb Award for Exemplary Diplomatic Service.

Before becoming Ambassador, Jacobson served in the White House as special assistant to the President for presidential personnel. Prior to beginning government service, Jacobson was a corporate lawyer in Chicago.

Ambassador Jacobson received his JD from Georgetown Law, where he was administrative editor of the Georgetown Law Journal. He received his B.S. from The Johns Hopkins University.

Selma M. Lussenburg

Vice President, Governance, Corporate Safety and Security and General Counsel
Greater Toronto Airports Authority

Selma Lussenburg joined the GTAA in January 2013. Ms Lussenburg's professional experience includes serving as the Chair of Ontario Capital Growth Corporation, SVP, General Counsel and Corporate Secretary at OMERS, serving as AT&T's Chief Regional Counsel for Canada, VP, Legal Affairs and General Counsel at AT&T Enterprises and Global Services, supporting AT&T's Canadian and international operations. Ms. Lussenburg has also practiced law with leading Canadian and Australian law firms.

Ms. Lussenburg holds degrees from the University of Ottawa, a Masters of International Law from the Australian National University and studied at the Hague Academy of International Law. Ms. Lussenburg is called to the Bar of Ontario, England and Wales. She holds a Chartered Director designation from the Directors College (McMaster University). Ms. Lussenburg is a Canadian representative to the Trade Ministers' NAFTA 2022 Advisory Committee on the Resolution of Private International Commercial Disputes, the Chair of the Airport and Critical Infrastructure Security Center of Excellence and a member of the IATA-ACI World Smart Security Working Group.

Honorable Peter MacKay

Partner, Baker & McKenzie LLP,
former Canadian Minister of Foreign Affairs, Minister of Defense, and Minister of Justice and Attorney General

Peter MacKay is a partner in the Baker McKenzie Toronto office. Prior to joining the firm in 2016 MacKay served in the Parliament of Canada for over 18 years and in a ministerial post in the Canadian government for almost ten years after the Conservative Party formed a government in 2006. Most recently, he served as Canada's Attorney General and Minister of Justice until November 2015, a position to which he was appointed in 2013. Prior to this post, Peter served as the Minister of National Defence for six years and held joint cabinet positions as Minister of Foreign Affairs and Minister for the Atlantic Canada Opportunities Agency for 18 months.

During his first five years in the House of Commons, Peter served as House Leader for the Progressive Conservative caucus. In this capacity he represented the caucus on issues pertaining to management and operations of Parliament. He also served as the Progressive Conservative critic for law enforcement issues, and as a member of the Board of Internal Economy, the Standing Committee on Justice and Human Rights, the Standing Committee on Canadian Heritage, the Standing Committee on Finance, and the Sub-Committee on the Study of Sport in Canada. In May 2003, Peter became the Progressive Conservative Party of Canada's 23rd leader. He played a pivotal role in the reunification of the Conservative movement in Canada and the formation of the Conservative Party of Canada, serving as its 1st deputy leader.

From 1992 to 1997, Peter served as a Crown prosecutor in Nova Scotia, and spent time in private practice and in Germany as lawyer at Thyssen Henchel. He is the founder of the highly regarded Halifax International Security Forum, which he hosted beginning in 2009. He has served on numerous volunteer board and has recently joined the National Board of Special Olympics Canada, Boost Child Youth Advocacy Centre and Wounded Warriors Canada.

Scott Miller

Senior Adviser, Abshire-Inamori Leadership Academy

Scott Miller is a senior adviser with the Abshire-Inamori Leadership Academy, focusing on leadership development programs for public- and private sector executives.

From 2012 until 2017, Mr. Miller held the William M. Scholl Chair in International Business at CSIS. The Scholl Chair focuses on critical issues in the global political economy, including international trade, investment, competitiveness, and innovation. In 2015, he authored *Investor-State Dispute Settlement: A Reality Check*.

Prior to joining CSIS, Mr. Miller was an executive with Procter & Gamble (1978-2012), a leading consumer products company. As Manager, Laundry Products, P&G Canada (1991-1994), Mr. Miller led North American siting studies for the company's Laundry and Cleaning Products Division. Following a series of assignments in the U.S. and Canada, he was appointed Director, Global Trade Policy. In that position, Mr. Miller provided Washington representation for the full range of international trade, investment, and business facilitation issues faced by the company. He led many campaigns supporting U.S. free trade agreements and has been a contributor to U.S. trade and investment policy over many years. Mr. Miller is a member of the State Department's Advisory Committee on International Economic Policy, and was the founding Chairman of the Department of Commerce's ITAC Investment Working Group.

Honourable James S. Peterson

Of Counsel, Fasken Martineau Dumoullin LLP
Former Minister of International Trade for Canada
Minister of Canadian Parliament

Jim Peterson, a former federal Minister and Secretary of State, is Counsel at Fasken Martineau. Jim has extensive knowledge and first-hand experience in government affairs, having served in the Government of Canada as Minister of International Trade, Secretary of State (International Financial Institutions), and Chair of the House of Commons Standing Committee on Finance. As a former Minister of International Trade between 2003 and 2006, Jim has expertise in trade policy and experience in trade disputes. While Minister, he represented Canada at the World Trade Organization's Doha round of negotiations which focused on expanding trade and investment in leading emerging markets including Brazil, Russia, India and China, and dealt with complex issues related to trade with Canada's NAFTA partners, the European Union, the Middle East and the Americas. As Secretary of State (International Financial Institutions) from 1997 to 2002, Jim was instrumental in piloting significant financial institution reforms through Parliament including legislation permitting foreign bank branching and aligning Canada with international standards in the fight against money laundering and terrorism. He handled the insurance industry demutualization file. Working with caucus and stakeholders, Jim approved major financial institution mergers including BNS – National Trust, Great West Life – London Life, Clarica – Met Life and TD – Canada Trust. As Chair of the House of Commons Finance Committee between 1993 and 1997, he began the practice of public pre-budget hearings and completed a number of major studies including a review of Canada's value added tax (the GST). Jim retired from the House of Commons in 2007 after 23 years of public service as the Member of Parliament for Willowdale (Toronto). Before entering public life, Jim had a distinguished career as both a legal scholar and teacher and as a practitioner of international tax and business law. He was also a consultant for the United Nations Industrial Development Organization. He was appointed head of Negotiation for Ontario in its efforts to reduce barriers to trade, investment and labour mobility, and to enhance economic cooperation with Quebec. Jim is the author of numerous articles and studies for Canadian and foreign publications on international business, investment, taxation and fiscal policy.

Steve J. Petras, Jr.

Partner, BakerHostetler LLP

Steve Petras practices international business transactions as a partner in the Business Group. He has facilitated commercial and corporate transactions in most countries throughout the world. When representing companies seeking to expand operations in foreign jurisdictions or in business transactions with parties from different countries, Steve seeks to create effective and efficient corporate and tax structures and enforceable agreements in the multiple jurisdictions involved. Furthermore, he advises on the compliance of the business activities and the parties

with the applicable U.S. and foreign laws and regulations. Steve has deep experience representing clients in the manufacturing and technology industries, where his technical background and interest enable him to better fit each transaction with the underlying technology of his clients' businesses.

Steve led BakerHostetler's International Industry team from 1998 through 2012. He is actively engaged in the international community of Cleveland and Northeast Ohio, having served as president of the Greater Cleveland International Lawyers Group, chair of the International Section of the Cleveland Metropolitan Bar Association, chair of the board of the Cleveland Council on World Affairs and president of the Cleveland World Trade Association. He is also a member of the board of directors of the World Affairs Councils of America. Additionally, Steve is an adjunct professor in the International LL.M. program at Case Western Reserve University School of Law. Dedicated to increasing international business in the U.S. and Ohio, Steve had been appointed by the U.S. Secretary of Commerce as a member of the Northern Ohio District Export Council and by Governor George Voinovich as an Ohio Commodore. Steve is the USA National Director of the Canada – United States Law Institute and is also a member of the board of directors of the Council of the Great Lakes Region.

Jeffrey J. Schott

Senior Fellow, Peterson Institute for International Economics

Jeffrey J. Schott joined the Peterson Institute for International Economics in 1983 and is a senior fellow working on international trade policy and economic sanctions. During his tenure at the Institute, Schott was also a visiting lecturer at Princeton University (1994) and an adjunct professor at Georgetown University (1986–88). He was a senior associate at the Carnegie Endowment for International Peace (1982–83) and an official of the US Treasury Department (1974–82) in international trade and energy policy. During the Tokyo Round of multilateral trade negotiations, he was a member of the US delegation that negotiated the GATT Subsidies Code. Since January 2003, he has been a member of the Trade and Environment Policy Advisory Committee of the US government. He is also a member of the State Department's Advisory Committee on International Economic Policy.

Schott is the author, coauthor, or editor of several books on trade, including *Trans-Pacific Partnership: An Assessment* (2016), *Local Content Requirements: A Global Problem* (2013), *Understanding the Trans-Pacific Partnership* (2012), *NAFTA and Climate Change* (2011), *Figuring Out the Doha Round* (2010), *Reengaging Egypt: Options for US-Egypt Economic Relations* (2010), *Economic Sanctions Reconsidered, 3rd edition* (2007), *Trade Relations Between Colombia and the United States* (2006), *NAFTA Revisited: Achievements and Challenges* (2005), *Free Trade Agreements: US Strategies and Priorities* (2004), *Prospects for Free Trade in the Americas* (2001), *Free Trade between Korea and the United States?* (2001), *NAFTA and the Environment: Seven Years Later* (2000), *The WTO*

After Seattle (2000), *Restarting Fast Track*(1998), *The World Trading System: Challenges Ahead* (December 1996), *The Uruguay Round: An Assessment* (1994), *Western Hemisphere Economic Integration* (1994), *NAFTA: An Assessment* (1993), *North American Free Trade: Issues and Recommendations* (1992), *Economic Sanctions Reconsidered: History and Current Policy* (second edition, 1990), *Completing the Uruguay Round* (1990), *Free Trade Areas and U.S. Trade Policy* (1989), and *The Canada-United States Free Trade Agreement: The Global Impact* (1988), as well as numerous articles on US trade policy and the GATT.

Schott holds a B.A. degree magna cum laude from Washington University, St. Louis (1971), and an M.A. degree with distinction in international relations from the School of Advanced International Studies of Johns Hopkins University (1973).

John Tennant

Managing Partner, W2N2 Partnership, and Principal, Global Investment Attraction Group
formerly Consul General of Canada, Detroit

John Tennant's varied and distinguished career in Canada's foreign service and subsequent leadership of the public-private economic development partnership for Ontario's economically successful Waterloo Region provide him with broad ranging expertise in international trade, foreign investment, economic development, innovation, and the interactions of the private sector, governments and academia. His global exposure, multi-faceted experience and strategic perspectives are reflected in the diversity of projects for which he has been engaged since 2008, through his consulting and advisory firm (W2N2 Partnership) and as well through the Global Investment Attraction Group (GIAG).

As Managing Partner of his consultancy, W2N2 Partnership, John has undertaken a wide range of consulting and advisory assignments since its founding in 2008, including in partnership with others. W2N2 Partnership was engaged by Global Affairs Canada during 2009 to author a detailed Global Automotive Sector Strategy for Canada and to provide recommendations on foreign investment 'aftercare' (business retention). In March 2010, John was invited by the Ontario Government to be one of four specially selected pro bono panel members providing external advice on its Information and Communications Technology (ICT) Cluster Strategy designed to improve Ontario's global competitiveness. In September and October 2010, he worked with Transport Canada on stakeholder input developed through an Ontario Workshop on Transportation Innovation. In early 2011, in conjunction with the Global Advantage Consulting Group, John participated in two studies for the Federal Economic Development Agency for Southern Ontario (FedDev Ontario) on the structure and prospects for the Southern Ontario economy and its global role. A further project in 2011 with the Global Advantage Consulting Group, supported strategy development by the Health Technologies Exchange (HTX), a key agency entrusted with the development of the Ontario medical devices sector. The Federation of Canadian Municipalities

(FCM) engaged John during 2012 to assess the potential for closer federal-municipal collaboration in international economic development activities, including foreign direct investment. That year, John also led a major study for Global Detroit and its Southeastern Michigan and Windsor-Essex economic development partners examining Detroit-Windsor as a unique bi-national metropolitan border community offering firms potentially advantageous access to two different public policy environments. In early 2013, John was a major contributor to the development of a strategic plan for the 26-member Canadian Chapter of the Association of University Research Parks (AURP). In 2013-2014, John researched and developed a comprehensive value proposition for Global Affairs Canada on Canada's leading role in quantum information processing. John was retained in 2014 by the inaugural Board of Directors of the Stratford Economic Enterprise Development Corporation (SEED Co) to develop an initial strategic plan. He also undertook a review in 2014 and 2015 of the role, mandate and structure of the Advisory Board to the Canadian Digital Media Network (CDMN) as it moved into its second five-year mandate as a Centre of Excellence for Commercialization and Research (CECR). John has also been retained to provide strategic advice by the Sarnia Lambton Economic Partnership, Invest Ottawa, Conestoga College, and the President of the University of Windsor.

Daniel D. Ujcz

Of Counsel and Cross Border (Canada - U.S.) Practice Group Chair, Dickinson Wright LLP

Dan is an international trade and customs lawyer who specializes in Canada-United States matters. In addition to his legal practice, Dan has responsibility for coordinating the firm's innovative Canada-US Platform where he collaborates with more than 400 Dickinson Wright attorneys who regularly assist businesses that have cross-border issues such as customs and compliance, corporate structuring, M&A, taxation, business immigration, intellectual property protection, and financial incentives. Dan also provides public policy counsel to governmental officials and corporate leaders in areas of regulatory cooperation, border security, economic development, labor mobility, corporate social responsibility, and public-private-partnerships.

A US-licensed lawyer, Dan is one of the few individuals that has served in the US and Canadian governments, private practice, and academia. Prior to joining Dickinson Wright, Dan served as an officer in Canada's foreign ministry where he was responsible for coordinating a network of government departments and Canada-US industry associations toward improving North America's borders and ports-of-entry. Dan also served as a liaison between government officials in Canada and the US, as well as routinely assisted companies in dealings with Canada-US regulatory agencies.

WELCOME AND OPENING OF THE 42ND CUSLI ANNUAL CONFERENCE

Speaker: Stephen J. Petras Jr.

PROFESSOR PETRAS: All right, everyone. Welcome to the 42nd Canada-US Law Institute Annual Conference. I am Steve Petras. I am the U.S. National Director, and it is a pleasure to welcome everyone here for “Back to the Future,” a look at US-Canada trade relations. So this is going to be an outstanding conference. I think everybody is going to have a great time. And I will just go through a couple of preliminary things before we start.

First of all, I would like to thank our sponsors for the conference. The Canada-US Law Institute depends on our sponsors so that we can afford to do programs like this.

Our Platinum sponsors are DLA Piper and Cleveland Cliffs;

Silver sponsors: Parker Hannifin Corporation, Formica Corporation, the Office of the Consul General of Canada in Detroit, Steptoe & Johnson, Dickinson Wright, Baker McKenzie, and Baker Hostetler, my law firm.

Bronze sponsors, all new this year, are Barudan America, which is an automatic embroidery machine company, the largest such company in the world; Biodynamics, a pile drive and foundation testing company; GRL Engineering, its sister company; and The Noramar Corporation, which makes specialty testing equipment.

So I would also like to congratulate today our winners of yesterday’s Niagara Business Negotiation competition. It was a very complicated problem. Two law schools competed: University of Windsor Law School and University of Buffalo Law School.

The University of Windsor Law School won the competition. It is interesting because for the competition, Ted wrote the problem, but the University of Buffalo actually got the better deal because they came out ahead of their negotiation strategy. So it was a great competition, and we are hoping to expand that for next year.

There are a couple of announcements that I would like to make. Some of you will notice that this is the first year in many, many years that one of our tried and true attendees is not here, Dick Petry. Dick died last year and the Cleveland Bar Association is going to have a memorial service on Monday, April 16th at noon for all the Cleveland bar lawyers who have died in the past year, and Dick will get to be among them. So we miss Dick. He was a great contribution, former international counsel for Eaton Corporation, and a big supporter of the Canada-US Law Institute.

Another announcement is one of our related organizations, one that we helped found, called the Council of the Great Lakes Region, is having its annual conference in Montreal May 3-5, and this will be the Great Lakes Economic Forum. This will be the fourth year that CGLR, the Council of the Great Lakes Region, is having a conference. It is well worth attending.

And finally, the Honorable Francois-Philippe Champagne, the Canadian Minister of International Trade, will be here in Cleveland on May 20. He is going to be the commencement speaker for Case Western Reserve University Law School. There is going to be a program for the public the next day, Monday, May 21st, from 7:30 a.m. to 9:00 a.m. at the Union Club in which Minister Champagne will address us about, again, US-Canada trade relations. So if you could attend any of these, that would be great.

I wanted to also just give everybody a brief rundown about the structure of CUSLI. Sometimes we forget what it is. It really is kind of a joint relationship between the law faculty of the Western University Faculty of Law and Case Western Reserve University School of law.

The two presidents are Erika Chamberlain, Dean of the Law Faculty at Western, and Michael Scharf, Co-dean of Case Law School. And we have two co-chairs, James Peterson -- where is Jim? He should be here -- and Jim Blanchard. Jim Blanchard will be on a panel today. So will Jim Peterson.

And if you don't know who they are, they are very impressive individuals, both are -- well, Jim Peterson a former minister of international trade for Canada; Jim Blanchard, former governor of Michigan and former U.S. ambassador of Canada.

Our executive committee consists of Richard Cunningham, Diane Francis, James Graham, Lawrence Herman, Ken Jones, Richard Newcomb, Paul Rosado, and Christopher Sands. We have the Canadian National Director, my counterpart Chi Carmody over there, and the U.S. National Director and our Managing Director is Ted Parran, who you will see running around trying to keep us in order here, and we also have support from Aylin Sawyer Drabousky, who is the director of academic services here at Case.

Now, today's program is going to be running panels. We will have four panels, and we will have a keynote speaker at lunch. So our first panel is a round table. It is a very impressive roundtable.

Everybody on that panel is either an ambassador, former ambassador, minister, or former minister. Doug George, who is the Consul General of Canada in Detroit, will be the moderator of that panel.

The next panel is going to deal with the current state of NAFTA. Larry Herman will be the moderator of that panel. Then, at lunch, we are going to have Lourenco Goncalves, who is the CEO of Cleveland Cliffs.

In the afternoon, we will have two panels. One is going to look at the auto industry. Dick Cunningham will chair that panel, moderate that panel, and then, we will have a dispute resolution panel, and that will be moderated by Maureen Irish.

By the way, we are recording this. As many of you know, we do publish these proceedings in the Canada-US Law Journal. So during the questions and answers, we ask that everybody identify themselves so that our court reporter can take down your name and also that you state your questions clearly so that they will be on the -- be recorded properly.

It is now my pleasure to introduce to you moderator of our first panel, Doug George, Consul General for Canada in Detroit. And Doug, by the way, has 30

years in international diplomacy and international negotiations, and he is the former Canada ambassador to Kuwait.

Doug is truly recognized as an international trade expert, and he has spent much of his career negotiating important international trade relations for Canada, particularly at the General Agreement on Tariffs and Trade and the World Trade Organization.

Interestingly enough, Doug has his Bachelor of Science in zoology. He did go on to get his Master's in Business Administration from Queen's University of Kingston, Ontario, but he has an undergraduate degree in zoology, and of course, he said, you know, it is very helpful for him because these trade negotiations are animals. Without further ado, Doug.

(Applause.)

AMBASSADORS' AND MINISTERS' ROUNDTABLE -- THE CANADA-US RELATIONSHIP AT LARGE

Moderator: Consul General Douglas George

Speaker: The Honorable James J. Blanchard

Speaker: The Honorable James S. Peterson

Speaker: The Honorable David Jacobson

Speaker: The Honorable Peter MacKay

CONSUL GENERAL GEORGE: I wonder if I could get the panelists to come up. While they are making their way forward, I will just start with a few remarks. I am Doug George, the Consul General of Canada in Detroit.

(Greeting in French.)

CONSUL GENERAL GEORGE: For the sake of the court reporter, we will do it in English. First, I really do want to thank Ted Parran and Steve Petras for inviting us here and, once again, including this session in the conference. I personally think this is the most interesting session and the most fun for all of us, especially my panelists.

It is really a great opportunity to get together with these distinguished leaders, distinguished policymakers, and people that can bring an awful lot of experience to what we are doing today.

I know most of us in the room follow NAFTA on a day-to-day basis, but for those few of you who don't, I will just give you a quick summary. As was stated last night by our keynote speaker, NAFTA is basically the premier regional trading relationship.

It is the largest one in the world, annual trade of over a trillion dollars, three times what it was when we started NAFTA. It supports nearly 14 million jobs in the U.S., serves 480 million customers in a combined GDP of \$21 trillion dollars.

What that represents is just under seven percent of the world's population but 25 percent -- over 25 percent of the world's GDP. And over the course of NAFTA, we really developed highly integrated supply chains and a highly integrated economy. And NAFTA has got a few wobbles here and there, but its track record is one of growth and prosperity.

Now we are in the middle of negotiations or renegotiations, and without going into nauseating detail, we have had seven rounds of negotiations, which have finalized six chapters, two annexes, and great progress is being made.

We just entered a very intensive phase, and among some of us, the perception that we are dealing with is NAFTA isn't working. That's wrong. NAFTA is working, but it needs to be modernized and brought up to date.

So what we are doing in NAFTA and in negotiations is to try and bring it into the 21st century. It is 24 years old. Twenty four is a great age if you just graduated university; young if you are a Brandy, and I do have an Olympic athlete joke, which never seems to go over because I talk about snow boarders, so if you don't get your Gold Medal by 17, you are over the hill.

(Laughter.)

HON. JAMES BLANCHARD: I thought it would be about curling.

CONSUL GENERAL GEORGE: We are all friends up here.

(Laughter.)

CONSUL GENERAL GEORGE: Let me just say Vice President Pence said it best: "What we are looking for in NAFTA is a win-win."

Now, my panelists don't need introduction, so I will make them very short. First is Jim Blanchard, former governor of Michigan, former U.S. ambassador to Canada, and now with DLA Piper in Washington. Next is Jim Peterson, former Canadian Minister of International Trade and now with Fasken's in Toronto.

Next is the Honorable David Jacobson, former U.S. ambassador to Canada, now Vice Chair for BMO Financial Group of Chicago where BMO's U.S. operations are headquartered.

And finally, the Honorable Peter MacKay, served as Canada's Attorney General and Minister of Justice, Minister of National Defense, and Minister of Foreign Affairs. And he is currently partner at Baker McKenzie in Toronto.

Now, a whole lot of honorable stuff. But it does show the depth of this panel, and none of them are currently serving government, so they are more than willing to share their unvarnished views.

As moderator, I am going to ask the first question or two, but I encourage you all to ask questions. I see there might be a few students here in the audience. I will give priority to questions from students so the students in the audience start thinking. Okay. We will start with a really easy question.

What do you think are the prospects for the NAFTA renegotiation? First, will we have a successful negotiation, and second, if we get a deal, will all three countries be in a position to approve it? I thought we would start off easy. So I will start with Governor Blanchard.

HON. JAMES BLANCHARD: The answer is yes and yes.

(Laughter.)

HON. JAMES PETERSON: I agree.

(Laughter.)

HON. JAMES BLANCHARD: I agree with -- most of you heard Peter MacKay's fabulous speech last night, but Peter, again, thank you for being with us.

HON. JAMES PETERSON: Here here.

HON. JAMES BLANCHARD: It was fabulous, and I agree with your analysis. I think in the end there will be -- NAFTA will be renewed. It will not be as easy in terms of getting a vote from Congress as people realize.

I see Trade Representative Lighthizer of the U.S. said that he would like a two-thirds vote in Congress. I don't think that's realistic at all because I think the Democrats are going to believe they have a free ride on this one, force the

Republicans to support it, even though most of the businesses, including most agribusiness in the United States, strongly -- they strongly support the renewal of NAFTA or the continuation of NAFTA.

I think what we are hearing is, there will probably be some announcement of an agreement in principle, probably by the end of this month or early in May, and then kind of a deferral on all the details until after the different elections, the Mexican election, the U.S. election in November, to finalize it at the end of the year.

Looking back, I happen to have been present at the creation really in terms of the adoption of NAFTA. I was a new ambassador in Canada. The agreement had been negotiated, but Bill Clinton, pursuant to his campaign, said he needed to tweak the environmental and labor standards provisions, and that's true, he needed to do that, or it never would have gotten through Congress, never got through the U.S. Congress. So my job when I went up to Ottawa, my job was to figure out how to make sure that Prime Minister Jean Chrétien and the Liberals supported NAFTA and didn't try to renegotiate it, which their platform, their Red Book, said they were going to do.

And my job was to convince the Chrétien people who hadn't been elected yet. But we really were expecting that the Liberal Party would win, to not use the words "renegotiate" in his speeches or in his victory speech.

And we thought up very quickly privately -- I wrote about this in the book, so I am not telling tales out of school -- through his pal, Jean Pelletier, who turned out to be chief of staff, that Jean Chrétien basically was a free trader as well as Pelletier, as well were a lot of people from Quebec.

So the good news is it all worked out with President Clinton. The bill approving NAFTA only passed by 16 votes in the United States Congress, very close. The issue then and the issue still today is low wages in Mexico; it had nothing to do with Canada or dairy or supply management or otherwise; low wages in Mexico. That is still an issue.

When members of unions and average people read that BMW is paying a dollar ten an hour in Mexico to auto workers, it really upsets everybody. So that's why a lot of Democrats who know we need to renew NAFTA will vote no. I believe it will be approved and extended. I know our negotiator, John Melle, he is very good. We had him as a guest speaker here two years ago.

He actually -- I talked to him about this. I said we would love to have you come next year and talk about what really went on in all the negotiations. He couldn't be here now to tell you, but it will be interesting to see what happens.

But I think it will get approved. I think that's a good thing. Maybe they will have some language encouraging Mexico to allow workers to organize, but it is hard to tell another country what their laws ought to be. That's a very difficult thing, and that's the issue.

Otherwise, I don't see any road blocks. All this -- a little editorializing here - - look, we have a President who doesn't believe that anyone ever negotiated any agreement that was any good; that only the things he negotiates are good, and that's a classic narcissist. Only the stuff he does is good. So what's no good?

Well, NAFTA is no good. TPP is no good. The Paris climate agreement is no good. The South Korea trade agreement is no good. He spends all his time attacking Obama or Clinton or somebody else.

He all of a sudden decided that, after he was elected, that somehow there is a problem with lumber. My God, I discovered this new thing. We are going to crack down. No one told him we have been arguing about lumber for -- what? -- a hundred years or more.

He had a great first meeting with Justin Trudeau. That was really good, and they did have a wonderful statement, including supporting the Gordie Howe Bridge. Thank you. There will be work on it.

But we will be dealing with somebody -- you know, Lighthizer says I have one client, and that's the guy in the White House, and he changes his mind every other day. You read now he might even want to do TPP.

So we will see, but ultimately, because I think he cracked down on steel tariffs, although let up on everybody but China and Russia, I think he feels he has been tough enough on trade in terms of rhetoric.

If things like NAFTA can move along and get finalized, and meanwhile, all this drama is totally needless, totally needless, and I spend my time on CTV and CBC apologizing for the behavior of our leader because I don't want Canadians to take it personally.

Every governor, almost every member of Congress thinks of Canada as one of our most valuable, if not the most, valuable partner and ally. We feel very lucky to live next to you. We are sorry you have to get put through this drama, but we think it will work out. Do I have strong feelings? Yes.

(Laughter.)

CONSUL GENERAL GEORGE: Do any of the other panelists have strong feelings?

(Laughter.)

HON. JAMES PETERSON: Let me just follow-up, and I couldn't agree with you more, Jim, about a wonderful speech by Peter MacKay last night. The only problem with him, he is in the wrong party, but we got to work on that.

(Laughter.)

HON. JAMES PETERSON: I met Jim soon after he was appointed to be U.S. Ambassador to Canada, and we were at a very critical time in terms of a referendum on whether Quebec would separate or not. And it is a rule of international law, as you all know, that you don't interfere in the internal politics of the country you are representing or you are going to.

Jim broke that rule, and he brought President Clinton up to Ottawa who spoke before the House of Commons and talked about how important it was to the United States that Canada remained strong and united. And we won that referendum by about 51,000 votes, a real squeaker, and so Jim, you have played a credibly important role --

HON. JAMES BLANCHARD: Thank you.

HON. JAMES PETERSON: -- on the history of Canada. I think we will get a deal. I don't think it will be done by the end of April as the U.S. has insisted and as politics and Mexico and the United States require.

And I don't think having a deal, which is an outline of what we might have with details to be determined, is going to be credible to anyone because it is like saying I am going to buy your house, and I will be the owner, but we will settle the price after I get it.

So that, I think, is a little bit of a difficulty that has to be worked out. Canada and the United States have benefited greatly from this. NAFTA was put together by the Mulroney government, which took effect back in 1994.

We have united our two economies in a way that we are inextricably linked in terms of supply chains, and to undue this, such as in autos, would be almost impossible.

We are building the Gordie Howe Bridge, the second crossing at Detroit, in order to make sure that our economies are more closely linked and cannot be trampled on by terrorism or whatever.

So having said that, will we be able to get a deal that everybody likes? There will be give and take, but I see the U.S. coming down from some of its very hard positions on things such as the dispute resolution under NAFTA Chapter 19.

I see them coming down a little bit on autos from 85 percent North American content to 75 percent now, and so I think there is room for negotiation and coming together.

And so I remain optimistic that it is in the best interests of all of us, in spite of politics, which are very difficult in the United States, that we will be able to reach an accord.

HON. DAVID JACOBSON: I agree with much of what has been said, particularly the part about politics being very difficult.

(Laughter.)

HON. DAVID JACOBSON: As far as what's going to happen, I will begin by saying that my record of predicting what Donald Trump is going to do is perfect. I am always wrong.

(Laughter.)

HON. DAVID JACOBSON: So don't listen to a damn thing of what I am about to say. I think there is probably going to be an "agreement in principle", whatever that means, and then, it is going to go into hibernation for a while.

I am less optimistic that there will be a done deal by the end of the year. It may be in hibernation for a very long while. As a business person now, I understand the difficulty of that. The thing that every business person wants is predictability.

You figure out how to work around, deal with the rules as they exist, which we can't deal with in our ever changing worlds, but I don't think it is going -- the President is going to pull the plug on NAFTA. It is not going to go away, but you are going to get into this sort of never, never land.

Were it to go away, obviously, this is not good for the United States or Canada or Mexico. But for one thing that I think sometimes gets overblown is what would the economic consequence of this be? Clearly, it is not good, and you are shooting yourself in the foot, but this is not going to be the end of the world for the United States, Canada, or Mexico.

There have been a bunch of economic analyses, one of them by my bank, and they all are around the same numbers, but I think we projected that if the President were to end NAFTA, that it would be about a three tenths of one percent hit to GDP in the United States, about one percent in Canada, maybe double that in Mexico.

That's not to say there will not be places and industries that are hit much worse, most notably the auto industry in Michigan and Southern Ontario, but supply chains will adjust, and it is not going to be the end of the world.

The only other thing I would have to say about this is the real consequence in my mind -- and Peter talked about this last night -- is not just the economic piece, but it is the geopolitical piece.

When I was the ambassador, there were a lot of instances where we went to the Canadian government. One in particular I remember going to him about where we asked for things that the Canadians might not have on their own accord been excited to do, but oftentimes, they did it, and they did it because we asked them to do it, and it went the other way as well.

And if NAFTA were to go away or even if it is to survive -- and there has been all this drama that has surrounded it -- we are not going to go to war or be at loggerheads, but those instances where we agree to cooperate just because the other guy asked us to are going to be harder to achieve, and that's a big deal.

HON. PETER MacKAY: Well, that's very well said, Ambassador, and I want to begin by thanking the US-Canada Law Institute for continuing this noble pursuit of shining the light on the importance of the relationship and specifically on the importance of trade. I am honored to be on this panel.

I am going to quote that great American philosopher, Yogi Berra, when he said "it is difficult to make predictions, especially about the future", but you've heard, I think, some very learned and great comments based on experience, and politics, as another person said, politics is the one profession for which no prior experience is required.

(Laughter.)

HON. PETER MacKAY: It is a necessary element of our democracy. And presidents and prime ministers change. There is a constant turnover. That's the essence of democracy, and that goes for relationships and business and politics.

And between nations, it ebbs and flows, and I say that because the enduring part of the relationship between Canada and the U.S. is very much predicated on these relationships. And the gentlemen who are here were pivotal in moving the dial on a lot of important issues, including trade, but including this collective sense of purpose, whether it be security or economy, the betterment of our people, and that's why I do have faith.

And I agree with the prior speakers that we will get through this period. We will get through this impasse on trade as we have in the past. Those who are expressing skepticism, let's say, about NAFTA, they are not the first. NAFTA wasn't a foregone conclusion in its first instance, and there have been lots of leaders on both sides of the border, on both sides of the aisle who have been sceptics.

And what is a little bit troubling -- and I am very reticent to say -- as the old diplomatic saying goes, you don't criticize your own country outside your country, and you don't criticize your host. So I should probably just stop right here.

(Laughter.)

HON. PETER MacKAY: But there is a great deal of utility in assuring we keep the facts going forward, and that we are leaning forward with what we know to be the truth about how successful the agreement has been, the mutual benefits. There has been lots of commentary here and elsewhere about ways in which we can improve this agreement.

One of the no fly zones or the red zones, as it has been called, is having a sunset clause because that injects a perpetual uncertainty, and one of the underlying problems with what has been happening throughout this negotiation is the complete uncertainty, the daily tweets that sometimes throw everybody into disarray.

But we need to continually press forward with the facts and ensure that the decision makers themselves are informed and that the sectors who are affected, the regions who are affected, people who will be affected most have an opportunity to ensure that there are informed decisions being made about NAFTA and about the impact that will have.

There is one other element that hasn't been touched on yet, and that is the necessity to diversify your trade. And I will be very clear: Canada will always, always put the United States first when it comes to these decisions around our trade, our relationship, our economies being so intertwined as David said.

And I don't mean that in an interdependent negative way;

I mean it is critically important that we cooperate, and most importantly -- and the expression of how securely is Trump's trade, that's taken on a whole new dynamic I suppose these days.

But I know what Ambassador Jacobson was referring to and how we have partnered in the past on critical issues around the protection of North America, not just our economy, but the security, and you know, I dare say in the future we are going to be revisiting issues around missile defense, around perimeter security, around our partnerships in many of the security apparatus. Those are also in the backdrop considerations if there is a breakdown in the relationship. So it isn't just about trade; it is about the overall relationship that we have to keep working constantly and having all of the touchstones.

And I will just conclude by saying I agree that we will find a way forward. It will probably be a partial or temporary path that we are on, but events are intervening, the trade dispute with China, the potential that we could see military action in Syria in response to the alleged nerve gas that is most certainly attributable to Bashar Al-Assad.

Thankfully, I think the world's attention will focus on security matters having to do with trade, but in the meantime, we have to maintain the path that we are on, continue the negotiation, and we will get there sooner or later. I am sure we will get there.

CONSUL GENERAL GEORGE: Thank you. I will ask one more question and open it up to the floor. One of the other big issues that has been taking up a lot

of attention is the U.S. Administration approach to retaliatory tariffs. They applied tariffs on steel, aluminum based on a claim of national security.

Canada and a few others have received temporary exemptions. The President has also threatened to impose \$50 billion, then I believe now it is \$150 billion in retaliatory tariffs on China due to intellectual property concerns under section 301. China announced that it is intending to reciprocate because it is only polite to reciprocate.

I was in Indiana earlier this week, and there is a lot of concerns because their major soy bean and pork producers are beginning to feel the impact, but there are also major steel producers. So they have sort of a mixed view there and in other places.

We have a lot of international experience out here, so I am just wondering if you can give us your views on whether these options are useful, diplomatic tools to move forward, and what would be the risk for Americans, Canadians, and I guess the rest of the world? Maybe I will start with the minister, former Trade Minister Peterson, please.

HON. JAMES PETERSON: First of all, let me say this: in terms of retaliation, I think we have an incredible concern as to whether the U.S. and China are going to take us into a trade war.

Going back on what has happened, when the United States realized it had an incredible problem or thought it had an incredible problem in trade, deficits, and I am sure it is a huge problem for them or should be, they had a trade surplus with Canada and a trade deficit with Mexico of around \$60 billion and a trade deficit with China of over \$300 billion for the last ten years, and last year it was \$375 billion.

So obviously, Canada should not have been the target, and yet, we were swept into this whole thing. I have the sense now that maybe the incredible efforts of our negotiating team headed by Minister Freeland and our Ambassador McNaughton have been paying dividends.

They have taken it right to the White House. They've taken it to the states, the 37 states in the United States where Canada is the biggest market for them in terms of exports and who would be affected by all of this.

And they have done it in a very high-level way -- they haven't been nitpicking. They haven't been dirty; they haven't been personal; they haven't been nasty. They have done it in such a way that I think their voices have been heard.

As the Vice President Pence said, you know, the President to our Prime Minister, the President really likes you, and I think this has paid big dividends as we have been under the fence.

Now, let me just say in terms of retaliation, when I was a Minister, do you remember the Bryd Act, which said that -- this is under United States law -- any duties that they collected for countervail or antidumping didn't go to the government but to the people in the United States who launched the suits.

And this was all on the softwood lumber, so there is \$5 billion bucks sitting there, \$5 billion bucks sitting there that we paid in, and it was all going to go to the people who launched the suit against us. So we went to the WTO and got this thing ruled illegal, and we had the right to retaliate. The WTO, as you know, can't

make them return the money to us, but they gave us the right to retaliate. This was one of the toughest little roles I had.

We consulted broadly through all of our trades and unions and everything else in Canada as to what goods Canadians could do without from the United States, and it was one of the toughest lists we had ever made. When we got down to the final list after all these consultations, we had motor boats, and we were just coming up to May, and I started getting calls from all of these marinas in northern Ontario, and so we had to take motor boats off.

(Laughter.)

HON. JAMES PETERSON: So what we ended up with in terms of retaliation was cigarettes, oysters, and exotic fish that went into Canadian aquariums. So this whole thing about retaliation is not going to be as easy for any government to cope with as I suspect they are saying right now. Having said that, I think we will get through it.

CONSUL GENERAL GEORGE: Ambassador?

HON. DAVID JACOBSON: I think you have to separate out strategy and tactics when talking about particularly the United States-China trade disputes.

You know, there is an inclination by a lot of folks, including me, to say that if Trump is doing something, it has got to be wrong. In this instance, the underlying problem, the way that the Chinese trade, not just with the United States but around the world and the rules that they enforce or don't enforce with respect to trade, are not good. And they do need to be addressed.

And so the President I do think has kind of the right kind of rough justice concept here. The problem is with respect to his tactics. This is one, obviously these unilateral tariffs that he is imposing for supposed national security reasons, is probably not the best way to go. There are better ways to do it.

My hope is that ultimately calmer heads will prevail because this is a very, very dangerous thing for the United States, for China, for Canada, and for pretty much every other country in the world to get swept up in some sort of trade war.

But conceptually, it is an important problem, and it is not the trade deficits. I know the President, the Secretary of Commerce, others are in the administration, Lighthizer, believe that the definition of a healthy trading relationship is one where you have a positive balance of payments.

Talk to Congress, and they will tell you that's not the measure. There are a lot more important measures of it, and that the balance of payments is caused by things that have little to do with trade, like savings rates. But the overall concern is a valid one, and he just needs to execute the response a little more carefully.

HON. PETER MacKAY: I remember a hockey player named Ted Lindsey, Terrible Ted Lindsay, played for the Detroit Red Wings along side Gordie Howe on the production line, and he was accused of lots of things in his career, but he always used to say retaliate first.

(Laughter.)

HON. PETER MacKAY: I don't think that the President, quite frankly, is wrong in his overall -- to use your description -- rough analysis of what the deficit problem is, and I believe the number that is often thrown around is \$500 billion dollars currently in China. That's not sustainable, even with a country the size of

the United States, and so something has to change. The way he is going about it is a bit ham-fisted. I do worry that Canada very often gets caught in the backwash in some of these decisions and statements.

On steel and aluminum, we still enjoy the exemption until May 1st. Look, I can tell you 70 percent of our steel and a similar number on aluminum from Canada goes into the United States on the defense procurement side and in the production of American armament.

It is a necessity as is our softwood. To make America great again, you have to have NAFTA great again, and I think that we are going to see further realization as time goes on, particularly on the steel and aluminum, that this is not the path we can continue down between our two countries at least.

On the dumping of steel from China, that is a huge issue. There is also a big cultural divide as you have mentioned, and we haven't even gone into the espionage and the fact of intellectual property theft that goes on regularly. China doesn't play by the same rules as everyone else. We know that. It is state run. They don't have the same considerations around labor, around standards, around safety.

And so that direct trade relationship with China is a very difficult one to manage, not to mention on consular issues and things that we would normally deal with on a much more regularized fashion.

I recall trying to get a Canadian Uighur, who was in custody in China, released and having a discussion that I can still remember, it was just surreal the discussion.

The Chinese happened to have a Chinese businessman who was in Canada at that time, and all of this is public record now, and I was making the statements for the release of the Canadian Uighur. He had a Canadian passport. The Chinese side would not refer to him by name. He was referred to as 'the terrorist'. The point of it was, when it came to asking me for the release of what they were interested in, this Chinese businessman, who was in custody in Canada but had left China with a considerable amount of money, my Chinese counterpart said "you know, you have to send him back."

I said, "well, there is an extradition process that is underway. He is in the courts. He will be appearing before a judge soon. And he said "you call the judge."

I said "whoa, no. In our country, we don't call judges. If I did that, I would be on the front page of every newspaper." He said "you call the paper."

(Laughter.)

HON. PETER MacKAY: So there is a whole different calculus that goes on, and that's just a fingernail clipping of an example, and that in some ways is the challenge of getting into a retaliatory dispute of this size.

The amount of trade is staggering, but the motive here is the correct one, and that is to rebalance or bring about some greater level of reciprocity.

And it is laudable because I think in fairness to the President, this has gone -- this is an accumulation of letting this happen for a very long time and not trying to bring about a correction. And whether they will be successful in doing so remains to be seen, but retaliation of some sort and a return of fairness does have to happen.

HON. JAMES BLANCHARD: Well, I will just say briefly I think these are better diplomats than I am here today, at least. They put a nice face on a bad

situation. Let's jump back to the action under Section 232 of the Trade Expansion Act of 1962 pertaining to steel and aluminum.

To suggest or even imply to anybody that Canada-Mexico is a security threat to the United States is nothing but stupidity and buffoonery. And nobody even believes that. That's the same as true of the European Union as well.

One could argue on steel, which was done a week before a primary in Pennsylvania in steel country, which the Republicans lost I might add. The only argument you can make would be about Russia or China was steel. My concern with all of this is, I think you can get tough around China, and we all agree on that, is that the President wants to be tough on everybody. It is a lot of buffoonery and bullying.

It is like, well, the steel tariff exemptions for Canada, Mexico and the European Union will expire on May 1st. It is not like they are going to be reconsidered. They will expire and expire in spite of our leverage, and here is my concern.

The President of the United States is selling a narrative here that our institutions don't work, whether it is trade agreements, our judiciary, our intelligence services, even the Congress, our alliances. The world is ripping us off. Everybody is making fun of us and cheating us. And so we can't trust anybody. We are going to put America first. Here is a guy who is trying to convince his people, his base, the American people, that every country is somewhat the enemy, and they are ripping us off.

It is like he hasn't even isolated the issues that we need to negotiate. So this retaliation, you know, this is a Pandora's Box here on trade, even in dealing with China. Our farmers can't live without exports to China. They can't.

For example -- by the way, I want to talk about dairy just briefly. As the President once mentioned dairy, he was in Wisconsin, and the cheese farmers complained about the supply management program in Canada, and we have never liked that by the way.

HON. PETER MacKAY: Do you know there are more cows in Wisconsin than all of Canada?

(Laughter.)

HON. JAMES BLANCHARD: I will tell you, the Green Bay Packers have pretty big linemen, so I don't know. These cheese heads are big, tough. All I know is one of these guys, Peter, one of these guys complained about the supply management program, and Trump comes back and goes crazy over that, NAFTA, and dairy.

I was on the plane with a bunch of farmers from Wisconsin -- this is a true story -- just the other day. They were going in for a Farm Bureau orientation, and they said they sell most of their cheese to Mexico.

I said "oh, so you are not against NAFTA?" "Oh, no. We love NAFTA. We don't like that thing up in Canada, but no, we love it. We are selling all our cheese to Mexico." People don't understand the integration of what's going on, not only with NAFTA but in the world, and I just hate to see this narrative that we don't want to work with the world, that they are ripping us off, that somehow it's America first and everybody else has to be a loser.

We have responsibilities, and we work with Canada. As you know, Canada has been our partner all over the world, and I hate to see us make it difficult on ourselves and our allies just to prove a point on a narrow issue, in this case laws, relationships, and trade with China. I just hate to see it.

It is not a good -- it is a slippery slope despite the fact that the President or his people may have a point. I doubt the President knows any of this substance whatsoever. His people should know better, and so should his allies in Congress.

HON. PETER MacKAY: One of the things that I've noticed, a quick point to register, is that, you know, in dealing with China and the whole retaliation issue, they have announced already very targeted sanctions and very targeted tariffs aimed at, not surprisingly, red states so-called and on quintessential American products, bourbon, for example, and Harley Davidson motorcycles, the areas that they know are going to hurt the President, and his party in addition to those sectors, so it is very much like the art of the deal meeting the art of the possible when you take on China and know that they have the flexibility in how they retaliated to maybe hurt the U.S. more. That's just an observation.

HON. JAMES PETERSON: If I could just add on to that a bit. The exports from China to the U.S. are about three times what the traffic is the other way. So the U.S. has about three times the trade that they can penalize as opposed to what the Chinese can do at the current time.

So the retaliation by the Chinese, as Peter has said, has been very targeted, very astute, very direct. But the impact on their economy overall, is probably less than some economists have estimated, less than .2 percent or .1 percent. So whether this is sound and fury signifying nothing, I don't know.

I think an all-out trade war is -- really has to be avoided. And whether we are going to get there between the United States and China, I just don't know. How much of this is bluff, how much of it is negotiations and getting people to come to the table -- you know, the stock markets have indicated to us that they are concerned with what the possibility of an all-out trade war will be between the two countries, and that will have huge impact on companies such as Canada.

HON. JAMES BLANCHARD: I want to add here, too. You know, we are counting on China to help contain North Korea, and you can always argue there is no linkage in this and that, but there always is. And now, of course, the President says maybe we will try to join TPP now, which, of course, everyone knows we should have, and everybody that knows Hillary knows she would have found a way to tweak it and support it.

And now we are going to find, I think, that the President will as well at some point hopefully. But we are sitting around Washington now, they are talking about having to subsidize all the farmers for their losses of exports to China because, of course, China is retaliating, and that continues to explode, so what we will have is a trillion dollar deficit in our budget, uncalled for when I think back to the fact that it was actually balanced during the Clinton Administration.

And so they are talking about even further spending. There is no end to this, so what we need are calmer minds like these three, not myself. I am too fiery a person.

HON. DAVID JACOBSON: The only thing I have to add to this discussion is that Wisconsin has the highest per capita consumption of beer of any of the 50 states. That explains a lot.

(Laughter.)

HON. PETER MacKAY: There should have been a caveat, too, that the only ones who benefit in this win-win that we are talking about are the lawyers, and we are all lawyers. I can send my kids to college.

(Laughter.)

CONSUL GENERAL GEORGE: On that cheery note, maybe I will open it up to the floor. Are there -- there are some mikes up here? Please.

AUDIENCE MEMBER: Thank you to the panelists and the moderator. So I am actually a third-year law student here. I believe one of the panelists mentioned earlier something about renegotiating some of the North American country's specific requirements, the regional values regarding NAFTA.

I was just wondering, especially with the current Administration here in the United States, do you think those values would go up or down or stay the same with these new NAFTA negotiations?

HON. JAMES PETERSON: I am not sure what values you were talking about.

HON. DAVID JACOBSON: She was talking about regional North American content in autos.

HON. JAMES PETERSON: Oh, okay. Do you want me to start off? You are looking at autos right now?

CONSUL GENERAL GEORGE: That's what they are talking about, yes.

HON. JAMES PETERSON: Okay. Well, we heard yesterday that the U.S. has gone from 85 percent to 75 percent in terms of North America NAFTA content. And it looks like a very complex regime that they are suggesting might apply.

One of my great concerns with this, too, is that they are going to rate it in terms of these salaries that paid, particularly in Mexico, up from \$3 U.S. an hour to \$15 to \$17 to \$19 an hour.

I think we have to ask ourselves what will the car companies do in order to stay globally competitive? Will they then forsake the NAFTA region and go to manufacture in other jurisdictions where wages are lower?

Now, I don't think wages are that big a portion of the final cost of a motor vehicle, so I would have to see exactly how that would play into the deal. Certainly, I think all of us like the idea that Mexicans can use the NAFTA to increase the wages of their workers.

We have Magna, a Canadian company, has over 30 plants in Mexico doing parts and components with over 25,000 employees. Dealing with this issue, we are going to have a huge impact on Canadian and American companies that have integrated the supply chains using Mexicans across the border. So I don't think it is an easy answer.

HON. PETER MacKAY: I heard the question about values, and maybe I am answering a question that wasn't asked, but one of the other politicians tends to do that.

One of the more sort of contentious reportings at the beginning of the talks over the NAFTA agreement negotiation, was the supplanting of values to the

cultural issues that emanated from the Prime Minister's Office with regard to gender quality, indigenous rights, environmental issues, all laudable attempts, superimposing that into a very complex, obviously, very contentious trade discussion.

I don't think it is going to help in the long run, and I would be surprised, quite frankly, if they find their way into the actual agreement. I know that similar attempts have been made in trade negotiations or trade negotiations in China, and Canada, as you know, is now moving down the road on the Transpacific Partnership, TPP, and we have just signed a comprehensive economic trade agreement with the European Union.

And there was -- they were more amenable to some of those discussions, but I would be shocked if in the Asia Pacific they want to, in the midst of these trade negotiations, start talking about labor rights, gender quality, or the indigenous requirement, quite frankly, and the Chinese ambassador yesterday laid down some pretty firm markers on those subject matters.

So you can have those discussions in perhaps bilateral and perhaps trilateral settings, if there is a willing participant to have the discussions on the other side.

And we have done this on things like acid rain with the United States. We have had carve-outs on the tailpipe emissions and other important elements. I don't think at this point, given what's at stake, that pushing those issues into this agreement will help us get to a final resolution.

HON. JAMES PETERSON: I would like to just add a note of caution in terms of what Peter has just said. In terms of the environment, the current U.S. Government has gone right back to the Paris climate agreement and has renounced their international obligations to reduce greenhouse gases and prevent climate change from increasing at the incredibly rapid pace that is going to be terribly detrimental to everybody else in the world.

And I think that the U.S. Government in renouncing the emissions provisions that were adopted in the United States following the California model was a very detrimental move and a very irresponsible move in terms of the global climate.

I am pleased that California and some of the states are rejecting that move, and that they have asked the Trump regime to back down on them. I am pleased that some of the auto producers, Ford, GM, Fiat, Chrysler, have gone to the Administration and said, "hey, we were prepared to meet those new conditions by the year 2025. We have been working on it, and we have been committed to it, and we have to be globally competitive," and others are going to do it, too. So I am hoping that these pressures will come to bear and make changes to domestic U.S. legislation.

HON. JAMES BLANCHARD: You know, related to that, David Jacobson mentioned that businesses want certainty, and in that area, there is a whole lot of uncertainty now, and at least, I know from what my contacts are because most U.S. businesses are, have been, and will continue to adjust their policies to accommodate the belief that there is climate change going on. They are doing it.

I spent 17 years on the board of a Canadian company, which is really a North American company called Enbridge, and we had been moving and moving and moving toward renewable sources of energy and/or cleaner sources of energy, and

that's not going to stop, no matter what the White House says, no matter how they renounce Paris, which was not a mandatory set of goals as I recall but really voluntary, that's not going to stop because the business community is realistic and practical, in this case, more future-oriented than I think some of the short-term political decisions in Washington. That's the good news in what is otherwise kind of a cloudy climate.

CONSUL GENERAL GEORGE: Any other comments on that question? Please.

MR. VANDEVERT: There were two things I wanted to mention. One was on the --

CONSUL GENERAL GEORGE: I'm sorry. Would you introduce yourself?

MR. VANDEVERT: My name is Paul Vandervert. I am a Case alum. I also had spent quite a bit of time with in-house counsel, trade counsel at GM, Ford, and one of the issues -- speaking of retaliation -- that I think is actually going on, we talked about how the Chinese and their possibility of retaliation. We always talk about hurt.

I was involved in Ford's efforts when President Obama did the tire safeguards and China retaliated against U.S. autos, and what we found, or at least my perception, was that the retaliation is actually targeted with the hope that the people affected will go to their government and say "could you rethink this, please?"

So it isn't so much to hurt like the bourbon industry; it is to get the bourbon producers to go to Mitch McConnell and say "can you do something about this," which I think in one sense is a remarkably sophisticated approach.

It is pretty kind of knowledgeable and almost paradoxical, you can't go to the Chinese government and say could you rethink this, please? But at the same time, we completely agree with the overall comments. The Chinese are just -- they have abused all the concessions and rules that we allowed for them to come in, that kind of thing.

The question I have for the panel, especially in a law school context, is, we've talked about the broad issues, and then we talked about kind of the policy and all that, but to me, don't we think there is a real threat to the bread and butter or rule of law?

I mean, the 232 thing, the problem was from the get-go it had to apply to everybody. I mean, it was this kind of a bizarre choice, but I think it arose out of - - to me, did it arise out of disregard or not the knowledge of what the laws are for, or what they were designed to do?

CONSUL GENERAL GEORGE: Rule of law.

HON. DAVID JACOBSON: I think this one goes to Jim Blanchard.

HON. JAMES BLANCHARD: Rule of law? And I am going to step back. Rule of law?

And I look out here, and somebody said earlier, reminded them when we were at law school. Yeah, we are at the law school.

I have my 50th reunion coming up in a few weeks at the University of Minnesota Law School, and they asked me to be the master of ceremony in his because they couldn't decide among themselves of the Minnesota lawyers who would do it, and I am from out of state. But it is true, and I am going to have to tell

them that I probably had the lowest grades in the class. I am serious. I am absolutely serious. So tell me about any rule of law.

Yeah, it is a huge problem. I mean, that's why I mentioned it was a joke that you would include Canada with the steel tariffs. That was all politics.

So on the President's behalf, he campaigned on the fact that all these trade deals are bad. He told the Steelworkers he would get their jobs back as he told the coal miners, which he won't.

In the case of coal, steel, it may be temporary, some jobs, and he felt the need to be tough, but he had to be kind of tough with everyone. And then let USTR decide who would be exempt if that's how they do it, or the Commerce Department could decide what products to exempt. That's how it works.

So he was not filling a commitment, and he was really trying to do it before that Pennsylvania election that I mentioned, which didn't work out for him anyway, and everybody says well, the cost of the tariffs will be spread among the entire society, whereas the benefits will be precise in Ohio and probably Pennsylvania.

But you know, you make a mockery of the law when you do what he is doing. And I think it is also true that when you attack a judge as he has in Mexican heritage or attack the courts or -- I could go on, call our intelligence services Nazis, attack judges whenever they rule against him, you are undermining the rule of law. You are undermining our system. That's what's going on here. It is a bigger problem than a lot of us want to admit.

I am old enough and been around long enough in politics to see it and say it as I see it. I am still involved in politics in Michigan. In fact, I have to leave to go back to the democratic convention because I have a candidate I want to help elect governor, but it is a serious problem.

I believe we have -- and attacking the press, the First Amendment -- I mean, we in Washington, we have some people, not the majority, but some people who are willing to devalue and attack all of our fundamental institutions, including the rule of law and the judiciary and our constitution.

That's going on, and what bothers me is not that we have someone at the top who doesn't understand all this, that treats this system as a toy, but we have people in Congress going along with it because they are afraid of their own voters and their own primaries.

This is really serious, and I am telling you, I have lived a long time. I've worked on thirteen presidential elections. I have gone to eleven inaugurations, and if I can't speak out on this, nobody can, and that's why I do it, period.

HON. PETER MacKAY: But you know, there is a fundamental question for sure, and it comes back to accountability, and if there are rules, whether they are international obligations or whether they are domestic, political considerations, if people are going outside those with impunity, then the whole system starts to fall apart.

And it is very corrosive on people's confidence and their leadership. China doesn't have those considerations. I mean, just in the context of the international environmental commitments, China is not going to meet their commitments, they are not. Neither is Pakistan. Neither is Russia. So in the context of Canada, we can

put all kinds, make all kinds of Poly Amish commitments -- and by the way, we are carbon neutral, knowing the size of our manufacturing sector and all of our forestry. We are not putting a lot of emissions compared to just about any other developed country in the world.

And you know, there is the whole issue around our Oil Sands development and the energy sector, which we haven't talked about here, which is a big consideration in trade, particularly with the United States, but with the rest of the world.

But you know, to your fundamental question of respecting the rule of law and human rights, I mean, let's talk about a country like Russia that has put on assassinations, put out hits on their own citizens; in other countries used nerve agents and shot people in the back of the head in the Ukraine or going across international borders or committed all kinds of unbelievable espionage.

I mean, we are going backwards, back in the 1950s when it comes to Russia and some of their activities. So we are in very precarious deep water with some of these violations that we are seeing in terms of international standards, norms, rules of law.

And it is a problem, and that's why we need to be together. Canada and the United States in particular need to hug each other on these issues and support each other, and democracy will prevail.

HON. JAMES PETERSON: Amen.

HON. DAVID JACOBSON: Can I just add one thing here? The institution's rule of law being an important one certainly in the United States are being tested now. They are being tested in a severe way. But it is not the first time that this has happened. It has happened repeatedly over the course of 240 some odd years.

And every time that it had happened, one way or another we manage to make our way through it. You know, Winston Churchill, my favorite Churchill quote said that in the end, the United States of America always does the right thing. The problem is they exhaust every other alternative in Europe, and there is much truth to that.

(Laughter.)

HON. DAVID JACOBSON: But the fact of the matter is that maybe it is luck, maybe it is because ultimately there are people who do care more about the country than getting reelected. God only knows what it is, but we have overcome this.

And while I look around -- and look, I am a Democrat. I represented Barack Obama. You can guess what I think about some of the politics that are going on now, but it bothers me greatly.

But I also truly believe that in the end these systems are going to work; that it is going to be okay, and that we will look back on this and think we dodged a bullet. Hopefully, we will look back on it sooner rather than later.

HON. JAMES PETERSON: One of the things that really bothers me about the whole thing in which I think is creating angst among the people in our countries is the fact that the tariffs that are being imposed, while may be popular to the small group, to steel and aluminum workers, impacts the whole economy in a way that is terribly detrimental.

You go back to Smoot Hawley, 1930, they put the huge tariffs on and the retaliation resulted over the four years before it was repealed in reduction of U.S. exports of 61 percent.

You look at a town, Tupelo, Mississippi, birth place of Elvis Presley, they have 95 workers in steel and aluminum production. They have 20,294 workers in industry that consume those two metals.

So while it appeals to us to say, oh, my goodness, we have to protect our steelworkers, what are we doing to the rest of the economy? And so let us worry about that.

I just want to quote Senator Ben Sasse, a Republican from Nebraska, who said in respect of the agricultural retaliation that China is proposing, he said the President was threatening to light American agriculture on fire.

Let's absolutely take on Chinese bad behavior, but with a plan that punishes them instead of us. This is the dumbest possible way to do this.

So I hope that this type of realization is going to get through to those people who are making the decisions on behalf of all of us.

HON. PETER MacKAY: And I think it is. I just want to add something quick.

I had the good fortune to work with people like Jim Mattis and Kelly and McMaster when we were in Afghanistan. Not only are these military people of the highest order; they are also highly intelligent in my experience. You know, there has been a lot of change, to say the least, that's perhaps the biggest understatement in terms of the turnover of personnel at the White House.

But I do want to come back to this national security issue because we are so integrated now, and the success of our collective security is going to require interoperability. And so that means ships, aircraft, military hardware, much of which, frankly, is going to be built with Canadian steel.

HON. JAMES PETERSON: Exactly.

HON. PETER MacKAY: And I am going to make a statement here that the rebuilding of the towers in New York, Canadian steel.

We lost Canadians that day, too, and you all know the story now comes from away and the thousands of Americans who were hosted in Canada post 911, but how does this tie into China?

China is building aircraft carriers at an alarming rate. They are building islands in contested water in the South China Sea with air strips. They have never been an expeditionary military, but those are pretty strong signals that we better watch. So it is not just the trade retaliation that I think about in the context of what's going on here.

HON. JAMES PETERSON: Good for you.

HON. PETER MacKAY: And all the neighbors in the Asian Pacific are very alarmed, Japan, South Korea for other reasons, but they are all watching China much closer than we do, and so we need to work together with America.

We have need to ensure that we are making informed decisions, not just around trade but security as well, and one outlet of it is the steel and aluminum to make the necessary, protective equipment that we both operate.

HON. JAMES PETERSON: Peter, let me just add to this. I think you are right to extend this out beyond trade, but I think the U.S. and the world lost an incredible

opportunity when the U.S. pulled out of the TPP. That was the one opportunity that we had to take on China with a number of allies and confront them not individually but multilaterally. And I hope against hope that the U.S. will reconsider its commitment to the TPP.

HON. JAMES BLANCHARD: Well, it sounds like they may. I want to echo what you said about the leaders in our Defense Department, the military establishment. They are, according to everybody I know, extremely enlightening, starting with Mattis, Secretary of Defense, certainly including McMaster who just left unfortunately, so we are really worried about that.

I wanted to say, though, I may -- I feel strongly because I am still involved in politics, and as I have said, I have been around a long time in this stuff, but I am actually an optimist about the future. This will come to pass as David Jacobson said. I hope it is sooner than later, but it probably is not going to come to pass without the American voters speaking their mind.

I think they will do that probably next November, and if not then eventually. I just worry about the damage of -- the tarnishment of America around the world and even in our relations with Canada because I have always felt with Canada you are not working to improve relations, they are going to slide.

You know, we will talk about autos later, we have a good panel. People forget, the auto rescue of General Motors and Chrysler wasn't just the U.S. Government, Barack Obama; it was also Canada, Ontario and Ottawa, and I served on the new Chrysler board so I appreciate that. That's just an example.

People don't think about the partnerships that we have. I want to see these partnerships get nourished and grow. I hate to see us defending stuff that shouldn't have to be defended, explaining things that shouldn't have to be explained, but I do believe in the future. We are going to become closer and closer, and I think our future leaders will understand that, especially because of the trial period we are going through now.

CONSUL GENERAL GEORGE: All right. Well, maybe we can move to the next question. Although I noticed the answers are getting farther and farther from the question.

(Laughter.)

HON. JAMES PETERSON: That's the chairman's fault.

CONSUL GENERAL GEORGE: Sorry. First up there, and I would implore that we keep our answers short, but I don't think that's going to happen.

AUDIENCE MEMBER: I am a second year student here at Case. Governor Blanchard, you have alluded to this several times, and I think it is sort of something that has permeated the discussion a fair amount, which is that we are in watch and cycle in the United States and Mexico with this idea of an agreement in principle with the details to be worked out later.

Do any of you see this becoming midterm much of an issue with the potential for Congress who under Article I, Section 8 has the responsibility and the power to regulate foreign trade with the possible changes of the Congressional makeup? Will that affect what we see going forward?

I mean, can this be so delayed that this becomes an issue now next year and with the impending federal election in 2019. So I realize that's a very broad question for short answers, but if any of you could please speak to that.

HON. JAMES BLANCHARD: Well, again, I think what the Administration wants to do, probably with the support of Congress, is really have this, quote, agreement in principle by May 1st or whatever and then defer finalizing it until after the November elections. And that's to help Mexico and help members of Congress get through their elections.

So the only problem with that -- but I think it will end up getting renewed. The only problem with all that is that you may end up with candidates running around saying there are secret deals, you know, there is treason afoot.

You may have people doing that, saying we want to know more and stakeout positions against approving NAFTA that they may regret later. That would be my concern, but I am actually happy that Trade Minister Lighthizer and Wilbur Ross, Commerce Department, have thought this through enough to know that they want to really put a lid on the steam here really and calm the waters and try to get this done later when it is not a political football.

I think they are wise to do that, and I said earlier I think the President has some running room here because he has been tough on steel tariffs and tough on China. So he doesn't have to prove his trade bullying on the rule of NAFTA.

CONSUL GENERAL GEORGE: Ambassador Jacobson?

HON. DAVID JACOBSON: Yeah, I guess I would add, it may be an issue, but I don't think it is going to be an overwhelming issue.

There are so many others that are so much to the fore, and I think the 2018 elections most fundamentally will be a referendum on Donald Trump.

CONSUL GENERAL GEORGE: Peter?

HON. PETER MacKAY: I think it is a good question. I agree with what both previous ambassadors have said.

I think NAFTA is going to want to second rail because of the China, Syria, other events. In Canada, I think the interprovincial trade issue between Alberta and D.C. is actually a bigger concern for the current Administration in Canada over energy transportation and pipelines.

So to that extent, I think this is not likely to be an election issue in Canada, but I think an interesting scenario would be, as we have all said, there is a sort of punting of the NAFTA down the road in the United States and their political considerations.

There may be changes in the midterms that result in how the balance of power is struck in the Congress. The President takes an extreme measure with the stroke of a pen and presidential order, says we are canceling it, but I can't because Congress has held it up, and that way he can say I tried to assert a political base. That's one scenario.

HON. JAMES PETERSON: I don't think we will have a deal before May the 1st. What that does to our exemption from the tariff on steel and aluminum, I don't know because the exemption is made conditional upon getting a satisfactory NAFTA deal. So I suspect that we will be able to keep that exemption, even though we don't have a complete agreement.

HON. JAMES BLANCHARD: You know, I have seen wave elections by the way, and again, I am an optimist. I think there will be a bunch of new democratic governors that will be elected in November, probably a democratic house, which is probably why you want the NAFTA thing, whatever it is, ratified before the new Congress takes over, get it done.

CONSUL GENERAL GEORGE: Yes.

MR. MARGOLIS: Justin Margolis. When Stephen Harper went to Brussels on October 23rd and signed the agreement and it took four more years until September 2017 that it came into force. Do you think it is more wise to let it lay out or to push it through now so it can get to the lame duck section in Congress?

HON. DAVID JACOBSON: One thing I will say is that it doesn't require the unanimous consent of all 50 states.

(Laughter.)

HON. DAVID JACOBSON: It just is a different political situation.

HON. PETER MacKAY: Are there any Wallonians in the United States?

(Laughter.)

HON. DAVID JACOBSON: They don't have a veto.

HON. PETER MacKAY: (Recites remarks in French and then discussion follows:)

HON. PETER MacKAY: I think it is better if they can get the deal sooner rather than later, even if it is a provisional or a partial deal. I think everyone wants to get it done, continue to work on it. I mean, we have very -- I said this last night. We have very dedicated public servants on both sides, all three sides, of course, with Mexico as well.

And whenever you put it too far down the road, the composition of houses change. You have perhaps -- nobody mentioned this yet -- but Lopez Obrador in Mexico worries me with some of the rhetoric coming from him.

So I am hopeful and I agree with what Jim Peterson said. In terms of the longer term here on steel and aluminum is questionable, but I cannot see a world in which the United States is going to slam the door with significant tariffs on steel and aluminum in Canada. That would be a self-inflicted wound, which I don't think we fully have contemplated the repercussions.

HON. JAMES BLANCHARD: In fact, the steelworkers is an international union and at least last I checked the President was a Canadian.

HON. JAMES PETERSON: That's right.

CONSUL GENERAL GEORGE: Time for one more question, you being very patient, so, please.

MR. SHOTT: Thank you very Much. Jeff Schott from the Peterson Institute of International Economics in Washington, so I will forget my economics question that I was going to ask and just ask a rule of law question.

And the panel has given short shrift to the rule of law problem that is threatening the very existence of the World Trade Organization, something where U.S. and Canadian negotiators and officials, myself included, have worked long and hard to strengthen the multilateral trading system.

And now, there is a threat that by starving the appellate body of members, that very shortly the WTO will not be able to hear appeals, and therefore, disputes will not be binding resolution of disputes.

And is there some way that the United States and Canada can work together on this, recognizing that this is something that is going to blow up in months, not years?

HON. PETER MacKAY: I will try that real quick. I think the short answer is yes, I mean, I totally agree with you.

When you take away the referee and move the goal post, the game changes, and so it is a big big problem that we have those shortage of vacant seats, and it hasn't been given ample attention in my view when you have international bodies that are completely not populated, when you have ombudsman, judges, individuals who are in those important decision-making powers, albeit appointed, they need to be there to do their jobs.

And I will just say this: The dispute resolution mechanism that has been contentious, it is contentious because for Canada and Mexico in particular when these disputes arise -- oh, I will just say there is a far more litigious nature in the United States than there is in Canada.

We have tried, I think, to sort these things out through international bodies, and you mentioned that. So my hope is, there will be legitimate effort, quiet or otherwise, to make these bodies function and to do the job.

HON. DAVID JACOBSON: As you know, because you are in Washington and anybody that reads the paper knows it is not merely international institutions that are not properly where the slots are not filled; the State Department, treasury, homeland, security, and on and on down the list, there is nobody home. You walk through the halls of the seventh floor of the State Department, and it is just vacant.

HON. JAMES PETERSON: Jeff, let me say this: I am terribly disappointed that the WTO has not been more effective, and that's because it has 164 members, and you have to have unanimous consent for everything.

Now, they have been able to overcome that in the past four important measures to -- but they still remain dysfunctional at the overall level, and the problem with that is that it was a development round that was still in effect.

And it leaves out the Third World countries, the ones that need the commerce the most in order to grow and, hopefully, adopt the values that we would like to see them do.

So I would hope that we could get reform at the WTO, one thing being that you don't need consensus on every issue, and that you could move forward to embrace more of the world.

Otherwise, Canada will continue to do what it is doing, and we have Europe now, we are going into Mercosur. We have the TPP. We can go into the African group, which has 44 of 55 countries in Africa, but this again does not embrace the type of development we would like to see globally.

HON. JAMES BLANCHARD: I am going to add a post script to all of this by saying I really enjoy working with Doug George. Earlier John

Tennant who was here, I worked with him, but Doug in recent years, you have been a wonderful representative to Michigan, Ohio, Kentucky, Indiana, whether it is the Gordie Howe Bridge or trade or all the issues, it has been a delight.

And these gentlemen here, I mean, Jim and I go way back. David, it is great to have someone who succeeds you that is better because it gives lesser to the job and with Peter MacKay, this is the first time we have actually met, he was still in high school I think when I was governor, but anyway, I am going to give you the curse, which is you may be one of the best prime ministers Canada never had.

HON. PETER MacKAY: Well, to make this a mutual love affair, all I will say is that the American ambassadors and American diplomatic corps, including our own corps -- and I had the good fortune to work with Doug when he was their representative of Kuwait -- and America sends its best to Canada.

We have been blessed because a lot of back channeling occurs into your country through the State Department and specifically through ambassadors. Both of these gentlemen did something that I thought was extraordinary given the geographic size of our country.

Sometimes Canada gets accused of having more geography than history, but these gentlemen took the initiative to travel our country, to every province and into the Arctic and familiarize themselves with issues and people in such a personal way, investing time away from their own families and their own pursuits, and that has made a huge difference in forging that strong relationship that will endure whatever, whoever occupies the 24 Sussex or the White House.

It is the hard work of the men and women who populate our diplomatic Corps that this country rides on as does our own.

HON. JAMES PETERSON: Here here.

CONSUL GENERAL GEORGE: Any other closing remarks from the two remaining?

HON. DAVID JACOBSON: I can't top those things, but I will say this is the fourth or fifth time that I have come here for this event, and it is always fun. It is always great to see a bunch of old friends, and I look forward to seeing you again next year.

(Applause.)

HON. JAMES PETERSON: Let me just reiterate that I was extremely privileged as a minister to have what I thought were incredible public servants working with me, and I just hope this tradition continues. I hope it is not being eroded in the United States. Anyway thank you ever so much for being part of that great body of people who make Canada great.

HON. JAMES BLANCHARD: And I want to acknowledge Rick Newcomb, my law partner, who helps make this conference a success. Thank you for your support.

CONSUL GENERAL GEORGE: All right. Well, on behalf of the diplomatic services of both countries and on behalf of the audience, thank you for a truly interesting, informative no holds barred panel session. And for me, this is one of the highlights of my year, is to come and attempt to moderate this group. Thank you.

(Applause.)

PROFESSOR PARRAN: We will be back here and get started with our next panel after a short break.

(Recess.)

PANEL DISCUSSION –
THE CURRENT STATE OF NAFTA

Moderator: Lawrence Herman

Speaker: Jeffrey Schott

Speaker: Peter Clark

Speaker: John Magnus

PROFESSOR PETRAS: Okay. All right. Everyone, as our panelists take their seats, our next panel is going to look at the current state of NAFTA, and moderating this panel is Larry Herman.

Larry has been active with the Canada-US Law Institute for many years. He has been on our CUSLI Executive Committee since 2009. He has a graduate degree from the University of Saskatchewan and has a law degree from the University of Toronto.

He is a well-recognized and well-known international trade lawyer in Canada, and if you follow the Canadian press at all on NAFTA, chances are you've read several articles written within the past year, past six months, by Larry about the current status of NAFTA and his thoughts about it and where it should go.

He is a regular writer for various newspapers, including The Globe and Mail in Canada. He has had a very distinguished career.

In fact, if you look at his bio, it is the longest in the materials, and we have known Larry for a very long time. He is an outstanding member of our Executive Committee. He always has great ideas on what the topics should be and what speaker should be, and we are happy to have him chair this panel.

MR. HERMAN: Thank you, and thank you all. We are missing a panelist, John Magnus. His flight may have been delayed, and I am hoping that he will arrive and take his place with us.

But we are going to start without John because we have two extremely well qualified panelists, people that I think will add some important views and comments on where we are going in the NAFTA.

I was very impressed with the first panel and the high tone of the discussion. It really was excellent and serves us well in embarking on this discussion.

It was an optimistic view, and of course, when you have Democrats and Liberals and Red Tories on a panel, you are going to get an optimistic view, which is fine. We are going to take it a little bit further this morning.

Now, here on the podium is -- I am going to introduce the panelists here on the podium -- is Peter Clark, who is the President of Grey, Clark, Shih, an Ottawa-

based trade consulting firm with global reach, and Peter has had broad experience going back many, many years.

In fact, he and I first met in the days when the GATT still existed, and we were both at the Canadian Mission [to GATT] in Geneva in the '70s. But Peter has provided advice and counsel on many issues in the international trade field, both as a consultant and advisor and a litigator you might say, and his knowledge is really very deep and extensive on all of the issues we are going to discuss this morning.

With him is Jeff Schott, another friend who I've known for many years, Senior Fellow at the eminent Washington think tank, the Peterson Institute. Jeff, as well, has brought experience as a commentator, as an author, as an analyst, very knowledgeable about all aspects of international trade and highly knowledgeable about the Canada-US dimension.

And we Canadians know that often in the U.S. and in Washington the Canadian dimension may not be as appreciated as it should be, and Jeff is one of those persons who has a high degree of knowledge of the importance of the Canada-US dimension.

So we are going to talk about scenarios I think, including the possibility of no NAFTA. I mean, it is one thing to say and important to say that the relationship between Canada and the United States is so strong, that NAFTA is so important it is going to continue, and it is going to be updated and modernized.

But what I would like the panel to address and comment on is what happens if it doesn't go that way. What are the possibilities under the current situation of an updated NAFTA? Where are these negotiations likely to go, and what would happen if the President decided that the United States would issue its intention to withdraw from the NAFTA? These are things I think we need to talk about in going forward.

Our plans were for John Magnus to go first. Obviously, he can't, and then to be followed by Peter and Jeff. So recognizing John is not here, why don't we start with Peter, and Peter, you are deeply involved -- deeply involved in the NAFTA renegotiations.

I know there are things you can't talk about, but hopefully, there are things you can talk about, and I would like you to give your views on scenarios. Where are we going with this thing?

MR. CLARK: Well, Larry, I had one view when I woke up; went through the evening reports, and I had another view just before I got on the plane, and by the time I had got off the plane, it had changed again.

(Laughter.)

MR. CLARK: So I thought that the suggestion that we could come up with an agreement in principle by the end of this week first and by the end of the month was highly, highly ambitious. But I've been dealing with U.S. officials and U.S. Government for a long time, and I am never surprised at what they manage to do if they really want to do it.

At the present time, I don't think that we are going to finish up by the 1st of May. Mexico clearly wants to finish by the 1st of May for their own reasons. This was the first week that I actually didn't go to where the hearings or the meetings

were because I thought it would be a waste of time after last week, because the schedule showed that there were a lot of tables sitting and negotiating and talking.

Everybody expected the activity to be in Lima, which it wasn't. It seemed towards the end of last week that the suggestion that Mexican president would go to Lima might be a bit delicate in view of moving troops to the border and yet another reference to the wall. They were very concerned that they might announce something and then have the President add his own editorial content, which would have made it very embarrassing for them.

Looking at what is supposed to happen next week, it is yet another series of tables trying to close. Now, they've only closed six minor chapters. I believe from my discussions with negotiators that they can probably fairly easily do another ten.

Now, do they mean anything? Well, they mean something to the people that are concerned, but they are not the really serious issues. I understand that Chrystia Freeland went through every chapter with Ambassador Lighthizer last week when she was there. Mexicans were particularly focused on automotive.

He spent three times as much time with the Mexicans as he did with the Canadians before the trilaterals. When they came out of the Winder Building, Chrystia had set up a scrum, a surprise scrum.

Everybody knew when she was coming out of the building, and at the same time, the Mexicans went out the side door. So that didn't send a very good signal on what had happened. And when we checked into it, basically, there is no six chapters that are done. The rest of the discussion has been on automotive, and the really important issues, some of the important issues for Canada weren't even checked.

Now, John Melle has supposed to have been putting papers in front of the negotiators, identifying landing zones, and my assessment is he couldn't even find the airport, nothing close.

So I think that the Canadian assessment is, if they can't get it done soon, it is going to have to go into 2019, and if I took it based on current state of play, I would say 2019.

MR. HERMAN: So just before we turn this over to Jeff, you are saying that the state of play will be suspended, frozen, and they will come back to the table having kind of captured those chapters that have been more or less, quote, closed, come back and try to address the real difficult issues in early 2019?

MR. CLARK: Well, Larry, it is like trying to predict the President's Twitter feed, nobody really knows. We have checked with the negotiators on whether they would continue to talk during the interim period or whether they would just put it on hold, and you can't find out. At least, I haven't. Maybe Jeff has been able to find out, but I haven't.

MR. HERMAN: So the message is, at least for the foreseeable future, for the business world where some of us operate, is uncertain, and if you are trading bonds or stocks, you have got to realize that it is an uncertain world for the foreseeable future.

You know, the trade agreement, NAFTA, and the stability of international trade has a direct impact on the business community, on the financial services community, and so there are major economic issues at stake here. Jeff, over to you.

MR. SCHOTT: Well, thanks, Larry, and thanks to the Canada-US Law Institute. This is my first time attending one of these conferences.

My partner in the law firm of Hufbauer and Schott, Gary Hufbauer, has been a recent participant here, and Gary and I have worked together for 40 years, including in the Tokyo Round and in the U.S. Treasury subsequently.

So when he couldn't come because he is out in New Mexico and he offered the baton to me, I grabbed it right away, and I am very grateful to be here with you. Gary is a lawyer as well as a Ph.D economist. So he would respond to some of these questions a little differently than I will. So I will just make a few comments on the state of play, which incredibly we are not well informed about.

I don't think there has been a trade negotiation in the past 40 years that you could say that of the three of us, and that's because the unpredictability, the incoherence of the U.S. policies and positions. Incoherence I think is the problem.

So you have an incoherent policy, and you know it is not sustainable, but you don't know how they are going to fix it or change it, and that's where we stand today.

About the most optimistic thing I can say is that NAFTA has always been controversial in all three countries. That's why we haven't fixed it before because the thought of the three countries getting together and trying to update it was too risky, raised too many political problems in our three countries.

And so we found a work-around it, and that was the TPP. The TPP updated the NAFTA and did a pretty thorough job of it. But that's gone into the public domain.

And so now we are faced with a NAFTA that is still very controversial but surprisingly has become increasingly popular because, as you have all these threats of NAFTA people that start talking about what's going to happen if the unthinkable occurs and banks do their modeling and look at the economic costs, the dislocations, it is all negative.

And farmers are already taking a beating in the Asia Pacific, and it will be worse. So you don't know what you've got until it is gone. Fortunately, we are not at that point, and there is a strong backlash already among groups that have been too quiet for too long, noting that NAFTA really is important as it stands, even though there are good reasons why it can and should be improved.

Now, I share Peter's view that it is going to be difficult to do anything quickly, and I base that on the two major tenets of Trump's trade policy, that is, doing something for autos and doing something for steel.

And in both cases, the U.S. approach is unworkable. On autos, the simple fact is the President wants to disrupt supply chains and have more components sourced in the United States. If that was an economically feasible approach, companies would already be doing it.

It is a very competitive market, the U.S. market. The import barriers to entry are very low, two and-a-half percent MFN tariff, and so basically, companies have to source as efficiently as they can, and NAFTA has been a big help for them.

You make those sourcing rules more complex, you require changes in where you source your components, the costs go up. And the more complex the rules adding new tracing rules, adding new steps of content requirements by product,

groups of product, that only increases the complexity of the rules and raises the compliance costs. Companies have to be able to verify.

This will be discussed in more detail later, but the simple point on autos is what the U.S. has proposed and even what is walking back is still uneconomic and doesn't make any sense for the companies to follow rather pay the MFN tariff and forget about NAFTA.

Now, if you have a big component of North American economy walking away from NAFTA, it loses some of its overall value. And at the same time, you have the auto industry moving, sort of pulling out of NAFTA. They are going to become less competitive because you are going to have that extra cost that they don't have right now.

And there are two things that happen. One is nothing changes on access to the U.S. market, and the auto companies produce less and employ fewer people. That's likely to happen. The other is that other charges are imposed to make it more difficult to source, to ship to the U.S. market, and then everybody is worse off, and prices raise across the board, and that affects Canada and Mexico. So that's a problem.

The other side of the problem is steel. It was discussed in the last panel, but the steel decision, whether you can argue, I think, convincingly that it is not a national security issue the way it has been put forward by the Trump Administration, but what they are trying to do, think of the Soviet Union in the 1970s. They want a steel industry that is profitable, and their view is, the only way you can ensure a profitable steel industry is to ensure that they are running at a satisfactory level of utilization, and they said that is 80 percent.

And then it is a very simple econometric exercise. You plug in how much imports have to drop to achieve the capacity utilization goal for U.S. production plants. And they came up with a number of 13 million tons out of U.S. imports last year of 34 million tons.

Well, you can't get to that number of 13 unless you include the major U.S. suppliers, including Canada, Mexico, European Union, and Japan because China doesn't sell almost any steel to the United States. It is already blocked by antidumping and countervailing duties. And so all the countries that have gotten exemptions -- and Japan hasn't even gotten an exemption. Taiwan hasn't gotten an exemption -- they are going to have to contribute something, or there is going to have to be a dramatic change in the national security rationale for the actions. And I don't know how the Administration backs away from that to justify a big steel action that is not -- that actually doesn't restrict any trade. So what does that mean for the NAFTA talks?

It means you might be able to push the exemption for Canada and Mexico a little bit more down the road, but it is still going to overhang the talks, and that I think is viable as long as the President -- as long as Trump is pushing his attention on China, and there will be negotiations for China through the rest of the year, and it will be mostly on investment, not on the tariffs.

And that was not covered at all yet in our discussions. But that will be the deflection, and hopefully, that is significant enough that it allows the NAFTA

negotiators to get back to the work of doing the modernization of NAFTA that hasn't been done in the first nine, ten months.

They have done maybe 20 or 30 percent of the work that needs to be done so far. And that's why I don't see how they can come up with anything other than icing the puck or treading water or whatever analogy you want to say, but it is going to have to move forward to 2019.

MR. HERMAN: Jeff, thanks. Peter -- sorry, I didn't mean to interrupt -- but you mentioned the difficult issues are out there, still unresolved. Can you take us through what you see as the roadblocks, the very difficult issues that are on the table?

MR. CLARK: Well, for Canada, there is government procurement. Then there is maintaining Chapter 19 of the NAFTA for conditional review of antidumping and countervailing duty decisions. It will be nice to have John Magnus here because he disagrees very actively with me on that particular issue.

Then, there is Chapter 11, which is investor state dispute settlement. Then, there is the possibility of making Chapter 20 dispute settlement even more useless than it is now.

(Laughter.)

MR. CLARK: I really wondered about Bob saying that he didn't want binding dispute resolution. It just doesn't work because -- well, it just doesn't work.

In fact, Mickey Kantor told the states that when he negotiated it, that don't worry about it. If you have a problem, we will just pay you compensation. So those are the main issues, but you know, if you look at where we are, people say how can they do all this work in such a short time? The work is nearly done. These panels have been meeting about eight months now. They have a bunch of documents that have square brackets, and the process is removing the square brackets. And since the meetings in Montreal, I talked to the negotiators as opposed to the ministers on these things. "When are you going to close?"

It has been the same thing since Montreal. They have only recently closed a few more. They were expecting to close another seven or eight in Washington. The negotiators get to the point where they can say okay. We are done. Put this one aside.

But Bob Lighthizer won't let them. He controls it. He controls every aspect of the negotiation, and he has a plan, and if it doesn't fit the plan, it doesn't happen.

Now, Chrystia Freeland and Ato Alfonso went to the last round of negotiations, and they had books. And you know, if you have been through these things, as we used to do in Geneva, you have your positions on each issue.

They all had their positions on each issue. Chrystia went through them all with Lighthizer; got nowhere. So it is not only the sensitive issues, they haven't been able to get the momentum they need to go through it because more of those minor -- you can't call them minor wishes because they are important to somebody -- but the package, if you can get the package really close to spitting distance, then the other thing should fall into line.

I tell people that I was in Atlanta when they were closing the TPP, and I was sitting there, and I went to a lot of these sessions with Alan Wolf, who I think was here last year, and 1:00 o'clock in the morning, supposed to finish the next day, at

1:00 o'clock, I went to bed; came back at 5:00, it was all over; all of those things that couldn't be touched were gone, which ended up getting Mr. Froman into some difficulty with Congress, but it was done.

I can remember being in the room to deal with the Tokyo Round declaration, to launch it. Stopped the clock at one minute to midnight, and we stayed there until 6:00 o'clock in the morning, but it got done. If there is political will, it will get done. I haven't seen political will yet.

MR. HERMAN: Well, the political will to get this done would probably require major concessions on Canada's part given the U.S. negotiating position on Chapter 19, on non-procurement, and on auto content. And so yes, it can be done if one side or another, Canada-Mexico, caved to what has been portrayed as difficult, intransigent, immovable U.S. positions on a number of points, but what I want to ask each of you is, now that there has been some traction and a statement by the President that there is no hurry to get the deal done, the less likelihood that the U.S. Administration would walk away from the negotiations or issue a notice of intent to withdraw. That's one question.

The other question is, with an impasse as you explained it, Peter, what happens to the Canadian exemption from the section 232 steel tariffs? Do the exemptions stay on, or are they removable? Is there a threat of removal?

So those are the two questions I would like you guys to deal with.

MR. CLARK: My experience in dealing with the steel industry is mostly from representing foreigners, and for ten years, I represented all of the integrated mills in the United States in Canadian disputes.

MR. HERMAN: I remember that, Peter.

MR. CLARK: Yeah. You were on the other side.

(Laughter.)

MR. CLARK: What was always impressed upon me when I was dealing with steel for the automotive industry was that if you don't deliver on time and you shut down the assembly line, there is a big fine, a really serious fine.

The automotive industry doesn't want their lines to stop, and I believe that they have already visited Lighthizer, and they have told him what their concerns are. It is a very, very serious thing to put the duties on Canada because we are the largest supplier of steel, five million tons a year, and the United States supplies us with five and-a-half million tons of steel a year. So there might be people concerned about perhaps disrupting that trade because if the trucks don't arrive at the plant on time, it is a really serious problem.

I don't think that that is likely. I think that they will find some way to talk about cooperation, and you know Canada has at every stage agreed that it would move quickly towards trying to reach an agreement.

The problem is that they are not getting back -- they have discussions about concepts, but they don't get any paper, and you can't negotiate without paper. So that has been the problem.

Now, if that improves, then it will move forward quickly. But I felt from what the negotiators were telling me about where they were, that if there was a willingness to move together, they could get rid of a lot of those problems.

Now, I understand what happened, you know, there is a lot of stories around how we got Chapter 19. Peter Murphy offered us exemption from dumping but not from subsidies. So Simon [Reisman] in his wisdom said no, we don't want exemption from dumping, which shows you the caliber of advice he had. And so then, they came back with this proposal that was worked out with [James] Baker and the Prime Minister.

MR. HERMAN: Peter is talking about the original bilateral FTA negotiations in the '80s.

MR. CLARK: That's where it is from.

MR. SCHOTT: But Murphy wouldn't have been able to follow through on that anyway.

MR. CLARK: I think he did have clearance for it. But anyway that's just where we are. Does it really matter if we don't have Chapter 19?

Probably not. We both have courts that do judicial review, and the Court of International Trade is probably more interventionist than the Federal Court of Appeal in Canada. So it may not matter.

But then, somebody would say, well, you are the only Canadian that ever worked for the lumber coalition, and I don't any more, but I do understand. I also understand where Lighthizer comes out on some of the things in dispute settlement in the WTO. There were certain understandings that the United States had, and they were not respected. So it is not easy.

MR. HERMAN: Jeff, your comments on all of these issues. There are so many we got now in the air, but your response.

MR. SCHOTT: Well, on Chapter 19, I actually disagree. There was a good reason for Canada to want ex-post review of final antidumping and countervailing duty borders, and it became less important over the years because Chapter 19 wasn't being used, except for softwood lumber essentially.

But if you look at the current state of U.S. policy, you have to say that it is the same situation with regard to the aggressive use of antidumping and countervail that existed in the '80s when this was an issue before the negotiations with the same people and with a much more crowded court calendar that existed in those days.

And there were greater delays in hearing these reviews in the U.S. courts and, therefore, the need, the rationale for putting this in the agreement is stronger today than it was ten years ago. So I think the Canadian position is well founded on Chapter 19. And I hope in the future it doesn't have to be used again. On steel, I still think there will be restrictions. Now it could be a tariff free quota.

MR. HERMAN: You mean for Canada?

MR. SCHOTT: For Canada. There are the problems of disruptions, but you basically can take an action that doesn't have an immediate impact. You can set a tariff rate quota at existing levels of trade and that manages it. That's not a very good approach for either country, but it is less harmful than putting the tariffs on all trade. So hopefully, they don't -- I mean, honestly, the officials of the Trump Administration don't understand economics very well. So if they -- perhaps they won't understand the economics of TRQs but --

MR. HERMAN: But if the Canadian exemption on steel surcharges and quotas were lifted at the end of this month, that would have a very damaging impact on the whole NAFTA exercise.

MR. SCHOTT: Yes, yes.

MR. HERMAN: And I can tell you there would be enormous pressure on Canada to retaliate quite apart from WTO obligations, there would be political pressure on the Canadian Government to do something if the U.S. were to apply extraordinary tariffs on Canadian steel for all of the reasons Peter mentioned and for other reasons. So there is that political concern over the interrelationship between the U.S. national security measures and the NAFTA negotiation.

The other thing, when we are talking about politics is, whatever you might say about Chapter 19 -- and there is a lot of myths about Chapter 19, those of you who may not be well versed in all of this Chapter 19 is the bi-national panel review system that takes judicial review effectively out of the U.S. court system and out of the Canadian court system and puts it into a binational panel process.

It has been very controversial in the United States from day one, and at the same time it has become kind of an article in faith in Canada that this is necessary.

I share, in part, Peter's view that there is a lot of myths about Chapter 19 and the need to take measures out of the U.S. process and have it -- have them handled by a supranational body.

The Boeing case was turned back by the U.S. International Trade Commission recently, showing that you can achieve victories without the need for a binational panel system, but the point is it is a political issue for Canada, and I can't see at this stage Canada agreeing to abandoning Chapter 19 without something major in return, and whether that's in the cards is highly unlikely.

MR. CLARK: Well, from Canada's perspective, Chapter 19 was a major win. We had just come out of a series of bad experiences with the United States trade remedy laws, which started with Trudeau first and Ronald Reagan, improved considerably with the election of the Mulroney government and got into this negotiation, and it was seen as a major victory, which we gained because Simon Reisman walked away from the table and wasn't prepared to do a deal without it.

So there is mythology there. There is practicality, and if there hadn't been seven cases against Canada in the last year, then people wouldn't feel so seriously about it. Now, I think for Canada it is a very important thing to have. Would it be the end of the world if we didn't? Probably not.

MR. HERMAN: But a politically difficult decision.

MR. CLARK: Well, yes, politically difficult decisions in Canada never last long.

MR. HERMAN: Jeff?

MR. SCHOTT: Well, I said my piece on Chapter 19, and I think that's correct, but we have not yet mentioned a number of other problems that are still festering. Peter is correct, there is a lot of integrated text, but there are a lot of chapters where there hasn't been much progress done, including on intellectual property, and that's a very difficult and time consuming area. But the problems that are still festering that concern me more are ones that will be looked at by members of Congress when they judge whether the agreement makes sense to them. So they

are not going to look at the text of the NAFTA. In Wisconsin, they are going to look at the dairy provisions, ginseng maybe now that they have lost the Chinese market.

They are going to look at softwood lumber, and that links to the dispute settlement. The Mexicans are going to look at seasonal safeguards and agriculture, and they are going to look at trucking and the fact that the Trump Administration wants to do to undo the very fragile agreement that was reached after an extensive period of time for the U.S. to comply with its original NAFTA obligations.

And those things, those issues are going to make it very difficult to go back home whether it is Ottawa or Mexico City and say we are successfully moving forward, and in Mexico City, it is even more difficult because they are not going to have control of their agenda by the time the deal potentially could be signed.

And so for the current Mexican negotiators, I would think they have to be rather rigid at this point, saying they are standing up for Mexican rights, and that's what the Mexican president gave in a very dramatic speech just in the past week. That indicated to me that Mexico is not going to suddenly compromise in areas that go against Mexican economic interests and risk the collapse of the entire agreement once it is put together and submitted for ratification.

I'm -- that's why I go back to the icing the puck scenario, which I think is the only viable way to deal with it, deal with the negotiations given what happens in Mexico City sooner rather than later. What can't be discussed with Canadians because of the provincial elections and which the United States can't move forward because of all the requirements of trade promotion authority for advanced notification to Congress. And I have left out the final and maybe most troubling aspect, and that is USTR has a bias against Canadians.

MR. HERMAN: Can you elaborate on that?

MR. SCHOTT: Canadian negotiators are notoriously unpleasant according to U.S. negotiators and that's odd because if you think of some of the -- I guess the proper word would be "hard ass." That term would apply to USTR officials, and they actually enjoy that reputation.

But there is -- if you go into meetings with Lighthizer, there is a dissatisfaction -- and that's the polite term -- with Canada and all of the disputes that arise in the -- the legal disputes that have arisen, whether it is softwood lumber, whether it is the Canadian filing in the WTO on a broad range of concerns about U.S. antidumping law, whether it is dairy, and that I think affects the psyche of this negotiation.

And I am saying it here because I am not a lawyer, and I don't have any irons in the fire in this, but the thought that Canada has a special arrangement with the United States for the valid reasons that Peter mentioned last night and this morning, that's not well understood at USTR.

And the other area that is not being well understood is that the National Security Council is not putting the appropriate weight on the NAFTA alliance that it should because it is so focused on China and the concerns that Peter raised earlier this morning about Chinese, extension of military force in Southeast Asia and in through to Africa. There is a National Security Strategy that was published last year in the White House that is an overlay of all the trade policies.

And that is a cause of concern with John Bolton as national security advisor. That's sort of -- I am trying to follow Governor Blanchard's direct comments. I am not as eloquent as he is, but these are areas that we should really be concerned about.

MR. HERMAN: So your first point was that there are bad relations at the negotiating table because Canada is being too tough. Peter, you are closer to these negotiations than many of us. What's your take on that?

MR. CLARK: Steve Verrill managed to negotiate with the European Union, and he did pretty well with that. He is the type of negotiator that will not give unless he is going to get something. He is pretty -- he is a good Canadian negotiator. He wants to deal in facts, and it is frustrating that he won't roll over and play dead.

I don't know where they expected -- I am sure you are talking about the current situation and not the past because --

MR. SCHOTT: I actually had great relationships with Rodney Gray and others when I was negotiating. I learned a lot.

MR. CLARK: -- so yes, it has been difficult, but it has also been difficult with the Mexicans on perhaps a narrower range of issues, but that's why we haven't made the progress that they expected to make at Montreal. That's why he was not able to wrap up the deal to have an agreement in principle at Lima because Canada just wouldn't move, and it is not only Verrill but the Minister. She is pretty well informed.

MR. HERMAN: Well, whatever the personal relationships are between or among negotiators -- and they can be difficult and nasty and contentious, there is no doubt about that -- you have to remember that the whole process started because the President of the United States said that NAFTA was the worst deal ever negotiated, and he did state in his Inaugural Address, which frankly the rest of the world outside the United States takes these addresses very seriously, they set the tone of the relationship that we can expect.

And when the President of the United States says "not ask what your country can do for you", or "we have nothing to fear but fear itself," which we all remember as Canadians from past inaugural addresses, when he says from now it is America First and only America First, that sends shock waves to the rest of the world.

And frankly, there may be testy relationships at the table, but in part, that's because of the tone that has been set from the -- by the White House.

And the other problem, Jeff, is that we are also faced in the negotiating dynamics with comments, for example, from Secretary Ross who said, yeah, you know, Canada and Mexico had done pretty well other than NAFTA, and they are not going to get a deal from us this time around. They are going to have to make concessions without anything in return.

Well frankly, when you sit down to negotiate with those conditions, it is not likely that there will be sweetness and light at the negotiating table.

MR. SCHOTT: Larry, I was not criticizing the Canadian negotiators, just the opposite.

MR. CLARK: The problem they are having is that Lighthizer doesn't consider this to be a negotiation. It is a rebalancing, and it is unbalanced from the U.S. perspective. So Canada and Mexico have to give to create a balance, and he has told the other negotiators that. They don't like it. And it is not going to help to reach a conclusion. I think they are all hoping that they will get an over-the-weekend chorus for NAFTA.

MR. HERMAN: So this, you know, is taking us a little bit in a different direction from the first panel, but that's okay. I mean, that's okay. Our intention from day one, when we put this together, was to try to come to grips with what is actually happening in the negotiations themselves and look at some hard tough issues.

What the two of you have said is that it is unlikely that there will be anything that can be called a deal this year and that the negotiations are going to have to continue into 2019, unlikely that you can get anything that satisfies any of the three governments and particularly the non-exclusively -- the requirements under the U.S. Trade Act of 1974 for Congressional ratification and all that sort of stuff.

But I want to ask the both of you what would happen if the President said we are withdrawing from the NAFTA. Here is my six-month notice. Let's talk about that. I mean, we can't avoid talking about that. Where would it take us if that happened?

MR. CLARK: For the 50 percent of trade under NAFTA, which doesn't use NAFTA rates very much, for products where the rates are not significant like the automotive industry would have an impact in terms of supply chains. The tariff rates into the United States are not particularly high.

MR. HERMAN: Zero in many cases.

MR. CLARK: Well, we don't sell much in terms -- we do sell some clothing under special arrangements, some textiles, some foot wear but not very much.

MR. HERMAN: Yeah.

MR. CLARK: So that's why the numbers come out relatively low. But what it does do to us is, it is going to affect the investment climate if we don't have that guaranteed NAFTA market access.

Now, when Lighthizer said that he didn't care yesterday if it takes another two weeks or two months or five months to negotiate NAFTA, he also made the point that there are no automotive plants -- no one is going into Mexico, and as long as the uncertainty is there, there won't be any investment. He made those specific points. So that's the big concern is investment.

MR. SCHOTT: There are two scenarios. One is the President notifies his intention to withdraw. That only means that he has the right after six months to withdraw.

MR. HERMAN: Right.

MR. SCHOTT: Doesn't mean that he will withdraw. It is not a Brexit type scenario where you file a notification and that's the deadline, but it does put everything up in the air, policy of unpredictability with an advantage to investments being made in the United States instead of Canada or Mexico. So Peter is absolutely right on that.

In autos, there has been a lot of new investment in the last few years. So it is a question with weakening demand in the U.S. market whether companies are slowing down in the short term, but that is for another panel.

The NAFTA withdrawal action would have a dramatic impact in the short term, and as David said on the first panel, much less impact once the markets clear up essentially over a couple of years. So the impact on the U.S. economy would be rather small in a couple of years. But the adjustments would not be small in the short term and particularly in particular segments of the country and in labor markets. And so there would be a short term shock that would be disruptive.

MR. HERMAN: For Mexico much more serious.

MR. SCHOTT: More serious for Mexico, particularly because of the investment impact, and that's why it was so critical for Mexico to be part of TPP.

MR. HERMAN: Right. You know, the fact needs to be restated that without NAFTA, if we are looking at the bleak scenario, Canada and U.S. will still trade and do business, and we will still be each other's largest trading partner. As Peter pointed out, most of the tariffs are zero, though not all. On the agricultural side, there are some duties that would impede agricultural trade.

On automotive, Jeff, you pointed out that the automotive tariff generally is 2.5 percent. So even without NAFTA automotive, trade would continue, and companies would just absorb that two and-a-half percent.

For trucks, it is 25 percent, so there wouldn't be any Canadian trucks produced in Canada and traded in the United States, but the point is that the geography and the facts of life would make the -- it would ensure the continuation of business. There is no doubt about that.

The media in Canada has sort of painted the picture that end of NAFTA is the end of the world, and it is not. Life will go on without NAFTA if we are talking about the worst case scenario. It will go on after a period of adjustment, but let's come back to the first question, and the panel that preceded us addressed some of these issues.

Do you generally agree that now that there is some traction in the negotiations -- maybe not much but some traction -- but some statements from the White House that there is at this stage less likelihood of U.S. withdrawal, either from the negotiating table or from the NAFTA itself?

MR. SCHOTT: Yeah, I think there are more distractions. So NAFTA is not the main event, and that's a good thing.

MR. CLARK: I think Trump has enough generals around him they should be able to teach him about not fighting on two fronts.

MR. HERMAN: Okay. Look, we want to have an exchange, and I think there is going to be probably a lot of questions. In some ways, we designed this panel to be not as -- how would I put it -- not as optimistic as some might have expected. We wanted to deal with some of the hard issues that are really there and need to be addressed.

So let's get some Qs and As, Dick Cunningham and then John Tennant and then hopefully some of the younger participants in the audience.

MR. CUNNINGHAM: He doesn't have enough confidence in my loud voice.

MR. SCHOTT: I was going to say almost everyone is going to be younger than Dick Cunningham.

(Laughter.)

MR. HERMAN: Remember to identify yourself, and you can give a short bio at the same time.

MR. CUNNINGHAM: If I can remember who I am, I will. Anyway, I am Dick Cunningham. I am with Steptoe & Johnson. I have been with this organization since a long time ago, and I love it, particularly with debates like this.

I wanted to make two observations and then a question. First observation is, there are two people in this Administration who really do believe that the best result would be that NAFTA would go away, and that's Bob Lighthizer and Donald Trump. There are others in this Administration that have very different views, but there is that conflict in the Administration.

The second observation is that I have always thought that you are barking up the wrong tree if your concern is that the United States will walk away from the negotiations. Even with Trump and Lighthizer, that's not the game plan.

The game plan of those people who don't like NAFTA has been bringing the negotiations to a situation where the Mexicans or the Canadians will walk away, and then Donald Trump can withdraw from NAFTA. And I think the Mexican-Canadian negotiators have played this very astutely, played along the game, we don't like the proposals, but we are cooperative. We will work with you, be constructive, we want to improve NAFTA, et cetera, et cetera.

And in that regard, let me suggest that the steel and aluminum 232 tariffs greatly changed the game. They changed the game because they give the United States an ability at a time when it wants to say okay, there is no more progress sufficient for us in NAFTA. We are going -- your exemption -- and mind you, there has never been an exemption that has been exemption from the 25 percent or so percent tariffs but with the clear understanding there would have to be something else put in place of those tariffs.

But the United States would say okay, no progress in the negotiations, sufficient for us, and we will impose upon you the 25 percent steel tariffs and the 10 percent aluminum tariffs at which point you have the breakdown that allows Trump to walk away. My question for you then is this:

Let's assume that there are issues in this negotiation, the United States has demands, knows it will never get, but procurement demand is the classic of those, and we can talk about how bizarre that was, but it has been put to the side and largely not pursued.

But if you had a situation where something can be worked out on autos and something can be worked out on Chapter 19, maybe some compromise, do you think the negotiation would go through? Do you think you can get a deal under that scenario? Or is all the rest of the stuff, do we have essentially a comprehensive changing deal to get this done?

MR. HERMAN: Jeff and then Peter.

MR. SCHOTT: The first requirement of the Trump Administration is to have a deal that is different than its predecessor. So that was the KORUS. They actually

made it a little worse. It is almost exactly the same, but they got the Koreans to restrict their --

MR. CUNNINGHAM: But not that it was the 232 that got them there.

MR. SCHOTT: Yeah, exactly. And basically, the Koreans -- this is a little separate, but it has implications for NAFTA -- the Koreans agreed to pay for Trump getting off their back on KORUS and just keep the alliance on the North Korean talks, keep them in the game on that. The price they paid for that was 30 percent of their steel exports.

MR. HERMAN: Yeah.

MR. SCHOTT: So they got rid of 30 percent of their steel exports. They regarded that to be a very small price to pay for keeping everything else intact.

MR. HERMAN: Yeah.

MR. SCHOTT: This has nothing to do with anything that Trump said about KORUS and the auto provisions are smoke and mirrors. NAFTA is a different negotiation. NAFTA is a renovation of an old agreement, and everything is on the table, and on the KORUS talks, very fewer items were on the table.

So if you go forward and say NAFTA was old, everybody knows it, Obama and Clinton bashed it in 2008 and Clinton and Trump bashed it in 2016, you can't just say it is the same deal. And if you have a smoke and mirrors auto rules of origin solution, it is going to be hard for the auto companies to say they are better off. If you have government procurement taken out, that is a big loss to U.S. service companies that are doing a lot of business winning a lot of contracts in the Mexican market. Mexicans almost don't win any U.S. government contracts, and Mexico is not part of the Government Procurement Agreement in the WTO.

So government procurement is a big win in the NAFTA for the United States because of what we get out of Mexico. So they moved back on that. That's a loss.

The average Congressional representative is not going to care that much about dispute settlement unless it seems to impede on the theological area of anti-dumping in which case, no, we can't change anything on anti-dumping. There are requirements in our law for an even longer pre-notification period before you try to do anything there.

So I don't see how you sell it to the Congress unless you're actually doing something. Maybe you tweak dairy. The TPP Agreement concessions on dairy were minuscule, three and-a-half percent quota was it? Maybe you get 3.3 percent rounded up, but which the United States would only get if and when it returned to TPP.

But I don't see a way that you put this together in the North American context unless there are big changes on energy that is a different game changer. And so far from what I can see on the energy talks, while there is a separate chapter and they are not doing the types of things to promote the investment and expanded energy infrastructure, particularly in renewables, that would provide a big economic impetus for all three countries.

There is a mental block, an ideological block in the White House about doing anything for renewables or saying the words "climate change." That's why the words climate change are not in TPP.

Even in the Obama Administration they wouldn't put it in TPP. So I think -- and this will be my last point -- I think at the end of the day, the best case scenario and maybe the more likely scenario is that the NAFTA negotiations blend into an eventual U.S. accession to the TPP.

MR. HERMAN: Well, that's a long way off. Anyway, Peter?

MR. CLARK: I think that would be after favoring position in Canada, particularly among the dairy industry. The beef and pork industry, who are now enjoying the benefits of access that the United States negotiated to Japan, would not feel as anxious to blend. I pretty much agree with what Jeff says.

There is another important issue for Canadian consumers, and that is, are we going to change our de minimus tariff at the border for courier packages from \$20 to Canadian to \$800 U.S. That would be wildly applauded by anybody who doesn't own a retail operation in Canada, but I think that we do have to go beyond those two issues. They are important.

MR. HERMAN: Yes. Oh, John Tennant was next and then you.

MR. TENNANT: Jeff asked the question earlier related to the apparent desire to neuter WTO dispute settlement. Would you take it just a little bit further? Indeed, do you see that it is Lighthizer's and others' desire not to face situations where they can be brought to an international or some kind of multinational or bilateral tribunal?

MR. SCHOTT: It is complicated. There is a lot of interest in using the WTO to defend U.S. rights. As long as the panels don't overreach, and that goes with Lighthizer's view that the panels should not have binding authority, that there should only be advisory opinions. Now, that hasn't been put in the WTO context yet, but certainly, I think Lighthizer was a prominent advocate of the national sovereignty critique of the WTO when it was being debated in the Congress in the 1990.

Gary Hufbauer and I have a paper that we did on this. Larry helped us, guided us on some of our analysis. When we looked at all of the problems of WTO settlement, we found that the U.S. arguments about two-thirds of the time were legitimate, and that there was a need for WTO, a reform in dispute settlement procedures and Appellate Body procedures, and that there should be a reengagement of the negotiations that had been going on for 15 years.

I would hope that Alan Wolf in Geneva leading the charge would be able to regenerate or revive those negotiations so that we could have a workable system, and then I think the U.S. would use it.

But this isn't a Trump aberration. This goes back to the Obama Administration, to the George Bush Administration. It has been going on for a long while, and Gary and I would argue it has been prominent since the decision on the FSC case, the foreign sales corporation that replaced the DISC and repudiated the agreement that Gary Hufbauer and I negotiated in Tokyo on.

MR. HERMAN: Peter, over to you.

MR. CLARK: Over to me?

MR. HERMAN: Well, there was a question asked. You are one of the most experienced WTO --

MR. CLARK: I agree with him.

(Laughter.)

MR. HERMAN: Okay.

MR. CLARK: I have been in a similar situation with the dispute settlement in the WTO, in a case called Canada - Dairy where the panel and the Appellate Body in their wisdom inserted cross subsidization into the subsidies and countervailing measures agreement.

I spent a lot of time during the negotiation of the Uruguay Round addressing issues like -- well, the one that Lighthizer is concerned with. Essentially, the United States had an understanding that the panels and the Appellate Body wouldn't substitute their own opinions for the opinions of the administrative bodies in the United States or anywhere else as long as there was some degree of merit in the, some say, scintilla of evidence supporting the decisions.

So I don't see the problem as being any different. I don't know what's going to happen in the WTO context. I talked to Alan as recently as last week in Washington about these things, and there doesn't seem to be any appetite for going back into the discussions, primarily from the European Union side. They don't want to do it.

And I am sure the Japanese don't want to do it, and the Chinese definitely don't want to do it. So it is not going to be easy.

MR. HERMAN: By the way, there is a panel -- going to the next question -- there is a panel this afternoon that is going to address dispute settlement, and we don't want to preempt that discussion, but a lot of these issues will be addressed then. You, sir?

MR. MARGOLIS: Two questions. One is, what impact does a polarized requirement have on imports of dairy and agricultural products, if any? And two, Chapter 16 on labor mobility is a topic that was not discussed. The USTR doesn't even mention labor mobility as a priority. Some say Canada is wise not to bring immigration issues into NAFTA unless you will get rhetoric about the wall being more legitimate, but it leaves us with a list of jobs created in 1993 that still talks about a computer systems analyst. And for the younger generation, it has been a hindrance.

MR. CLARK: Well, as I understand it, Canada has tried to pursue that, and it has been difficult because the U.S. side simply says this is inconsistent with Hire American. So it runs into a brick wall there, some type of a brick wall. With respect to dairy, I had tried -- I think I told you I wouldn't talk about dairy, didn't I?

MR. HERMAN: Well, go for it. Go for it.

(Laughter.)

MR. CLARK: Well, let's see, Peter tried to bring some of it up, and Governor Blanchard brought a little bit about the dairy. It is a big pain in the neck. But let me give you a few examples.

There is a glut of milk in the world and in the United States. Over the last ten years, milk production has increased 16 percent in the United States. That's why those beautiful little dairy farms that we see in Vermont and in Maine are in difficulty and their subsidy system has changed. Okay.

If you go to USDA data, you will find that over the last 15 years invariably the farm gate price of milk has been less than fully absorbed cost. I use fully absorbed cost because that was the measure used in Canada dairy.

Now, when you come into the increases in production, into New York State, I understand that Senator Schumer -- and it is very, very dangerous to be between him and a television camera -- Senator Schumer has built a Greek yogurt industry in northern New York State. On what I don't know. When I am in Florida, I see lots of ads trying to attract business to New York.

So there may be some money in there. But the USDA data shows that in New York State, of the 16 percent increase in dairy there has been 23 percent in New York State, and it has been 27 percent in Wisconsin. And the fuss that had been raised when the President was in Wisconsin was because the big operator, the co-op, was expanding its own dairy operation, so it let some private ones go.

So there is lots of stuff in there, and if we ever get around to talking about it, which I understand is next Friday in Washington, then there will be points on both sides.

Will it make a difference to Speaker Paul Ryan's retirement? I really don't know, but it would depend on when it gets to the House.

MR. HERMAN: Jim Blanchard.

HON. JAMES BLANCHARD: Yeah. A comment and question: You raise an interesting point. When Trump says NAFTA is the worst treaty ever negotiated -- of course, he says that about a lot of things -- how then does he support a modernization of NAFTA without some major differences, radical differences? That is a good question.

My answer would be, I think that because he has been now tough talking on China and also pushing steel tariffs, however they work out, it does give him running room to be softer on NAFTA ultimately if Lighthizer agrees and they find a way to package it.

And of course, the thing about Trump -- and I have watched him really carefully is -- he is living in two worlds. You know that. He has the world of tweets and Fox News, which deals with his base.

And then, there is everyone else. I think he often confuses reality and fantasy, I do. But if he could sell Fox and his tweets and he has got a great deal, it probably wouldn't matter that everybody else says it is a slight modification and a good modernization. Really?

The problem I see is that he, as you know, loves to play the role of a bully, and there are two countries -- there are two countries on the planet that are not going to be bullied and cannot afford politically to be bullied by the Americans. It is Canada and Mexico.

So how do we get through this without pounding his chest as the bully saying I did this and I did that and allow Canada and Mexico to go along with what might be a slight modification? It is going to be a real challenge. I don't expect you to have all the answers on that, but I think it is a real problem here, the optics.

My question is, the reason why Hillary and Obama and Bernie Sanders and Trump all attack NAFTA have nothing to do with any of the things you are talking about; it was wages, low wages. Okay. And the workers in Ohio, Pennsylvania,

Michigan, Wisconsin keep reading how cheap the wages are in Mexico and what are we going to do about it?

So what is it that the President and Lighthizer and Chrystia Freeland, what can they do on the wages in Mexico that is realistic? That's the question I would have if I were a Democrat trying to out-liberal someone in Congress. I need to have an answer for that, or I vote no, which means it is not going to be so simple to get something through unless you can deal with that issue.

MR. HERMAN: Jeff?

MR. SCHOTT: Well, this is the subject of lots of lunchtime staff meetings at my institute among some of the best economists in the world, and there is no good answer. The way you raise wages is to raise productivity, and the way you raise productivity is to bring in more investment with better technology, increase demand in Mexico.

That was the Mexican development strategy from the early 1990s and the desire to build excess capacity in Mexico that would start by exporting to the United States but would essentially be to build to capacity to supply a growing Mexican market.

Well, the peso prices screwed that up in '95 right at the beginning. And after that, they were much too tight on their fiscal and monetary policy, really orthodox medicine for the peso prices, and their growth was underachieved. They underachieved growth, it didn't resolve over the first 20 years to narrow the gap the way they had hoped.

Now, you can't go to an American politician or worker and say, well, wait another 10 or 20 years because Mexico is now really taking off, and investment is going to go in instead of coming into Ohio or Indiana or Michigan, and wages are going to go up.

They want -- they are facing the adjustment cost now. They want a remedy now for the adjustment cost, and that has to come through domestic programs. And you know what? We used up all of that money long ago, and we can't even go to the till to borrow because we just gave it away in tax cuts.

So we are now running a budget deficit of 5 percent of GDP, which should not happen anywhere, anytime, in an over mature recovery, and so we had basically used up the resources we could have to help the American worker, and that's -- and we are getting the expected response. They are saying what do we have to lose with protectionism? Well, they have a lot more to lose from protectionism.

But you can see where getting the political support -- I mean, your point is a hundred percent right. And that's going to be difficult to get any type of international agreement moving forward as long as members of Congress, you know, say, well, we have to listen to our constituents, and we don't have any domestic response to give to them. It has to be paid by the foreigner.

MR. HERMAN: Peter?

MR. CLARK: Canadian unions are very vocal about getting up Mexican wages. And they have been playing a much more active role in the consultations with the government on this point in the negotiations than on anything I can remember.

So in the foreign -- particularly Jerry Dias -- is that every round he has got special communications people with him so that he is getting a lot of exposure, both in print and particularly on TV. People know who he is, and they know that we have got a problem with Mexican wages whether or not we do.

And he has got a target, and he is determined to get it. And he has got pretty broad political support where it matters. And it could be difficult for Canada to accept a deal that doesn't do something on wages.

MR. HERMAN: And yet, \$15 an hour is a basic requirement for duty free entry under a new NAFTA; pretty hard for the Mexicans to agree to, and if you try to kind of blend that in with the different wage rates permitted on different types of products, it becomes enormously complicated. Dan?

MR. UJCZO: Dan Ujczko with Dickinson Wright. I just want to explore a scenario that we haven't fully touched on yet, which is, if you go back to the two rounds that we've had and now this kind of unofficial round just coming up from D.C. myself, the bitch news in Montreal was that the procedural counter move and Lighthizer says we are going to TPA extensions because prior to that time it was very unclear -- and quite frankly, we are out of time because in our reading of the statute, March 30th was the date you have to give Congress 90-day notice. So we need TPA extension to deal with it, but we got the extension, so Congress still has to say no, but that was step one.

Step two was in Mexico City. The big news there was that the Mexicans are ready to make a deal, and the Mexicans need three things. They need an auto rule of origin and we will talk about that later, Chapter 20, and seasonal produce. They will cave on everything else.

That's all of our sourcing, we are in Mexico, a lot on this. So the idea, that's why we solved this last week, that we are going to get a deal or at least to the AIP because we would hit those.

Now, the auto rule of origin is not going well. Right now we are in a session as we speak. I think that will carry forward as everybody has said for a few more days or a few more weeks. But let's say we get a scenario where Mexico is ready to craft a deal with the U.S. and go on that and cave on textiles, and as was said, they don't care about government procurement, they don't care about others.

What does that map look like at that point where the U.S. comes back to Canada says all right. We got a deal with Mexico. What are you going to do on supply chain management, government procurement, et cetera? So how does that play out between now and the next few weeks?

MR. CLARK: The first reaction is going to be, so what on the particularly difficult issues. I am not -- I know that the supply management industries have been promised exemptions in virtually every round since the Canada-US Free Trade Agreement, and the Government has not paid any attention to those promises in the end.

There are issues that they will cave on, and there are issues that they won't. We have Ontario now trying to respond to state procurement rules in New York. It is a very emotional issue, government procurement. I don't think that Canada is going to willingly give up Chapter 19. At the end of the day, I am not sure that they really care about investor state dispute settlement. They might be prepared to

trade that off. Canada, I think, has been planning for the possibility of Mexico going it on their own, and I think that over the next two weeks we may well see Mexico go on its own if they get what they consider to be a balanced agreement. I don't think that's going to force Canada to go faster.

MR. SCHOTT: And I don't think even if Mexican negotiators did what you said, that it would be sustainable in Mexico and, therefore, what's the value? You are not going to have a deal that is signed. And so it would be -- the new government would not follow through on it, and we should know that. And that's why I don't understand this rush to a framework or agreement in principle.

MR. UJCZO: So you don't see a lame duck scenario in Mexico in September?

MR. SCHOTT: I am just looking at the U.S. calendar on when we could sign a deal, and it doesn't fit into the Mexican political calendar for 2018. So I, you know, I think there is a lot of talk, and there has always been an interest in Mexico to try to accommodate as long as it didn't cost them politically. But in my view, it is already too late for Mexico. The political clock, the calendar has already gone too far. They had to do this latest in March.

MR. HERMAN: And even if the Mexicans can sign a deal before the new government -- a new government was elected, there is a whole process of Mexican ratification, which is a complication. Even a signed deal can't be ratified, could not probably be ratified by a different, wouldn't be ratified by a different Administration. Why would they? Anyway, Jon Johnson, would you identify yourself, John?

MR. JOHNSON: I am Jon Johnson. I am a retired trade lawyer and also a senior fellow at C.D. Howe Institute along with Larry.

What do you think Congress would do if Mr. Trump actually did serve a notice of intention to withdraw? As was mentioned earlier this morning, of course, Congress has explicit power over commerce and all sorts of taxes, and so far as I can see, there certainly is no statutory authority given to the President to withdraw from the trade agreement that came into effect only because Congress approved it.

MR. SCHOTT: Okay. I am not a lawyer, so I can answer this. I don't know if it would be an indictment or an obstruction of economic justice. No, that's a bad choice.

The implementing legislation approved the agreement and including the withdrawal authority for the president. The President has the authority to leave the agreement.

He does not have the authority to remove all of the NAFTA preferences. That was legislated by the Congress.

MR. HERMAN: And what about all the changes to U.S. laws implementing the NAFTA?

MR. SCHOTT: Right, and he can't do that either.

MR. JOHNSON: It doesn't say the President has the authority. It says the U.S. may withdraw; a party may withdraw.

MR. SCHOTT: A party may withdraw.

MR. JOHNSON: It doesn't specify.

MR. SCHOTT: No, it is an arguable case, and it certainly would enrich many people in this room to litigate it over the years. In my -- I mean, when I was in

graduate school -- I roomed with three law students from Georgetown. So I feel fully competent in making these legal arguments.

MR. HERMAN: We are really out of time. I just wanted to -- I can't resist this. The U.S. has only withdrawn in its history from one trade agreement, and that was a trade agreement with Canada. I don't think people realize that the 1854 Reciprocity Treaty between Canada, which was then a British colony, but it was a trade agreement with Canada, the 1854 Reciprocity Treaty was abrogated in 1866.

And it was abrogated because the U.S. was really annoyed at the Brits for producing coastal vessels that the Confederacy used to raid Union commerce. So the Reciprocity Treaty was abrogated in the 1866, but it required Congressional approval. Congress had to approve it. Most people find that surprising, but the Congress had to approve abrogation of the reciprocity agreement, and that was the only time the U.S. has abrogated a trade agreement.

Anyway, on that note, I couldn't resist it. Look, let me -- we have had a terrific discussion, and I am sorry we didn't get everybody's questions in, but I want to thank Jeff Schott and Peter Clark for being wonderful panelists.

(Applause.)

PROFESSOR PARRAN: And thank you, Larry, for being an excellent moderator.

We will take about a 40-minute break for lunch. Go out these doors, and lunches are in room A66 to your left. There is not enough room in there for everybody to sit down, so I would suggest you bring your lunch back here, but you have some time, and lunches are basically out to the left. Thank you.

(Luncheon recess taken.)

DISTINGUISHED LECTURE –
MR. LOURENCO GONCALVES,
CEO OF CLEVELAND-CLIFFS INC.

MR. PETRAS: All right. Everyone, welcome back for our keynote speech at lunch today. I am going to introduce the person who is going to introduce our keynote speaker. So it is my honor to introduce James Graham, Senior Vice President and General Counsel and Secretary of Cleveland Cliffs, a long standing company here in Cleveland. James and this Institute go way back. He has been involved for many years, and he is one of our new members of our Executive Committee. He is also a grad, a fellow grad of Case Western Reserve School of Law, and he is the chairman of the LLM International Advisory Board. So James, the floor is yours.

MR. GRAHAM: Good afternoon, everybody. I have a privilege of introducing Lourenco Goncalves. I met him first in August of 2014, when he single-handedly won a proxy fight and took over the board of Cleveland Cliffs. In fact, I was the first person that he met with at the company, and we had a discussion in a not very subtle way about how I was going to cut cost and staff in the legal department. Fortunately, I survived along with some of my best people who are here.

Starting that day, I got to know Lourenco well, and I appreciate his experience and expertise as an operator, innovator, salesperson, and visionary in the metal and mining industry.

Mr. Goncalves has been a vocal leader for the domestic battle against unfairly traded steel in the United States and a champion for the mine and steelworkers. Currently, he is an advocate for the industry on Capitol Hill with the U.S. Administration, with the media on a national and international level.

Since joining Cleveland Cliffs, Mr. Goncalves has implemented a strategy designed to strengthen the company's position as a major supplier of iron ore pellets to the U.S. steel industry, fix its previously overleveraged balance sheet, and cleanly exit from non-ore and unprofitable operations.

With these goals complete, Cleveland Cliffs is now positioned for growth. In 2017, Mr. Goncalves announced plans to make the company the sole producer of hot briquetted iron ore, HBI, in the Great Lakes region. The groundbreaking for this \$700 million project in Toledo, Ohio, took place last week, and through Mr. Goncalves' leadership, we have begun construction ahead of schedule. The future of the company is here. Please welcome my boss, mentor, and friend, Lourenco Goncalves, Chairman, President and CEO of Cleveland Cliffs.

(Applause.)

MR. GONCALVES: Thank you, James. Good afternoon, everyone. It is a big pleasure to be here, to be talking about things that are affecting us here, particularly

here in Cleveland in the Great Lakes, which have two countries on both sides, United States and Canada.

We are well positioned as a business to affect this region, which straddles both sides of the border. We have been talking a lot about trade, trade restrictions, trade wars, things like that. Just to make abundantly clear, we don't have a tariff on iron ore. We don't need a tariff on iron ore. We are not going to see foreign iron ore here in the United States because we produce the type of products, taconite pellets, that feed the blast furnaces, that produce steel both in the United States and in Canada in a way that people can replicate, particularly the big producers of iron ore, particularly Australia, the biggest producer.

Australia produces more than one billion tons of iron ore, one billion a year. We produce 20 million, million. And they still can't come here. They still can't compete here. They still can't deliver here because the iron ore that they produce in Australia and feed mainly China, is highly polluting.

We can't use it in the First World. As China becomes a First World country, China will one day, and that day will come a lot faster than people believe, China will no longer use Australian iron ore they use today. It is coming, and it is coming fast, and not a lot of people are seeing that. We are.

And they are very well positioned. So I will not talk about problems in the iron ore. We are doing good. We are fine. The problem is with the perception around the steel business because there is a big perception still out there that the Chinese steel is better or more competitive, or we should allow the Chinese to do whatever they want because it is cheaper, and we don't ask the right questions.

The right questions are so obvious that it defies my understanding why we don't ask the simple question. The most simple question that we should be asking all the time -- and you see guys all the time, a guy like Fareed Zakaria, the other day on his show on CNN said, look, China is just 2 percent of the trade in the United States. Why people talk so badly about China. They are so competitive. They are so good. They are so cheap. But he didn't ask the right question. He needs to ask, why Chinese steel is so much cheaper than anyone else?

A few reasons: Number one, there are absolutely no environmental controls in China. That's just another day in paradise; anywhere in China, could be Beijing; could be Shanghai; could be Harbin close to Siberia; could be Shenyang close to Korea. Anywhere in China, that's what you see. You never know if it is a sunny day or not a sunny day.

Second, China consumes products from Australia, Brazil, and others. These are the guys that are feeding the beast. I don't think that Australians or Brazilians or other countries that supply iron ore can even call themselves environmentalists because what they are doing there is destroying the environment.

Actually, South Korea and Japan produce steel the same way. The air in South Korea is a lot worse than the air in Japan. The only reason for that is the wind. The pollution coming from China hits South Korea very badly.

And when it gets to the reason -- the reason is that the Chinese workers are paid very low wages. I would say they are paid lower wages, and I am talking about low wages, period. They creased a lot in the last two or three years.

They are now at \$2 an hour. A steelworker in China makes \$2 an hour. Let's do quick math, \$2 an hour times eight hours a day, times six days a week because they work Saturdays times 52 weeks, less than \$5,000 a year. I will let you think about that. That's the type of competition that we are facing.

And they don't pay that just to the steelworkers. It goes to everything that they produce in China. And on top of that, the Chinese government helps them a lot to export what people use. So government subsidies to export massive amounts of steel are the rule, are the way it works. Let's talk about the massive amounts.

Let's put numbers. I like numbers. I like facts, so I am not just going to give you my speech here and my points -- and by the end, at the end, feel free to disagree and ask questions, and bother me with different points of view because that's what makes the thing fun.

So let's go back to numbers in 1980. In 1980, that was the picture of the steel world. The world produced 717 million metric tons in 1980. Why do I use 1980? Very simple. Because it was 35 years after the end of World War II.

So the world has been stabilized again after the War. And we invested -- we, meaning the United States -- invested a lot of money to facilitate the two countries to be rebuilt. One was Japan, and the other was Germany, or at least a portion of Germany, Western Germany.

So in 1980, as you can see in the pie chart, Japan produced 111 million metric tons of steel. The United States produced 102 million tons of steel. Germany, combining both Western Germany and East Germany produced 51 million metric tons, and China produced 37 million metric tons. Now, let's -- that's 35 years after World War II. Let's fast forward another 36 years. Let's go to 2016.

I don't have reliable 2017 figures yet, so I will use '16. So now, the world is producing 1.6 billion metric tons, more than double the figure of 1980.

Japan is hanging in there, still producing 105 million metric tons, close enough to the 111. We went down to 82 percent, to 79 million metric tons. Germany is down around 20 percent as well to 41, 42 million metric tons, and the rest of the global amount, China, 37 million tons is now 808 million tons. In other words, in 35 years, China increased their production more than 22 times.

So China produces steel today, more than the world used to produce 36 years ago. That's the reality. Do they need all that? No. They need a lot, but they don't need all that. They consume something like 550, not even 600, but let's give them 600.

If they work, assuming only 600 million metric tons a year, another 200 million tons a year are used just to export. That's twice as much as Japan, twice more, almost three times as much as any other country, including ourselves.

That's how they do stuff -- and polluting, paying low wages and adding subsidies. Is this fair trade? Are we setting ourselves up for a trade war? Of course not. Of course not.

The trade war has been going on for a long, long time, and we are losing, and we are losing because we don't know we are losing, because we don't ask the right questions.

So why has China's steel production increased so much? A few reasons: Life is simple. The reasons are always very obvious. One, steel is needed to produce

real development. Real development means infrastructure and manufacturing. That's a fact. That's why we helped Japan after the war. That's why we helped Western Germany, to rebuild their country. In order to rebuild the infrastructure, you need steel. And today, by the way, the airport of Shenyang in Liaoning province is better than JFK, just to give you an idea.

If I had a little more time, I would bring some pictures, so trust my word. Google their airport. I can give you a few names of cities that you never heard, that have airports that are better than LAX or Chicago O'Hare, places like that.

The other reason why China increases steel production so much is that steel production is a great vehicle to generate jobs, and if you have 1.3 billion people to take care of, you need to employ these people. You need to generate jobs. Then they don't talk about the opioid crisis. By the way, China had a very big experience with the opioid crisis, but that was a hundred years ago when the Chinese did not have jobs. There is a movie called "The Last Emperor." You should take a look at that. That was an opioid crisis, no jobs.

So there is experience with these things in the world. Things repeat themselves. Steel production is a great vehicle to generate jobs and is needed to build up military power. So we are not dealing with a country that is involved or intending to engage in a trade war. That's military power. I love steel and those tanks. These are vessels, destroyers, patrolling the South China Sea with naval carriers and airplanes, and there are visitors from the sky, and that's not North Korea; this is China.

So these guys are no joke. You guys know they are preparing for a trade war. I don't feel like that. If we are in Asia, you would feel even more the pain if you were to see what they are doing to the South China Sea. What's the South China Sea?

The South China sea is the hub where all the shipping routes throughout Southeast Asia have to go. So South China -- controlling the South China Sea is basically controlling the Southeast Asia trade physically. So they are building islands in the Scarborough Shoal, that's pretty much inside the Philippines. Or in the Spratly Islands, they are basically Malaysia.

So they are building islands with military airports based for missiles and things like that. They are no joke. They are not engaging in a trade war. They are preparing to be a super power, and that's what super powers do.

And by the way, when the war is ongoing, the very first thing that a super power at war does, they take territory, and that's what they are doing in the South China Sea. So how can I fix this? We. The United States and Canada, North America.

First of all, we need the jobs that are being exported into China and to other countries. Every time you are supporting their steel, you are basically benefiting a few business owners that are very rich. You are not benefiting the average American because the average American is out of a job. The middle class is shrinking. We have a problem here in America. Our people are getting poorer.

I came from a country that has a lot of poor people. I came from Brazil, so I understand a little bit about poverty and what poverty can do to destroy a country. So we can't allow that to happen here in the United States.

We need those jobs back. We also need to rebuild our infrastructure. The fact that we are going down fast in terms of our ability to even keep up with the maintenance of our bridges and airports and railroads and things like that is very scary. We have not done a good job in either keeping up with maintenance of these things, let alone building new. We also need to be prepared to defend ourselves. Let's stop believing that we are going to be okay by spending a lot of money and a lot of effort in internet companies. Google is cool. Twitter is a waste. Instagram is useless.

It is good to basically take selfies with a duck face and share. This is BS. We don't need that. We need stuff. We need manufacturing. We need to go back to basics. We need to go back to what made us great in the first place.

The United States needs to continue to produce its own steel because if we don't produce our own steel we are done, and the steel production needs environmentally friendly iron ore. That's our belief. That's what we do for a living, and we put our mind where our mouth is. So just to give you an idea what Cleveland Cliffs is today, that's Cleveland Cliffs. We have five mines, three in Minnesota, two in the Upper Peninsula in Michigan.

We mine very low iron content, iron ore called taconite with 26, 27 percent iron content. We concentrate and we produce pellets. We concentrate because we have water. We are here in the Great Lakes. We are in the biggest assembly of areas with fresh water in the entire world. Twenty one percent of the fresh water in the world is right here in the Great Lakes. So we concentrate on that. That's something, for example, Australia can't do because the iron ore is in the Uluru, and the Uluru is a desert in Western Australia.

These are our clients. You see that I don't really differentiate between Americans and Canadians. We have clients on both sides of the border. These are the blast furnaces we serve, both in the United States and in Canada.

And we are now building a new plant to produce hot briquetted iron. We have started right here in Ohio, in Toledo. We are making a \$700 million-dollar investment -- which by the way is the biggest investment going on in the Midwest right now, and it is Cleveland Cliffs -- happening here in Ohio and will benefit Ohioans.

And these are the clients that we are going to serve, the blast furnaces on both sides of the border that will buy environmentally friendly HBI from us and will be able to produce very high quality specs of steel to be very competitive in the market.

So our project is one of the world's most modern and efficient iron making pellets ever built to be right here in the Port of Toledo, at the mouth of the Maumee River.

Like I said, it is a \$700 million-dollar investment. We have the money in the bank. We raised it in December last year at a fixed rate before even the conversation about interest rates that started. So we have it. It was just a matter of deploying it wisely so that the plant is a facility producing 1.6 million metric tons of HBI per year. To date, imports that come to the Great Lakes are all important, but we are going to displace the imports from places like Ukraine, Russia, Venezuela.

They will all be kicked out properly. It is all fed by our own iron ore out of one of our mines called North Shore in Silver Bay, Minnesota. We are generating 130 good-paying \$90,000 average jobs in Toledo. So it is a blessing for the area, an area that needs jobs badly.

During construction, we are going to have 1,200 people at peak working our site. We finished site preparation at the end of last year. We got all the permitting during Q1.

Actually, in February, we were done. We started construction in February. This will take two years, and in July 2020 we will be in commercial production.

That's a rendering of the plant that will be in operation in July of 2020, and we will feed -- we will increase our presence and continue our commercial operations in the Great Lakes, and we will continue to improve our competitiveness in our ability to produce our own steel. With that, I will be more than happy to entertain your questions, disagreements, let's discuss about China and how competitive they are, how nice they are. Yes, sir. Okay.

AUDIENCE MEMBER: Back in 1914, back in 1914, the United States had about a hundred million people and had about almost 400,000 miles of rail line. Most of it was steel, but some of it was the old cast iron type of rail.

So here we are now with 330 million people in the United States, and our rail mileage has gone down about 190,000 miles. So we are trying to transport three times -- 3.3 times the population and the freight movement to sustain that on less than half of the rail mileage. So imagine what that has done to the steel industry. Isn't it time that we rebuild our rail infrastructure and stop putting all this effort into highways which just increases more traffic?

MR. GONCALVES: As well. We have room for both. We are probably the only big country or big geographical area because Europe is not a country, it is several countries, but we are the only biggest geographical area in the developed world that is not covered by a decent network of railroads. We don't have that in the United States. We don't go from Cleveland to Washington, D.C. by rail, but in Japan, you go from Tokyo to Fukuoka in the south by Shinkansen. In Beijing now, you can go from Beijing to Hong Kong or Beijing to Shanghai by rail.

In Europe, you can go anywhere. The railroad stations are downtown, such as in Paris where it is very convenient. So yeah, we are behind because we don't focus on things that we have done in the past.

I live 50 percent of the time here in Cleveland, 50 percent of the time, Fort Lauderdale, Florida, by the Intercoastal Waterway. The Intercoastal Waterway was built a hundred years ago just to allow barge transportation. It was not built to move people like me to take a boat and go to a restaurant or anything like that. It was built to allow barge transportation. It starts in New Jersey, goes all the way to Brownsville, Texas, because there the barge can travel on such waterways. They don't need to be exposed to the ocean. Think about that when we built that more than a hundred years ago.

So we lost our hands because we are focusing short term. We are focused on the next quarter. There is no vision about continuing to do the right thing. Instead, we are very eager to do the next thing that would be trendy.

And generally, it is good to be saying these things inside a school. We are creating a generation that only reads the headlines. I am in this business for 38 years, and 20 years ago when I came to the United States, to raise money, you would visit with the investors, and when you got there, they had already read everything, the prospectus and everything.

Today they read the headline, and that's it. The only thing they want to know, if the presentation is on that road show because if it is on that road show, they don't even need to pay attention. They will take a look at it later. They will take care of that. So you addressed a good point. Yes, sir.

MR. DEBIN: My name is Aaron Debin. I am a tax lawyer. What is the HBI used for?

MR. GONCALVES: It is feedstock for steel production in the electric arc furnaces. The taconite pellets are the feedstock for blast furnaces, and the HBI is the feedstock for an EAF, electric arc furnace. It is a different type of a production route.

MR. DEBIN: To make steel?

MR. GONCALVES: To make steel. Sorry about that. I should have said that. Yes, sir.

MR. MICHAEL: My name is Mark Michael. First of all, thank you –

MR. GONCALVES: And you are young. You either read the headlines or read the text.

MR. MICHAEL: Both.

MR. GONCALVES: Good.

MR. MICHAEL: I graduated from this law school five years ago. I am a lawyer downtown, and I appreciate you coming and spending time with us during this hour.

MR. GONCALVES: My pleasure.

MR. MICHAEL: I have been watching the news over the last two years, all the channels, and the pundits have said that Americans don't want to work in the steel industry.

How do you respond because I keep seeing it over and over again. Americans don't want these dirty jobs. How do you respond as the CEO of Cleveland Cliffs?

MR. GONCALVES: We need to do a better job to educate all of us, including ourselves. I believe that we have a generation right now of entrepreneurs, but entrepreneurship right now is like that. I need to create a website and make a killing. Then I will be a billionaire by the age of 30. That's a bad way to start. That's a bad way to start.

First of all, you need to learn so when you are young, it is good to learn. Then, you need to accumulate knowledge. Then, you need to separate good from what is bad. Then, you say, okay, now I am going to use the good stuff that I learned, and I will make it better, and the bad stuff especially how I was before when I was not treated well, I am going to treat my people a lot better because then they will carry me.

That's the way you build, you know? And it is all about how you educate. We are creating a generation -- and I have three children ages 34, 30 and 25, so they

are no longer kids -- so I am very concerned about how we did in terms of raising them because short term is not a good thing.

We need to believe that there is a long-term plan, and that's the way you should treat things. Take the steel business you are raising. Working in that plant over there, it is one of the most high-tech jobs you can get.

You are in a much more high-tech position as an operator in that plant than if you were doing anything behind a laptop. You are going to be really dealing with complicated stuff. You are going to really be putting your skills to work. It will be as near as you can get.

You are not going to have anybody walking around dirty. So we need to explain that to people. I had a hard time convincing the Toledo people that that thing would be okay because that tower is 494 feet tall. So you -- on a good day -- you are going to see it from Canada.

So we need to explain, we need to educate. We need to bring the right message. But in order to do that, we need ourselves to believe, to do what we believe.

I see a lot of grownups right now reading headlines. I just gave an example of a guy that I actually like, and I know him, Fareed Zakaria. For him to defend China the way he did, there is only two options: whether he is on a retainer, which I believe he is not, or he just got educated the wrong way.

So we need to do a better job explaining ourselves and educating people. I have one of the lowest rotations in terms of people leaving the company on their own power probably in Northeast Ohio entirely and in the mines in Minnesota and Michigan.

So where are we going to retain people that don't feel bad about the jobs they got? In Toledo, we hired 13 so far of the 130. Six of them are coming back. They are from Toledo. They have to be back. So I am encouraged. I am doing my part.

MR. MICHAEL: Thank you.

MR. GONCALVES: Yes, sir.

MR. CUNNINGHAM: There are a lot of people in this room who will have pre-law and policy views on the national security steel import relief measures.

From the standpoint of -- from the standpoint of the industry -- sir, how do you see this working out? Is this going to do what the steel industry needs to do just from the standpoint of the steel industry and the iron ore industry?

MR. GONCALVES: Let's take a look at the screen. The guys in China, they like steel. They produce it, 800 million tons a year, and a good portion is used to build tanks, weaponry, Navy ships, carriers, airplanes, and these folks that come through the sky. So steel is important. You can't import steel to produce weapons.

In my previous job -- let me give you a hint on how things are in the United States. In my previous job for ten years, I was CEO for a company called Metals USA. Metals USA was the fourth largest steel center in the country and the biggest supplier of military grade steel to the west military.

And then, we are fighting two wars at the same time, one in Afghanistan and the other one in Iraq, and we are deploying a lot of Humvees like the ones that China produced as well. They look a lot like ours. You know, I don't know how they -- but that's a different conversation.

(Laughter.)

MR. GONCALVES: Anyway, these Humvees that are very similar to the Chinese but were ours, they were being deployed to especially Afghanistan without the proper armor because they were very well armored on the side, on the top, on the front but not underneath, and the biggest problem over there were the IUDs. So they improvised the devices.

We are basically blowing up our people, and the people in Fort Wayne, Pennsylvania, DoD, they were asking me to produce more armor plate to deploy to the field to armored vehicles that were already there.

And we developed kits to not only supply the parts but supply already correcting the way -- because it was there, we weren't there. The military were there; we were not. So they were taking the kits and welding in the field.

Well, guess what? There is only one steel mill left in the United States in Conshohocken, Pennsylvania, that is owned by ArcelorMittal that produces military grade plate for armor plate.

So I had to develop a source outside the United States because we didn't have it, enough, and I was happy to find and I was lucky to find, and I have a great guy, the Secretary of Defense, Gates, and he allowed me for the exception to use foreign steel, but Gates was there. That was to check the box and being lucky, and when I went to school in Brazil at the IME, the Military Institute of Engineers, my specialty was armor plate. So I knew exactly what I was talking about.

That's number two, check the box, and we were able to act fast, and those deaths we were reading every day in the newspaper in 2003 and 2004 went away quietly. We are talking now because we are 14 years removed from that, but that's a true story.

We were completely unprepared here in the United States. We did not have enough armor plate in the U.S. to armor our own vehicles, and I can only imagine what is going on right now, especially in a time when we are distracted with a lot of the storms, Daniels and things like that.

(Laughter.)

MR. GONCALVES: Yes, sir.

MR. SCHOTT: Jeff Schott with the Peterson Institute. I am in Washington. Let me ask Dick's question a different way.

MR. GONCALVES: Please.

MR. SCHOTT: The White House says impose tariffs on steel imports, but those don't affect China because China doesn't sell us almost any steel, because it is all blocked by antidumping and countervailing duties.

So the concern is that the tariffs are not doing much except to deal with the problem of China, and they may have provided a temporary price boost for domestic steel producers. But your concern seems to be that we don't have the capacity in specialized products.

And are there better ways of trying to support and develop investment in those particular areas than this broad brush tariff approach, which is going to prove costly to a lot of other people in the U.S. economy?

MR. GONCALVES: That's a great question. Thanks for asking because then I can answer it.

Otherwise, I would say I am already beyond my time, but that's a great question. So let's see what the tariffs do. You are absolutely right. We resolved the China issue back in 2016 when -- and I am very proud that -- I was part of the group that worked on that.

I convinced Denis McDonough with John Kelly of the previous Administration, he was the Chief of Staff, and he was from Minnesota. So on December 22nd, 2015, we brought Denis McDonough back to Minnesota to see the mines, and I gave him a good explanation on how things were affecting national security and stuff like that, why China was bad, and he put me in contact with Jeffrey Zients.

That was the guy who had the job for a while, was Gary Cohn's job, the Chairman of the Economic Council, and those guys were able to basically do the impossible. They convinced Barack Obama that tariffs on antidumping duties and countervailing duties were not only the right thing to do but the only thing to do in order to take care of China.

We took care of China. China went away, went away for us, but you know what they did? They went to Canada. They went to Vietnam. They went to the UK. They went to France. They went to Italy. They went to South Korea. They went to Thailand. They went to Malaysia. And now they sell to these countries, and in these countries, there are a lot of smart people that are a lot smarter than me, that instead of importing galvanized steel from China and selling to the United States, they imported hot rolled steel from China.

Then they galvanized there, and they send here because they are a loss. It should be stated without explanation, the duties should not apply, and they are right. So Vietnam that used to produce zero tons of galvanized in 2015 produced 1.2 million tons of galvanized in 2016.

It is a miracle. It is a Chinese miracle. So why do you need Section 232? Why do you need the tariffs? Because I will be very blunt, and Canadians forgive me, Canadians, British, Italy, Italians, French, altogether will not stand up against the bully.

So we need 232 to push back on behalf of everyone because it is clear that we hit them here, they showed up somewhere, but the problem is, if I were to wait for the pressure to push back, no, they will complain to the United States because they know they can do that for free.

The South Koreans, they are showing their face right now. They are great friends that we have in Southeast Asia. The Japanese, oh my gosh, they are making a lot of money. They will complain, but they are happy that we are doing 232. So make no mistake. Without the tariffs, the problem would be worse.

Another thing, things would be more expensive. You said that, and you are not even asking, you are just stating that. Let's see if things will be more expensive. The tariffs are 25 percent, right, 25 percent.

A car, any car on average is one ton of steel, one ton. An SUV has 1.1. A little Chevy has .7. On average every time you see a car on the street you are see a ton of steel on wheels.

So if one ton of galvanized -- a car has a lot of hot rolled that is cheaper and cold rolled that is cheaper -- but let's assume that the car has only galvanized, one

ton of galvanized, \$800. Twenty five percent on top of \$800 is \$200. So I just made a pickup truck that costs \$32,000. \$32,200. I promise you Rick Case will eat that for you, the dealer.

(Laughter.)

MR. GONCALVES: That alone is good stuff, so there is a lot of talk, but there is not a lot of circumstance. That's why we need to understand how things really work.

But of course, if a guy is a trader importing steel, I am taking his business away. If a guy had a deal that he buys a lot of cheap steel and passes along to someone downstream, I am eating his lunch.

On the other hand, if we can rebuild the steel industry the way we need in order to support manufacturing and jobs and things that we need and things that are necessary to promote development, to fix with the infrastructure, to generate jobs -- and by the way, to build military power because, again, we don't know much about what goes on.

I gave you the example there with plate metal, that's all I know because -- all -- I got personally involved, but I can only imagine we would have been out for a bad thing, and I don't think we are out for a bad thing. It is the best country in the world.

We have been the most open, the most ready to do the good thing, and we need to continue to do that. We need to continue to be a participant of that. We need to continue to be the benchmark. We need to bring the world to be better, not the world to be worse. That's our role, and that's what we need to fulfill.

Thank you very much.

(Applause.)

PROFESSOR PARRAN: Thank you, sir. All right. We will take just a quick five-minute break, stretch your legs, and use the restroom if you need to, and we will back here for our next interesting panel.

Sir, thank you so much.

MR. GONCALVES: Thank you.

(Recess.)

PANEL DISCUSSION –
NAFTA AND THE AUTO INDUSTRY

Moderator: Richard Cunningham

Speaker: John D. Tennant

Speaker: Basil "Buzz" Hargrove

Speaker: Dan Ujcz

MR. PETRAS: If you can take your seats. These panels just keep getting better and better. This is a very exciting conference so far.

It is my job to introduce the moderator of our next panel, Dick Cunningham. Dick has been a long-time friend and associate and member of the Executive Committee of the Canada-US Law Institute. He goes way back to the early days of coming to Cleveland at the invitation of Henry King and speaking to the Greater Cleveland International Lawyers Group, and it is an honor to have him.

Dick has more than 40 years of experience as an international trade lawyer. He is a partner at Steptoe & Johnson in Washington where he leads that practice, and when he is not in Cleveland, he is normally in Korea or Japan or someplace else working on trade agreements.

So without further ado, Dick?

MR. CUNNINGHAM: Thank you. Thanks for the introduction. My favorite introduction was Undersecretary of Commerce, who once introduced me as Dick Cunningham, the leading practitioner -- and I am, boy, this guy knows his stuff -- the leading practitioner of the Black Art of International Trade Law.

(Laughter.)

MR. CUNNINGHAM: Which I probably carry that medal with me. This panel is a great panel, and it is really an important panel. I hope that all of you picked up at the desk this little brochure, U.S. -- Canada-US trade facts, and if you turn to it and look at the table inside of the ten leading U.S. exports to Canada and the ten leading U.S. goods imports from Canada it is obvious that the auto sector dominates US-Canada trade. It is 44 percent of those ten top U.S. exports. It is 55 percent of the top U.S. goods import from Canada.

That's true in a number of the U.S. trade relationships. Auto trade was and remains the key issue in the U.S.-Korea trade negotiations, and it is central to the NAFTA negotiations, and that's what we are going to discuss here today.

We are going to discuss auto trade, and we are going to discuss NAFTA. We have got a great panel to do it. Those of you who are particularly observant probably have noticed this is not Ms. Wilson sitting next to me.

MR. UJCZO: Only on Saturdays.

MR. CUNNINGHAM: But Dan Ujcz is an embodiment of the clear rule that the Canada-US Law Institute is the path that leads on to greatness. Dan has been a long-time associate. He was -- he worked with us for years and years, and he is now a practitioner of international trade law, working at the firm of Dickinson Wright where he specializes in trade policy issues and is working deeply in NAFTA negotiations.

To his left is John Tennant. John is formerly Consul General of Canada in Detroit. His distinguished career in public service has focused on trade, investment, and economic development, and today he is the Managing Director of the W2N2 partnership and principal of its global investment group.

And of particular interest to this panel, his companies were commissioned by Global Affairs Canada a few years ago to produce a global automotive sector strategy for Canada, which the NAFTA renegotiations is probably well on its way to disrupting.

Finally, on my far left is Basil Hargrove. Buzz Hargrove was national president of the Canadian Auto Workers where he was and is one of the most recognized labor leaders in Canada.

Mr. Hargrove is now distinguished visiting professor at the Ted Rogers School of Management at Ryerson University in Toronto where he is co-director of the Center for Labor Management Relations, and if you look at it in the brochures that I have handed out, you will notice one of the things that I always thought as a distinction between Canadian labor and American labor is that in the spelling Canadian 'labour' has a U in it, and American labor sometimes lacks that.

Let me turn first, if I can, to John Tennant. John, I would like to put the NAFTA talks on automobiles in a bit of context going back a few years and sort of a how did we get here at this point?

MR. TENNANT: Thank you very, very much, Dick. In addition to my spell in Detroit, I also served twice in Japan, in the '70s, early '80s, and then again, in the '90s.

Coming to CUSLI is comforting I find. Lawyers, trade policy people are committed to working out problems within certain norms. That's even more comforting in a world now that seems to be a bit rudderless and lawless. So it is nice to hang out a bit here.

But regrettably, as I think we have come to find out, international trade, trade and economic relations have long been political. And very evidently, they still are.

This NAFTA renegotiation is to a very considerable extent political, and it applies to auto déjà vu all over again. There are two aspects that I think really express the political. The first is, I think history has shown us that when a country aggressively grabs market share in the U.S. in a major sector, as Mexico has done in autos, they should anticipate that there are going to be some restrictive counter measures on the part of the U.S.

From a Canadian point of view, of course, we have been living since the 1980s with lumber where the industry in Canada has certainly found a growing market and has not been hesitant to exploit it. But time and time again, we have ended up

with responses from the U.S. that have usually led to some type of negotiated settlement.

It is a great generalization, but I think it could be said in contrast to lumber the Canadian steel industry over time has been much more measured in the extent to which it has marched into the U.S. market knowing that it would face actions, some of which it has managed to avoid.

In the case of the automotive sector, we started, of course, with the auto pact of 1966 that did allow Canada the comfort of being able to set content, Canadian content requirements. That was fine for a while, but we, of course, in the 1980s ran into the Japanese automotive industry entering the United States and Canada.

The U.S. confronted Japan over exports, and as the Japanese were growing the market, some would say, in part, because of having fuel efficient high quality vehicles, the U.S. ultimately won voluntary export restraints during the Reagan Administration.

Of course, there are some people on the front lines now who were around then, too, and the Japanese were pressured to establish production in the U.S.. Canada got into the game, too.

When the Japanese only seemed to be paying attention to the U.S. pressure that was being applied, Canada's then Minister of Industry Trade and Commerce, Ed Lumley, got Japan's attention by moving beyond what anybody would normally recommend by having a Japanese car that arrived in Vancouver inspected by customs officers. And that got some Japanese attention, and Canada then proceeded to find a very innovative way, new ways to incentivize the Japanese to be investing in Canada as well as in the United States.

Then, of course, we moved into the opportunity of Canada-US free trade and then NAFTA. The U.S. was certainly interested in the Canada-US Free Trade Agreement on the auto front because of how imaginative we had become in beginning to introduce some new ideas, like our duty remission incentives.

So we ended up in a situation where we refashioned the Canada-U.S. relationship. In fact, there was out of the initial bilateral agreement of 1988 some things that didn't work as perfectly as they might have, and in the original NAFTA Agreement, one of Canada's good reasons to be in it was that the automotive content provisions that Canada had thought were in the Canada-US Free Trade Agreement weren't interpreted identically by the U.S., and indeed, it represented some risk to Canada.

Now, of course, here we are with a situation where NAFTA has created opportunity in Mexico and where there was literally -- I think we would all agree -- a stampede to investment in auto production in Mexico up until a little less than two years ago.

That stampede is one that clearly President Trump has sought to corral. I mean, there is a difference now. It is more political than it may have been before, but the trend I think is very, very clear.

And do remember I think it is important as the discussion goes on about content. Not only was there the issue of sorting out an agreed definition of content in the Canada-US Free Trade Agreement and the higher level in NAFTA, but in the Canadian case, the automotive content provisions in the comprehensive and

progressive Transpacific Partnership have certainly not been to the liking of most of the Canadian industry parts industry.

There will be a lot of eagle eyes on how all of this comes forward. I think this case paints the context of politics and how it really rules, and one is the importance of auto and the question of imbalance or change occurring. Because it is so important, it invites a political response.

Arguably, too, just as a final note, steel has always been very much in that category, and it certainly seems to me that steel is very much at the foundation of U.S. objectives when it comes to the automotive sector as reflected in the content requirements, dialling back to make sure that that becomes part of the content.

MR. CUNNINGHAM: I just want to tell a short anecdote to underscore the truth of what you were saying John about politics really determines trade actions by governments in an important economically powerful industry like autos. You referred to the Japanese voluntary export restraints. There came -- that's one of the favorite moments that I look back on in my career.

There was a real movement by both the industry and the union to take measures against Japanese imports in the 1980s, which, as you say, were assuming a dominant role in the U.S. market. The industry was mixed, as it often is in the auto industry about this, and the Administration worked with the United Auto Workers to file a case under Section 201, our safeguard proceeding -- we call it the escape clause -- because we have to have a legal basis to do a negotiation with Japan to get them to restrain exports.

So I was in the United Airlines lounge at Dulles Airport on the day that the International Trade Commission was to vote on that case, and everybody was absolutely convinced that they were going to vote to restrict imports.

In walked Bob Hartstein, who was the Undersecretary of Commerce at that time, and I said "why are you here?"

And he said, "well, we are anticipating a vote from the ITC today, and I and my team here are going to go off to Japan. I am on the same flight you are on to negotiate the voluntary export restraints."

Guy comes running in a few minutes later, beckons to Hartstein to come over. Hartstein comes over, talks to him, the talk gets very agitated. Hartstein comes back. All the red corpuscles have drained out of his face. He looks terribly white.

I said "what happened?"

He said, "the ITC voted no. They voted no import restraints. No injury caused by Japanese imports."

And I said "oh, and what happened?"

He said, "well, I called the President."

I said, "well, I suppose he told you to cash in your ticket and go on back."

He said "oh, hell, no. We are going to go and negotiate the restraints," and that's what they did.

One might assume then that the legalities here play a somewhat tenuous role in bringing policy to a conclusion in an industry like this.

Let me begin this discussion by asking what I think is a fundamental question that you don't often ask at this juncture in a trade negotiation because you get so

bound up in the intricacies of what offers have been made and what counteroffers have been made, that sort of thing.

And I would like us to step back and say what are we trying to do here. What do the governments want to achieve in NAFTA on autos? What do the industries in the three countries want to achieve in auto trade, and what do the unions want to achieve in auto trade because I think as we get -- as we discuss that, it will give a little better window into why some proposals have traction, why some don't -- but also as to why some interests may not be what are really guiding these things, and the politics instead may be guiding.

Buzz, maybe I can start with you and talk about what labor is do on this. I know that you come from a Canadian standpoint, but I know that you and the UAW work hand in glove on all these things over the years, so perhaps you can give a bi-country labor view on this.

MR. HARGROVE: A Canadian view and a labor view.

MR. CUNNINGHAM: Yeah.

MR. HARGROVE: I am glad, Dick, you set me straight because I have always believed it was George H. W. Bush's trip to Japan where he threw up in the lap of the Japanese Prime Minister, and it was really a spark that got the negotiations going.

MR. CUNNINGHAM: Now that's a negotiating technique for you.

(Laughter.)

MR. HARGROVE: But from -- I start from the premise one of the panelists earlier said that NAFTA enjoyed a lot of support in Canada. Well, I can tell you it is not amongst the labor movement or our membership.

Everyone is very, very upset with NAFTA and for good reason. I started in the auto industry back in 1964, and I was around -- I remember demonstrating in 1965 in January and February before the Auto Pact was signed -- demonstrating for content rules and ratios of sales to market share be put in the agreement.

And I can understand why people think that Canadian negotiators are unpleasant. I have been on the receiving end of Simon Reisman's negotiation on a few occasions, and yes, he would leave you with the impression that all Canadians are unpleasant, but he did come out of that bargaining with those kind of rules.

We had a sales-to-market ratio that was by category, trucks were a category, buses, automobiles were their own category, and each company had to meet their share in each area, and if they didn't, they had to pay duty on every vehicle they sold in Canada that year.

So if you only built 750 vehicles and you sold a thousand, you paid duty on a thousand vehicles. Given that we were the smallest player in the trade agreement and we had no auto industry in Canada that was owned by Canadians, it was owned by Americans, and that's something people should think about when they are meeting as to what this NAFTA discussion is all about today.

These are American companies that still own the auto industry. We have a couple of parts makers like Magna that do very, very well, but the reality is the auto producers are either American or Japanese. It is not Canadian producers that are going to have a big advantage.

But we progress into the Free Trade Agreement where we lost some of the ability to force the companies to invest in Canada. And by the way, I should point out that even though contrary to popular thinking, if you had protectionist measures in place, the industry would grow fat and lazy. We built with those rules in place one of the most cost effective, one of the most productive and best quality industries anywhere in the world, and it was to the amazement of a lot of people who said that can't happen if you have content rules in place.

So we moved through that. The Free Trade Agreement started to dismantle that, and we've seen ourselves starting to lose jobs, and then NAFTA came along, and we opposed NAFTA. We demonstrated. We had done everything.

I said to myself, as I was flying down here this morning, where the hell was Donald Trump when we needed him? We were making the same argument that he is making today.

I don't agree with Donald Trump on much, but that's one thing I do agree on. There is an unfair -- unfairness in trade -- right across the border but especially in the auto sector.

Canada is not part of that. We have lost four plants in the same time frame that the Americans lost ten plants. We have lost almost a hundred thousand jobs in the auto sector in Canada. Our deficit with Mexico is quadruple to \$18 billion dollars a year during that period, and we watched new investment go into Mexico and go into the Southern United States while Canada got zero over the last five years.

We have had no opportunity to improve on what is a great work force, incredible skills, incredible education system, and there is an opportunity and a willingness to work with the industry to make sure that we recognize we are a small player, and we better do things right if we are going to get our fair share of production.

So we would not be disappointed if NAFTA disappears. In fact, I think it is exaggerated and included by some of the panelists in this room today the impact of NAFTA. Think about it, when we signed NAFTA, the political instability in Mexico was the best safeguard we had.

I remember a lot of discussion and dialogue with the companies and with the government saying that, as long as there is this political instability in Mexico, we are not going to invest. We are not going to put major investments and gamble on whether or not it is going to be nationalized or they are going to have more rules put on.

And that worked for a few years, but Mexico did two things during that period. Politics had become fairly stable. They don't have the same uncertainty today that you have in the United States under the Trump Administration, the kind of uncertainty that the industry faced when making decisions to go to Mexico during that period.

So it is a different world, and so Mexico today, they are well-positioned. They have the same technology. I toured an engine plant in Mexico. It was owned by Fiat. And I toured a Ford engine plant, and I toured a couple in Canada; same technology.

The only difference in those facilities in Mexico was they had more people. Why? Because they are paying them \$3 or \$4 an hour, depending on who you

listen to, maybe \$5 or \$6 an hour all in, and they can afford to have more people and make sure they have checks and balances in the production system.

We have two problems with Mexico. The instability is gone, and they have this incredible low wage base that nobody can compete with. But if anybody thinks that somehow Mexico is going to sign an agreement that forces them to raise wages to \$15 an hour, you are living in a dream world. That ain't going to happen, not in my lifetime.

They would just as soon see the agreement go. The companies are going to go there anyway. If it is in a non-NAFTA environment, they are going to invest in Mexico. So we got those two problems in Mexico.

But we also have the problem of right-to-work states in the United States that allow people to pay a lot less and free loaders to stay in and get the same representation as people who pay union dues.

Now, imagine the people in this room are lawyers. Just think about it. You are a lawyer. I walk into your office, and I say "I want you to represent me on a case. It is going to be a couple of months, but I am not going to pay you."

And you get another customer, he says "I am going to pay you. You can't go by me, you got to first represent me under the laws of the right-to-work laws in the United States. You have got to represent me the same as the guy waiting with no pay."

Now, imagine your legal office and how long you'd stay in business if that was the case. Well, that's what we face as a labor movement in the United States and Canada as a result of right-to-work laws.

There has been an enormous amount of investment that went into the right-to-work states in the United States, and we think we can do -- we have been screaming about it as a labor movement during the discussion, the dialogue and in the media.

But do we really think that the United States federal government is going to bring in a law outlawing the right of states in the United States to bring in right-to-work? Not a chance. You are living in a dream world.

I was telling my colleague, "Of course, people should be aware of it", but if you think that's going to change things very much, then you are wrong. That's not going to happen.

So these NAFTA discussions are interesting. Some say to me where is it all going? I don't know. If you went by Donald Trump today, you'd say we are in pretty good shape. He is saying some positive things, but wait until tomorrow, he will do something entirely different or say something entirely different.

So trying to read him is like trying to read -- I can't repeat what went through my mind.

(Laughter.)

MR. HARGROVE: But that's just not in the cards.

I think the most we can do is get rid of the uncertainty, and that's going to help investment. That's going to help sales. People are not clear what they should buy today because of the uncertainty of where it is going to be built.

There are a lot of Americans, and I just spent three months in Florida, loved it, a lot of Americans are looking at buying new vehicles, and they are saying "I am going to wait to see how this thing unfolds." I want to say where they are built.

I would like to buy a vehicle that is built in the United States. I might consider Canada, but I am not going to buy something that is built in Mexico.

So then you have others that are thinking about investment, and they are saying, well, I am going to wait until the cloud clears, and we know what the rules are before I make any major investment.

To me that makes sense. Business people are going to put a lot of money on the table, and you better know what the rules of the game are. So the most I believe that can come out of this is through to end the uncertainty, and let's move on, and let us continue to debate what is in the best interests of each country.

MR. CUNNINGHAM: John, let me turn to you. We are looking at the question I posed, which is what the governments want. What do the various constituents want? What are we trying to do in this negotiation?

We have got a problem that has been posed to us here, which is a clear and obvious concern that you have a very low paid labor force in Mexico that attracts investment away from -- and production away from -- Canada and the United States, and you've had pessimism expressed that you could ever get wage rates up by agreement between the United States and Canada.

There are other ways that are being talked about to address this, John. How do you see these things going? How do you see -- what do you see as the goals of the U.S. and Canada in this negotiation?

MR. TENNANT: Maybe it oversimplifies it, but now that the Trump Administration has so many balls in play, and I quote from the eleven winning negotiating tactics from Donald Trump's Art of the Deal --

(Laughter.)

MR. TENNANT: I never get too attracted to one deal or one approach. I keep a lot of balls in the air because most deals fall out, no matter how promising they seem at first.

And with the additional actions that are out there with more to play with, it seems to me that though the time frame, as has been discussed has really been thrown off, there is some opportunity if the U.S. can get something it can present as making future investment in Mexico in the near term less attractive, some fancy arrangement with respect to costs being reflected somehow, That there is the potential to capitalize on that and give them something to walk away with.

I think there is one other aspect to this in terms of what might come out, though, it is not only does Trump have more things out there, NAFTA is not the singular policy issue in terms of the U.S. automotive industry. There are fuel economy standards that are out there.

U.S. corporate taxes and part of that has been the immediate write-off of capital goods and what is a more capital intensive industry.

There is, of course, a self-interest that they have in various of these actions against China, GM producing more automobiles in China than in the United States and big users of aluminum as well as steel.

So there is a lot out there for the automotive industry, and there will be for them some tradeoffs, and it won't be pure and simple. They could accept something in NAFTA that is not from their point of view perfect, but if they are getting something somewhere else that would be a factor.

MR. CUNNINGHAM: Dan, do you want to talk a little bit about who wants to get what out of this?

MR. UJCZO: On the big picture, sure. First and foremost, again, it is a privilege to be here, and thank you for the invitation. At Dickinson Wright we are a continual sponsor here. We were a little late to the game this time just because, frankly, we didn't know if we could be here given the way that the NAFTA schedule was.

And then I forgot I had a trip out with our U.S. Ambassador Kelly Craft to Calgary, so when Ann Wilson called, who I work regularly with, we are proud members of MEMA, I think we were one of the founding members of MEMA at Dickinson Wright.

As some of you know, Dickinson Wright was founded in Detroit. The firm incorporated Chrysler. Auto is part of our DNA, and we are, of course, proud members of APMA with Flavio Volpe and the gang. So Ann and I talked, and I forgot that I was going to be in Calgary when we were in D.C. earlier this week.

And she said could you cover CUSLI at the end of the week? I think I have probably come the farthest, even though I live two hours away.

So I flew in last night. That's a little bit of the head cold. So Ann and I about a month ago when we were in Mexico City and sat down together, and we were talking about this presentation, and we kind of laughed as we walked out of the door after having breakfast and said it will be funny, will this presentation be the same a month from now, April 2018 versus March of 2018?

And I am not sure it is the same presentation that I would have gave yesterday, frankly, in terms of how fast things are changing. On the ground, we are in rule of origin negotiations that are just wrapping up as I said earlier today, at least, towards this session.

Just the big picture, looking at this in the NAFTA itself, we keep using the term "modernization," and I think that term means different strokes to different folks in the sense that modernization means something very different to the Canadians and Mexicans than it means to the Americans.

And so I always go back to what President Trump said on February 2nd of 2017 when he met with House Ways and Means and Senate Finance a couple weeks after the inauguration, after the flurry of activity we saw, and he said I am going to renovate NAFTA, and I thought there is the perfect word for a real estate mogul who turned president.

And that's exactly what we are doing. There is really three buckets. Bucket number one, and this was talked about earlier today by Peter and Jeffrey, where we are just putting on a fresh coat of paint on about 14 chapters, anticorruption, competition clause, small and medium size enterprise. That's my favorite one, North America, small and medium size enterprise dialogue.

I worked in government, Canadian and U.S. for 15 years. Whenever you see the word "dialogue," it means there ain't nothing in it. But so -- and those are the things -- and frankly, we are talking a lot about those things this week, and I think as somebody said earlier about ten chapters could be closed, it is those. It is the fresh coat of paint.

Then, there is the upgrades where we are putting in new fixtures, upgrading the appliance in this renovation, and that's the digital chapter, the customs and trade facilitation chapter, telecom financial services, and there is a lot of good news.

People don't generally focus on that aspect of it, you know, getting this deal updated to the 21st century. Now the problem is, that's where the Canadians and Mexicans wanted to stop. So when you ask me what were the Canadians and Mexicans proposal was, hey, if we are coming to this dance on NAFTA, we are going to end there. Let's just have the good stuff.

And the problem is they don't live here in Ohio or Western Pennsylvania, Western New York, up north, Wisconsin. These are areas where I was involved in the presidential campaign. We run a lot of the Congressional races. We are running Senate races.

Right now I kind of concur with the earlier sentiments, and I think even if we get an agreement in the coming days and weeks, there is no way it is getting passed in 2018 in the U.S. Congress because Governor Blanchard said it. If I am a Democrat, why would I possibly vote for this deal?

Because even if I like it, even if it is UAW, if I bump Sherrod Brown, why would I take it? I could wait until 2018 and get a Blue Wave and get a deal with Amwell and a progressive government in Canada. I can get a better deal probably.

If it means Democrat votes, it ain't going to get done, and yes, it needs Democrat votes because the constituency right now that is most anti-NAFTA in the United States is white males 55 and older, and if it needs to be said, Republicans.

I mean, that's what all polling is showing us right now. So there is not a clean sweep in the lame duck as one would predict in Republican Congress. And if you doubt me on that, look at healthcare. Look at tax reform, and look at what we just recently saw.

So there was this last bucket, and this is what we are talking about right now, which is why we are knocking down walls in this NAFTA. And specifically, you know, someone called these the poison pills.

Automotive is at the top of the list. Government procurement, we will talk more about dispute resolution, the sunset clause, labor, which I would put in the so-called poison pill knock down wall, but that's being dealt with a little bit.

But one nobody is talking about is textiles, which is a huge issue, particularly in this part of the world in places like Columbus or in the Carolinas or elsewhere. So what the objective -- and into that as well with seasonal produce, and as I noted earlier, that is a big issue with our friends in Mexico. The U.S. policy was very simple. They want to stop Dick Cunningham's clients from bringing in steel into the United States. All of us -- I am kidding of course but not really.

(Laughter.)

MR. UJCZO: But any of us that were around the table with Secretary Ross last year and because USTR-Lighthizer wasn't confirmed, we all heard the same story. There is a piece of Chinese steel that goes to Japan, gets exported duty free into Mexico or Canada, and becomes an exhaust pipe in your car. We heard that story.

Now, none of our auto companies could actually find that piece of steel, but that was the story that we heard. So priority number one was cutting down the back door because as we know Bob Lighthizer and others were China warriors, and so cutting down, shutting the back door was priority number one.

And priority number two was making it as difficult to do business in Mexico as possible. And so that may be through a wage increase, so as we talked about the specific proposals, it also means something like eliminating Chapter 11, investor protections in Mexico, but those are the two major priority areas, and then getting it through Congress.

And one of the things that I think got lost when we started calling these things poison pills was the actual strategy for looking at that basket of issues. Some of it was policy. Bob Lighthizer just doesn't like Chapter 19, and there was a spirited discussion within this room, and there historically has been.

I have been coming around here for 20 years. We have been talking about Chapter 19 I think every year since the day I walked in the door. But if you look at what that laundry list was, it was I got to get votes from this from auto districts of Republicans and Democrats so I better have an auto proposal for them.

I got to have a textile vote so I need votes from the Carolinas. I am going to need seasonal produce so I can get votes from the great tomato wars from Florida. You know, Chapter 19 is synonymous with softwood lumber as was said earlier, so while it has this kind of life of its own in Canada, on Capitol Hill for Pacific Northwest, and in the U.S. southeast, that's softwood and supply management.

I have been in meetings with Chuck Schumer, with the Canadian delegations where, one, he shows up about an hour late habitually for those meetings, but he will come in, say "I don't really want to hear anything else. What are you guys going to do on supply management?"

What are you going to do with dairy, and if the people don't have something to say, he has walked out with some of the leading CEOs in Canada, and the same can be said with Paul Ryan, Speaker Ryan -- Speaker Ryan for a while, soon to be not so Speaker -- and you know, so here is the situation that we are in right now, and I'll get to the specifics in a minute.

As we are getting a deal anytime, the U.S. has to make a concession on one of those areas, that's going to cost votes potentially on the floor and final deal itself in Congress. So we may say, let's just get a deal quickly here. If we get autos, we can then maybe punt on supply management.

Well, you've lost 10, 15, maybe 20 votes. We have a huge white board of every member of Congress, every vote they have ever taken, what letters they are signing on NAFTA and what public statements that are making.

It is remarkably inconsistent on the statements and letters that they are signing right now, but just looking at an abstract deal I would say we are about 45, 50 votes short, even in a lame duck year right now.

And it is tough to do without a formal deal, but this is going to come down to old fashioned horse trading, and the machinery right now isn't there to get a deal through.

We talked with a lot of the folks that were around with the last NAFTA and got through Congress. We are nowhere near the mobilization effort that we need

to do to get a deal through, and we are not going to have a Speaker, et cetera, et cetera.

I would just conclude with some of the broad strokes. For the auto industry -- and this gets to John's point -- the automotive ruffles of origin in NAFTA are extremely important to us right now, but Section 232 tariffs are even more important at this stage, particularly the exemption for Japan, because high grade specialty steel that is in every spring in an automotive automobile, and I don't care how technology sophisticated your automobile is, it has springs in it. That specialty steel, is made in the Netherlands and Japan. And you can add other components to that, and it is not just --

MR. CUNNINGHAM: Clients.

MR. UJCZO: Not just used in Honda here that creates 5,000 jobs here in Ohio or in Tennessee, it is used across vehicle platforms. So if we are not able to get some of those specialty steels in that, quite frankly, U.S. companies can't make, we don't have the capacity or the capability right now, but even if we did, the tonnage is so small it is not worth it for them to do it, to be honest with you.

So we need to bring that in or the assembly lines are going to start shutting down in the next 90 days. So 232, hopefully when the Japanese are here next week, we can get that problem solved relatively quickly. But that brings me to the first specific proposal that we have, which is that the automotive rule of origin discussion has a component in it which will require 70 percent of all aluminum steel and glass to be made within the region meaning in North America.

Right now as of a couple days ago that was only for auto. Right now it is expanding to all tariff classifications, so it is not just aluminum steel and glass in the automotive industry; it is for appliances and other types of people. So the idea is, if we could get folks to sign on to that, then you will get your permanent exemption on May 1st.

MR. CUNNINGHAM: From the 232.

MR. UJCZO: From the 232s.

So the auto discussion in NAFTA right now, which is taking place over the last few days, is having an effect on the 232 discussion because we are up against, too, as was stated earlier, two real procedural deadlines.

We have the TPA deadline where I think we are past time to be honest with you, but some may be able to fudge this for a few weeks. If we are to get a deal even through the statutory mechanisms, we are out of time, but also we have this May 1st deadline on the steel and tariff, steel and aluminum tariffs.

We can talk more about the specific proposals, but that's the big issue right now is because the Mexicans showed up thinking they could get a deal, and all of a sudden they were told the 70 percent would apply across the board on all tariffs, and I said whoa, because contrary -- as was stated earlier in a question for those of you that weren't here, the Mexicans came to Washington ready to make a deal on three -- should they get the three points, auto, seasonal produce, and Chapter 20, and I realize the practical challenges, but EPN and EVA strategy was to try to get this through in their lame duck in September where they still have majorities in the Senate, practical, a lot of challenges to do that, but -- and I agree with Jeff's comments earlier.

I think it is a pipe dream to try it, but they were and they showed up and realized that Lighthizer was going to squeeze every drop of blood he could, and so the pause button is on.

Now, there are some other proposals we can talk about, but overarching strategy, that's the problem, but the third final point that I will make has to do with what was said earlier when Jeff commented on the view of USTR toward Canada.

And it is something that those of us that advocate in the Canada-US relationship confront quite frequently at USTR with their views with Canada, and it is not only because Canada has strong negotiators; it is because they see Canada as running against those objectives.

Specifically on -- it is one thing to say diversification and do a TPP, TPP; it is another thing when we are trying to close the back door to China and Canada is over talking about opening a trade deal with China in December.

And I think that changed some of the tenor and tone of these negotiations, and the complaint that the Canadian Government filed against the United States challenging all of the trade remedies ostensibly as part of the softwood lumber debate really did sour some of that.

So I would expect that one of the USTR's requests to keep the steel exemption, steel and aluminum exemption will be that Canada will have to withdraw that second WTO complaint, which for those of you who may not be familiar with this, Canada essentially pulled a WTO complaint off the shelf that challenged every -- the way that the U.S. calculates remedies in many, many cases where the overwhelming majority of the products were claims that were brought against China. So that was mixed messaging.

This is at the same time that we are saying we make things together, we build things together, we are in this together as a North American community, let's talk about a North American platform, Canada's talking about doing a deal with China and bringing claims against the U.S. to enforce U.S. trade remedies.

Now, it was for a specific purpose in softwood, so that's why we get to Montreal, and you have to ask yourself, as a Canada-US community a year into the NAFTA negotiations, we have Bob Lighthizer standing on a stage defending Mexico and chastising Canada, like something has gone terribly wrong in terms of positioning at that point.

Now, I think over the last few months we have gathered things together, and I think there is an opportunity to have a more reasonable discussion, but that mixed messaging was a big issue for those of us that were going on to the Hill and meeting with USTR and elsewhere throughout most of the last six, eight months.

As we would hear, yeah, yeah, Canada wants to shut the back door. Then why are they trying to do a trade deal with China? So that's why it was very important for Canada -- I think the Trudeau Government did a great job with the 232 tariffs saying they would up their enforcement efforts in terms of monitoring, things at the border and the like.

So I will stop there. We can get into the specifics, but overall vision, that's where we are right now.

MR. CUNNINGHAM: I want to unpack a couple of these things for you, but before doing that, let me talk a little bit about the last point that Dan made here,

and you need to have it in perspective, and this is not a NAFTA issue; it is a China issue, but it affects NAFTA and affects the negotiations in precisely the way Dan mentioned.

Over the last two Administrations before the Trump Administration, it was increasingly apparent that the focus of U.S. import relief concern was going to be China, that there was discontent that China was not moving toward the market oriented view that we thought they were going to move toward, which was this basis of our admitting them to the WTO.

There was a reluctance in both the Bush and Obama Administrations to do, quote, "protectionist things", that is, things that were like the 232, an artificial imposition of tariffs without the attack on unfair practices.

And so all the China issues were funneled into the Department of Commerce antidumping and countervailing duty cases, and the Department of Commerce, with the encouragement of the politicians, adopted a number of internationally controversial techniques to inflate antidumping and countervailing duty measures, and they are things like adverse facts available, something called particular market situation, treating China as a non-marketing economy, use of zeroing or some permutation of zeroing.

All of these are now actually under challenge in the WTO, both by Canada and a number of other countries, and it is going to come up for decision at the panel level this fall. Unfortunate time for that to happen, a time for a whole bunch of those decisions to start coming down the road against the U.S. just at the time when we've got midterm elections coming on, and Canada is seen as a country that has been at the heart -- shouldn't have been at the heart -- because this was not originally focused on Canada; it was focused on China.

But Commerce Department adopts a policy and uses it against China and says, well, we can't be seen to be discriminating against China. So we got to use it against everybody else.

And so other countries, including Korea, the EU, and Canada have attacked them, and Canada has done a particularly comprehensive attack. That has been a real -- and that is, you have to understand, that this Administration's trade bureaucracy comes from a tough antidumping and countervailing duty enforcement culture, particularly steel industry people.

I refer at the USTR and Commerce as the steel protectionist all-stars because that's the people who have been appointed there, including Bob Lighthizer. That affects NAFTA but not so much autos directly, but it affects the Chapter 19. It affects the U.S. attitude toward Canada.

Let me come to move that aside for just a second, and let me go to sort of a broader reaction I have that was just said by the various people here.

I think back to the days when NAFTA was first being discussed, and the policy that led to NAFTA was being developed, and the idea was a very sort of idealistic vision of making North America a more competitive international entity, that is, taking the strengths of Canada, the strengths of the United States, and the strengths of Mexico and putting them and you recall together to make us all more competitive against the world.

And if you think about that in terms of autos and think about what that meant, you find that it was advantageous to the industry because the industry got developed supply chains, it developed cooperation among the three countries and was basically, has become more competitive than it would have been without this.

But -- and this is a criticism or at least an observation as to what has seemingly gone wrong with globalization at large is -- we haven't paid attention to the losers. The losers tend to be the industrial workers, and that is where the big problem has been. You have production moved -- of autos moved to Mexico with autos and auto parts, moved to Mexico primarily to get a favorable labor rate.

So you come to -- and if you take that as the heart of what's wrong -- what seemed to be wrong with NAFTA, then what you should be saying how do we do a deal in which we can address that somehow while still maintaining as much as we can of the joint competitiveness of the North American economies.

And that's a difficult issue, and it is one that I am disappointed that we don't really address. We look at this as individual pockets of issues, as Dan just went through, and we don't look at this as a holistic kind of exercise as to what should we be doing to protect workers in the industrial -- in the two industrialized countries while we are increasing competitiveness as a whole.

And how does that come about in the NAFTA discussions? Well, there is the argument that, well, Mexico, they have a higher minimum wage. We have heard that said by two of our panelists as being a nonstarter from Mexico's standpoint, and I think that maybe is right.

There may be some room for negotiation on that, but you are certainly not going to get Mexico to a \$15 an hour minimum wage. You can do rules of origin, so that the content from the U.S. and Canada and particularly the U.S. in order to get entitled to the Free Trade Agreement benefits is higher.

But understand there is a limit to what that means. That means a lot for trucks because there is a 25 percent U.S. tariff; doesn't mean a hell of a lot for autos because there is a two and-a-half percent tariff there. Or you could do things like -- this is kind of -- I am almost embarrassed to say it because who would think this is a good idea, to make investment in Mexico more risky by getting rid of or watering down investor state dispute settlement.

Now, let's put that aside, and we will leave that with the next panel to deal with that hot potato. But the question is: Where could we go on this, and what -- I would like to have us all talk a little bit about what are the proposals that are being made now and where we stand? Is there any room for play on the negotiation on wages? Is there any -- where could you go on rules of origin from an original U.S. proposal, which was 70 percent rule of origin from the -- in other words, you had to have 70 percent of your content be from a NAFTA country to be entitled to do your favorable treatment plus 50 percent of the content had to be from the United States.

Now, you move to -- the 50 percent I think has been sort of pulled back, although I am not sure it is entirely off the table. Seventy percent has been broadened beyond autos to go to autos and everything but the kitchen sinks. Maybe kitchen sinks are in there.

(Laughter.)

MR. CUNNINGHAM: They are in there. Okay. Where does all this -- Dan, you are probably on top of the current state of what the proposals are more than anybody else here.

MR. UJCZO: Yeah. Well, the original proposal by the U.S. was to take the 62.5 that we have, would have had, and as you said bump that up to 85 percent --

MR. CUNNINGHAM: Right.

MR. UJCZO: -- total and 50 percent of that being U.S. made, not a lot of clarity there on the 50 percent, for example. You know, some of our clients that do seating and the frames coming from that state up north in Ohio, foam is coming from the Carolinas, it is all sent to assembly into Mexico and comes back when it still has its U.S. character; lot of problems, and I should also add one of the things that didn't get a lot of press because it gets complicated was expanding the tracing list so adding more things that would never count toward North American --

MR. CUNNINGHAM: Explain that a little because we talk about tracing list, and while I think this is a fairly educated group, 70 percent of them here know what they mean by tracing list, what we mean is --

MR. UJCZO: I think the easiest way to say this stuff is, it will never count toward the NAFTA, or we have to always know where it is coming from.

MR. CUNNINGHAM: In other words, your intellectual property or your labor content or something like that, that historically has not been treated on what counts during the 85 percent, well, 85 percent, and 50 percent things would be counted in there.

MR. UJCZO: Yeah, and then that's what -- so we were sitting there at that 85-50 and kind of in a squishy room, you know, would there be things -- and there was something else talked about by the great luncheon speaker, which is shutting that back door, tightening the rules on substantial transmission, so goods that could come in from overseas.

And I will say, I think there was an enlightened view developing about this time last year. So you started to hear Secretary Ross, who is, frankly, less relevant now than then but would talk about a North American production platform.

MR. CUNNINGHAM: Right. And remember Ross is the businessman in this current Administration as opposed to Lighthizer -- an excellent guy, an ex-steel guy, also a textile guy -- but, as opposed to Lighthizer, who is the one who come up through a career having spent time in bringing trade cases on behalf of U.S. industry seeking production from imports.

MR. UJCZO: In that vein, so what went from there is, we were basically at impasse for a while, but we were starting to go out -- actually, the Mexicans I thought who had played their hand beautifully up until recently started to say, hey, we admit that about 3 to 5 percent of stuff in the North American supply chain was probably coming from Asia.

And industry itself, we were starting to say, you know, our blanket certificates of origin that we have had, stuff in Mexico, we don't always know if it is coming from Mexico. It is coming from other parts of the Americas. We could probably tighten this up and come up with a nice good rule of origin that works, and then, unfortunately, I think a lot of the other developments took over that we talked about throughout the day, and then we came into Montreal at the end of January.

And Canada made a presentation, not a proposal, which basically advanced something that the Boston Consulting Group working with MEMA and others and the global auto makers had come up with, which was focused value, which is really a more enlightened view of -- which essentially is the body and weight of the vehicle, which is the frame of the vehicle BIW -- is that things below that we wouldn't really care about.

So things that are -- and this is aggregating a bunch of different presentations and proposals, but we will just say we started moving in this direction where screws, nuts, washers things we really don't make efficiently here, we would have either lower rule of origin thresholds, or they wouldn't count.

We wouldn't care, but what we wanted to do is keep high value components made so the steel and aluminum would be made here in North America, and then we would start tiering the components, and the hope was over time is that 85 would start to diminish. Why? Because if you are in the industry, you know, like the number is always about 73, 74 percent of the most North American automobile, is a Toyota, it is also a Ford, it is pretty darn close, is around 73, 74.

If you go to Magna, if you go down the supply chain, most of it is all around 70, 73 percent. So say your average Tier 1 auto company will have -- or plant will have -- a \$250 million-dollar procurement spend, about a hundred million and change, more than half of it will actually be directed by the original equipment manufacturer.

So the D3 will tell them where to buy that stuff. Then, they will have a lot of discretion over the rest, but most of that is coming from North America because, quite frankly, they have to source from local places usually just from transportation cost, so most of them will say \$50 million probably is NAFTA non-compliant.

And then if you looked at them, wink, wink, smile, smile, hey, Dan, we could probably do like 70 percent rule of origin. 85 would kill us.

The other component of the broader focused value was, as Dick said, we would start counting things we haven't counted, R&D, sales costs, things that were high volume that we are doing here in North America already.

So part of that kind of Mexicans admitting that 3 to 5 percent were saying, hey, let's shut that down because that stuff is coming from Asia anyway. Those OEMs that are directing a hundred million are telling us, telling our people in Mexico to buy from Asia anyway. Let's shut that down, and that will just make -- that will benefit us here in Mexico.

So we were starting to move in the right direction, and then really what happened from January to March of this year, the Mexicans really expressed more of a willingness to reach a deal. So we hadn't really flushed out the contours of that, and that's happening as we speak, but then the U.S. came back because USTR Lighthizer has got pretty hard on the question, where is the labor proposal?

So I flew up on the plane to the Montreal round with Congressman Sandy Levin from Detroit, who is not exactly a pro-NAFTA person, and I said "Congressman, why are you bringing this Congressional delegation up, bunch of Democrats came up?" It was bipartisan but mostly Democrat, and he said "we are up here to remind everybody if there is a deal, it has got to have strong labor provisions."

And then Lighthizer got hammered in Congress, and so the reality was -- but as was said earlier -- there is a labor chapter, and there had been talk of putting a wage provision in the labor chapter, but as I said, the Mexicans could never agree to a flat labor proposal.

So there is some brilliance in the Lighthizer proposal, which is, we will put a wage figure associated in the rule of origin. So now what we have right now is we are starting, the numbers are fluid right now.

Last count high value products will be at 75 percent rule of origin, transmission, certain components, and they will have a North American average wage associated with it of roughly \$15. It depends on how you do the math.

Mexico has a very complicated structure on how you pay wages, so there is no methodology developed for that anyway. So developing an average North American wage is going to be very complicated to do because of how Mexico pays their employees, but then, there will be a next tier at 70, 65, and those numbers.

I don't want to go on the record with those because I think they will move, but the reality is, the Mexican private sector, the side room, has instructed the negotiators to the extent it can, that they don't even want Mexico talking on a wage proposal.

So as of yesterday, there hadn't been much progress on anything, and that includes wages. But that gets back to the politics. Can we have a NAFTA that doesn't deal with the wage issue and still get through Congress? So --

MR. CUNNINGHAM: With that sort of state of play in mind, let me turn to Buzz and John; Buzz from the labor standpoint and John from an industry standpoint. It seems to me that if you are looking at it as from industry, from a U.S. and Canadian industry standpoint and your focus is Mexico and what we are doing to address the fact that Mexico stands out there as an attraction to shift production to Mexico or to maintain production in Mexico, it seems to me that the companies are looking at this and probably saying what does this mean for our value chains?

Does it mean we can essentially keep them the way they are, or do we have to start bringing that production back to the states and Canada? From a labor standpoint, it means -- does that really mean something to us? Does that really get something that we really -- that really benefits American labor, which would be in terms, I guess, of higher wage rates in Canada or a less attraction to U.S. companies to put plants in Canada.

So if you two could sort of talk about how this might -- this sort of negotiation might resonate with the two constituencies.

MR. TENNANT: You made the point earlier about North American competitiveness.

MR. CUNNINGHAM: Right.

MR. TENNANT: And everybody has long said that that part of North American competitiveness vis-a-vis other parts of the world is, you need to have a low cost supplier in the mix. Europe has it. Asia has it.

So all of this, at least to some extent, starts to make that lower cost part of the equation, higher cost. So we accept that, and that's in the ideal theoretical world something that you have to be a little careful how far you go on, and what has been

raised, too, is complexity and the question to which some new rules are going to upset the way people have been doing business and force them to reinvent things.

And all of that costs money, all of that involves uncertainty that is afoot. So there is some problems there, but as I heard Dan describing this tiering of value wage, though it will be extremely difficult in the details, it sounds to me more like an incentive, or it would be structured to be an incentive to do things in the U.S., and by definition that would probably also mean Canada as opposed to doing it in Mexico.

The incentive was to try and get more high value production even more solidly. And at the end of the day, you certainly could have a package that is politically saleable that may not be something that has done a huge amount to throw out the competitiveness, but it is headed in the right direction.

Is that good enough for labor? Tip of the hat, maybe a little bit more, but it is pretty hard, as I think we had somebody earlier in the day talking about, in terms of trying to jack up wages in Mexico.

MR. HARGROVE: Thank you, John. Personally, I am just thrilled to be here. I have learned more today about what's going on from Dan and John and Dick than —

MR. UJCZO: That will change tomorrow.

(Laughter.)

MR. HARGROVE: -- reading the papers and talking to some of my own people who are close to the negotiations.

I want to deal with the first point that Dick made, and that is, can we be competitive as a North American entity? And if you look at pre-NAFTA in North America, we exported about 3 percent North American production to the rest of the world. And guess what? Today it is about 3 percent.

There has been no change because we don't lump the three countries together unless they get a median cost thing and try to reach that. Everybody is grasping for their own.

As we watched the Mexican automobile industry increased from somewhere around 780,000 vehicles pre-NAFTA to over 2 million vehicles today, and within the next three years they claim it will over 4 million vehicles they are going to produce. We are producing now 4 million vehicles more a year than we did when NAFTA was signed back in '89.

But Canada has had no advantage from that, not one iota. The U.S. has had some advantage, but Mexico has picked up over 80 percent of the production of that increase in vehicles since NAFTA was introduced.

So there is nothing I've heard today or anything on the table that I am aware of or, quite frankly, nothing that I can think of that would allow us to be able to compete in an international market.

You look at what's happening with the European Union, you bring in countries like Romania and start building vehicles there and Czechoslovakia, some of those countries, they are going to be North America's Mexico, and as Dan pointed out, Asia already has all of these low cost producers in China and in Vietnam, and so there is a whole -- I don't see much hope for that changing very much.

The one thing that could be done is the ability to unionize. That's the problem in Mexico. They have unions in Mexico, but they are what the labor movement refers to as ghost unions, and I am not just talking about the North American labor movement but the European labor movement.

And the companies are going to make an investment. They call out the government-controlled unions and invite them in, they sign an agreement before there is a shovel in the ground or before a worker is hired, and the terms of the agreement are settled then at \$2 or \$3 an hour.

In Mexico, that's a pretty good wage in a lot of communities. So something in NAFTA to require legitimate independent unions, there will be a lot of people that will choke on that around the negotiating table, but that is the reality. That's the only way I know of if you are going to take advantage and force up the labor costs and see what happened in Canada.

We are at several dollars an hour, and I forget the exact numbers, but in 1965, we were behind the Americans in terms of nominal hourly rates, and 1967 when we ratified our agreement, it brought us to full parity in each country's currency by 1970.

We still got a -- got a copy from not the Trudeau of today but his father, who was prime minister of the day, criticizing our union for taking away the advantages under the Free Trade Agreement by negotiating wage parity with the Americans.

So it can work if you have legitimate unions as part of this agreement. I don't know how Mexico could argue against that publicly. How do they stand up and say we don't want or we don't accept that there is going to be legitimate unions in our country.

MR. CUNNINGHAM: Dan, you had something to say?

MR. UJCZO: Yeah. I just wanted to say, I wanted to add, I want to reemphasize, if I didn't say it at the beginning, I am not suggesting in any way, neither me nor Dickinson Wright, agree with these proposals, just to be very clear on that.

I am just saying, if that is the objective, this is what they are trying to do, but my concern is three-fold on what we are seeing right now.

One is there is a compliance burden. Companies right now are barely meeting compliance burden. The compliance on rules of origin as they exist at present are already so problematic we see companies, there is a barrier entry, companies forego using them.

Adding these additional requirements, it is going to be great for customs brokers around trade lawyers. I mean, it is going to be wonderful if it comes to fruition.

The second is, practically speaking, it is going to kill suppliers because a lot - - the movement we are seeing in Mexico today is very rarely due to wages. It is -- most of these companies right now are following the original OEMs. So they need to be within a certain radius of the part, they need to be in the auto production part.

Mexico has done a great job of giving incentives to companies to come down. So we talk about the cars that cross the border six to twelve times during the assembly process between Detroit-Windsor and Mexico. The car is being assembled from loading dock to loading dock in the same assembly part.

So those suppliers that are presently in Canada and United States are taking financing to go down and to set up shop in Mexico assuming political risk, all of those things. They are running on shoestring budgets anyway.

Now, you've just increased the labor costs. And that cost does not get passed on to the OEMs. If anybody knows how the OEMs work with the supplier, you figure out a way to make that cost work, or you are gone, you are out. And you don't get back in.

Usually Paul and others can talk more about that. So that additional cost is not going to get passed on. The supplier is going to have to figure out where that's going to hit is back here, and they are going to start laying people off in Canada and Mexico, and it is going to have the opposite effect.

And last but not least, I don't think the Administration of Jack Davis to bring back the facilities that are in Mexico now, that will take decades to do so because it will require encouraging new investment, so you try to change that calculus that the auto companies are using where they figure out where to invest. It is a large algorithm essentially.

If you start figuring out supplier costs, all those things, but guess what? That ain't going to be Michigan, Ohio, and Ontario at the end of the day, so where this is a significant part of the President's base? This is not going to be the place where you are locating your next big automotive supply plant; it is going to be in the U.S. southeast most likely, which are right-to-work states.

MR. TENNANT: Toyota, Mazda just took a decision.

MR. UJCZO: Right, absolutely.

MR. TENNANT: And where was it? Alabama.

MR. UJCZO: Exactly. And I think these are things that -- I think they look good on paper. They sell in Congress, but the practical consequences are not going to be what the Administration thinks that they are going to be.

MR. TENNANT: Another way to put it, it could be presented as a win for the U.S., for the Administration if there are no further OEM plants going into Mexico in the foreseeable future, and whatever the rules are, give the public, labor, and others comfort that that's going to be the case, but gee, how do you do it?

MR. CUNNINGHAM: I listened to part of this, and I think one of the most brilliant strategies for us could be to get Lopez Obrador elected president of Mexico, and then they will have risk that would prevent anybody from investing there, but that's a joke I think.

MR. UJCZO: It is a very real.

MR. CUNNINGHAM: Anyway, let me just add to what you just said, John. Let me come back to where you started out in our discussion before, and that is that the essence of decisions made by governments on trade issues relating to these big important industries like autos is politics, and the politics overwhelm the economics.

And if you look at it that way, I would like us to talk a little bit about whether something didn't come out of here that trump can ballyhoo and say I promised, and I did it and be believed.

Now, let me say as an introduction to that in a less heated media, namely Korea, we just did a deal which Trump or Lighthizer said, "see, we did great things

for the automobile industry". Those of us who know anything about the deal and those of us who know anything about U.S.-Korea auto trade know that it is pretty damn near totally cosmetic. It has two aspects.

One is that Korea has more rigid environmental and mileage and safety regulations than the United States, but we had a provision, full confession. I negotiated this provision in the original course, that up to 25,000 U.S. cars per year can come in and be certified to sell to Korea, even though they only meet the U.S. regulations, not the stricter Korean regulations.

The problem -- and this new deal we've said we are going to increase that to 50,000. That would be real meaningful if we had ever got near the 20 or 25,000 we never had. We never got above 20,000.

The other part of the deal is, we would -- as we said before, there was a 25 percent tariff in the U.S. on light trucks. And that was scheduled, of course, to expire in 2021, and we have extended that for 20 years to 2041.

The only problem is, Koreans don't sell light trucks in the United States and don't have any plans to do so, and if they did so, they would probably produce them in the two Hyundai and KIA plants here in the United States.

So my point in saying that is not to talk about folly and U.S. negotiating or anything like that. I can do another hour of that anytime you want but, rather, to say that there are ways in which Trump has been able to on this and some other issues say I kept my promise. I came through, and I did it even though somebody looking really close at it might say wait a minute. Wait a minute. Your promise's fulfillment is not all that meaningful. But NAFTA is under the spotlight a lot more. NAFTA is here. NAFTA is right on our borders.

So how does Trump come out of this a political winner, and what is he -- the reason I say this is such an important issue, it strikes me that there comes a point at which Trump and Lighthizer and the team that is doing this have to make a decision do we come out a political winner by doing this, or do we do the only other way in which we could make ourselves a political winner, which is to engineer a shutdown of the NAFTA negotiation talks, and I say that very clearly.

I think now they set it up so Trump doesn't walk away from the talks. What Trump does is, he says no exemption from the steel and aluminum tariffs for Canada, no exemption from Mexico, and Mexicans say, well, we are not going to negotiate, and the Canadians say we are not going to negotiate in NAFTA, and Trump then says good, it is all over, and I am leaving the talks.

So it seems to me there is a time that comes when Trump will be faced with the decision I either got something that I can ballyhoo as a political victory, or I engineer a collapse of the talks, and is there a way to get to the first one?

MR. UJCZO: I think we got our answer yesterday in the President's comment in my view. I am from the school of thought and, you know, being engaged in politics in part of the world, that getting a deal doesn't help him in my view because it is not going to get through Congress.

And he can blame Congress, but I think saying that I stopped automotive investment in Mexico because of the uncertainty and I am beating the hell out of the Canadians and Mexicans and et cetera, et cetera, I think the limbo is a political win for the President right now.

And members of the Congress, look, NAFTA is not a four letter word itself, but if you say it in this part of the country, you are going to hear a four letter word. I mean, that's just the way it is here. There is not somebody --

MR. CUNNINGHAM: Five letters.

MR. UJCZO: There isn't somebody -- but you are going to hear a four letter word. I mean the F'n NAFTA is usually North American F'n trade agreement, right, in this part of the country.

And there isn't a member of Congress that wants to touch this issue right now. It is political dynamite. Right now it is very quiet, but it could blow up. You know, the farmers are already driving everybody in everybody's halls.

So in my view, I don't think there is anything they could put on the table right now that could get this through Congress because, look, if you get a win for labor, who is going -- just take right what we got, you are probably going to get a deal without investor state dispute settlement.

You are not going to get the U.S. Chamber of Commerce's resources to support that deal. You are not going to get the Business Roundtable's money. I just think we all have to appreciate that this isn't 1993, 1994 again. The politics are much, much worse. We are not mobilizing R&D in the same way.

The politics of trade are very different right now. It is not just here in the Midwest but throughout the country. The real steam to get a deal right now is coming from Texas, from the Texas delegation, from Kevin Brady, chairman of the House Ways and Means. Why? Because Houston has invested a ton of money in Mexico right now and Mexican energy reform, so they are saying, "get a deal before AMLO gets in there so we can lock it down".

But I am not sure, that's not where the President's base is located. So I don't -- I mean, I am optimistic that we will have an agreement if in principle, say, here is 80 percent of the things we agree upon. We are working on autos. It looks like this Canada-Mexico, you are going to get your exemption, and we will go beat up on China for the next nine months but because I just don't see a win any other way.

MR. CUNNINGHAM: So would anybody like to follow that supremely optimistic view with anything that is of a different tenor?

MR. TENNANT: I think I would -- I don't have reason to disagree with that. I think Trump is currently in a very comfortable position. The job owning that he has done has kept anybody from putting in a new automotive plant. And he said yesterday that that's the case.

And if anybody doubts that he won't continue to do that, he sent a shot across Jeff Vesto's bow the other day. He is going to keep doing that kind of thing.

In the meantime, I think in some of the public eye he has got -- seems to get wins on Korea. I would be very surprised if there aren't some concessions that the Chinese have already started to move towards, and if he is comfortable enough that it is status quo, no further action with Mexico, then he is doing okay.

But if there is some real genius that can come up with something simple that it would come under much, much more scrutiny, the content requirements, new content requirements for NAFTA, then Korea or other things, if he can get something there, I think he might want to move.

But he has got to be able to get it through Congress, and it has always been a tight run with the Canada-US Free Trade Agreement and Canada, and this doesn't seem to me -- I am not the expert.

MR. CUNNINGHAM: Any comments, Buzz?

MR. HARGROVE: Yes, quickly. I think he is concentrating on the wrong enemy so to speak, and I agree with Dan and John. I don't think there is going to be a deal where we are going to end up, and there is going to be a victory for this portion on his trade agenda, but what's still sitting out there where he could really make some inroads and people are really concerned about is the level of imports that are still coming into our market, North America, from mostly U.S. and Canada but from Japan, Asia, and there is not much that comes in from China, but Europe.

And it is going to increase with the European Union Trade Agreement. You are going to see lower costs going into vehicles and those imports going to increase. So taking a harder line on the imports and demanding a level of content on them would help rebuild the auto parts industry in the United States almost overnight, almost like the Auto Pact when it was signed back in 1965.

MR. CUNNINGHAM: On that note, we are running close to -- we got to go to some questions here. We have run over, as we always do, but yes, sir.

MR. JOHNSON: Jon Johnson. You know, point of clarification, and this is a technical thing with rules of origin, but I think it is important.

And this is where tracing fits into it and the way cars -- and I will just deal with cars because the way I understand -- you start out with the concept of total cost, and that's everything, all cost.

And you subtract some things from that that aren't particularly relevant other than royalties. Royalties aren't subtracted if they are used for software in North America. So that's your base, and that's your denominator.

Now, the only thing you subtract from that are items that are in the car that are imported into the NAFTA territory from outside the NAFTA territory under specified tariff provisions, and there is just a list of auto parts, engine parts and wheels and things like that, a specific list so everything in the car that is on that list counts against the producer. Everything else counts in favor of the producer, so that means things like research and development, development of software, all that stuff counts.

Now, when you are describing this notion of having wages be a part of it and so on and so on, that just doesn't fit into this template. They must be contemplating something totally different.

MR. UJCZO: It is focused value. It is a higher different methodology, yeah.

MR. JOHNSON: Yeah. Because the tracing, it is an interesting concept, but it is totally alien to what seems to be on the table. Now I don't understand what's on the table. Maybe you do.

MR. UJCZO: Yeah. And I think that's a great point. A lot of the reporting on this has tried to fit the new methodology into the old wine skin so to speak, and we are coming up with a whole different -- or not 'we' but allegedly 'they' are.

Let me just say that the methodology, the proposal that the U.S. gave recently tabled did not include methodology to any degree of that.

So I think it was commented earlier that we were still at the concept stage. Now, we are talking tiers and brackets, but that point in and of itself suggests to me it is going to take months, if not years, to figure out what components are in, and they are trying to do this now. I don't -- it is a whole different kind of thing.

MR. CUNNINGHAM: One of my favorite television shows from my youth was called Monty Python's Flying Circus and always began with John Cleese sitting at a desk saying "and now for something completely different." And everything I see in the Trump Administration fits that.

MR. JOHNSON: Could I just --

MR. CUNNINGHAM: Sure, John.

MR. JOHNSON: John, you talked about the Canada-US rules of origin and the troubles we have and the NAFTA rules came along, and there was a lot of clarity. I think one of the critical things in that clarity was uniform regulations, is that we actually -- the U.S. negotiated task force, Sandy Marose and the Mexicans. I believe that the regulations putting the rules of original into effect in all three countries were harmonized, and they were totally.

The only differences or known differences was because of differences in the tariff schedules, and that had a huge amount of clarity. You could not work with the NAFTA text as it was. There are all kinds of things in the tracing, and the rest of it, it didn't deal with, and we settled all that in the regulations.

If we ever come to an end to this thing, I would urge the three governments to adopt that approach because I really think it is worthwhile.

MR. UJCZO: That's a good point.

MR. CUNNINGHAM: If they are ever smart enough to hire you as an adviser, we will be a lot ahead of the game.

Jim, you had a question.

HON. JAMES PETERSON: Jim Peterson. What percentage of the cost of a car is labor?

MR. TENNANT: The five percent is what Ray Tanguay, who, formerly worked with Toyota in Canada and until a week or two ago special adviser to the Canadian Ontario Government, says. Five percent.

MR. CUNNINGHAM: Has that come down a lot in recent years?

MR. TENNANT: That's what our union uses is 5 percent, and yes, it has come down. I think when NAFTA come in it was probably closer to 17, 18 percent.

MR. CUNNINGHAM: That's what I thought. Yeah.

MR. VANDEVERT: Paul Vandevent. That question, though, goes out to what John was talking about because that question comes up all the time. How much -- what's the value of steel in a car? What's the value of the labor content? What's the value of the U.S. origin parts? I mean, there are parts in there that are made in the United States.

MR. TENNANT: Sure.

MR. VANDEVERT: You should be able to count it. The rules go negative, and so nobody knows. It is a very -- you can do a very informed opinion, but as far as the -- all the worker bees that everyday qualify goods for NAFTA, even just in the automotive industry, it is all negative. They are only counting non originating content, and I think that you are going to have failed discussions

forever until you get to a method which -- I will admit I don't fully understand the focus value -- but until you get to a built up method of counting what originates, will you ever be able to get the discussion in the popular mind of just so how much does originate?

MR. CUNNINGHAM: Your question assumes that it is possible to understand focused value. My dad always described Einstein's theory as the theory that explains why it is hotter in the summer in the city and focused value may be much like that.

If there are no other questions, I want to thank you all. We have certainly enjoyed this and hope it has been somewhat enlightening for all of you.

(Applause.)

PROFESSOR PARRAN: All right. We will take ten minutes for a short break, stretch your legs, more refreshments in the back, and we will be back for our final panel.

(Recess.)

PANEL DISCUSSION –
NORTH AMERICAN DISPUTE RESOLUTION

Moderator: Maureen Irish

Speaker: Scott Miller

Speaker: Selma Lussenburg

PROFESSOR PETRAS: Everybody, please take their seats. Okay. All right, ladies and gentlemen. We are now with the panel that is going to focus on dispute resolution, a contentious point on a story, history on NAFTA, and we have the real experts here to talk about it.

Our moderator today is Professor Maureen Irish. Maureen is a professor emeritus at the University of Windsor Faculty of Law, and she has taught all types of courses on international trade law and international economic law, international business transactions, Canada-United States legal issues, and many more.

Most importantly, she has also served on panels under the Canada-US Free Trade Agreement dispute resolution provision and the NAFTA dispute resolution provision. So she has seen it from the standpoint of deciding disputes.

So, Maureen?

PROFESSOR IRISH: Thank you very much. So this is the panel in which we figure out how to settle disputes. So we've had many comments and views throughout the day, and this is the specific focus of our panel that will resolve all of this.

(Laughter.)

PROFESSOR IRISH: Or I am not sure. It is a little difficult to figure out how we decide the measure of success of dispute resolution. You know, does the success of dispute resolution mean that things are quiet, that's okay? Sometimes that's all right politically.

Does it mean we have had a lengthy discussion, and we have been through all the issues. We have everything solved, and we now have wonderful systems to go forward? Does it just mean that we get, you know, some kind of final resolution of that particular dispute, or there may be any other measurement of success for dispute resolution.

And, of course, there are lots of different ways in which the methods of dispute resolution can be addressed.

So to get us going on all of this going on, we have two panelists with expertise and experience in the private sector and in government relations. Donald McRae is on the program. Don is, unfortunately, unable to be with us because of illness and sends his regrets.

I am going to introduce the speakers briefly for the record. You will have further details in the conference materials, and then our two speakers will speak in order, and then we will have lots of time for questions and comments and any solutions that we might not have thought of.

So our first speaker will be Scott Miller, who is senior adviser at Abshire-Inamori Leadership Academy at the Center for Strategic and International Studies. He focuses on leadership development programs for public and private sector executives.

Until 2017, he held the William N. Shoal Chair in International Business at CSIS. The chair focuses on critical issues in the global political economy, including international trade, investment, competitiveness, and innovation.

In 2015, he authored “Investor State Dispute Settlement, a Reality Check.” Prior to joining CSIS, he was an executive with Proctor & Gamble, a leading consumer products company.

He has also been involved in a range of international trade, investments, and business facilitation issues and campaigned supporting U.S. free trade agreements and has been a contributor to U.S. trade and investment, of policy over many years.

He is a member of the State Department’s advisory committee on international economic policy and was the founding chairman of the Department of Commerce’s ITAC investment working group.

Selma Lussenburg until just very recently served as vice president, governance, general counsel and corporate secretary of the Greater Toronto Airport’s Authority. In this role, she led a team of more than 90 people providing advice and direction to the Airport Authority’s board of governors, executive team, and the organization on governance, policy compliance, security, corporate safety matters.

Previously, she served as chair of the Ontario Capital Growth Corporation, the Ontario Government’s Venture Capital and Private Equity business. She has also been senior vice president and general counsel and corporate secretary at OMERS, one of Canada’s largest public pension plans, and also vice president legal affairs and general counsel at AT&T Enterprises and AT&T Global Services.

She is currently a Canadian private sector representative to the trade ministers NAFTA 2022 advisory committee on the resolution of private international commercial disputes, and the Canadian chair of the NAFTA 2022 transportation sectoral working group.

So two panelists with a great deal of background and expertise, and I will first call on Scott.

MR. MILLER: Thank you. And let me add my thanks to the Canada-US -- United States Law Institute. It has been a pleasure being here.

I just mentioned to one of the previous panelists that I learned more in the last hour-and-a-half on NAFTA automobiles than I learned in the previous year-and-a-half sitting in Washington. So this was very beneficial from that standpoint, but I am delighted to be here and happy to be a part of this.

There are basically three dimensions of dispute resolution in the NAFTA. We talked before, but let me go through the taxonomy.

Chapter 19, which is somewhat unique, I start with Chapter 19 because it is sort of the one that is really unique to the US-Canada relationship. It comes out of some very specific U.S. Canada politics and continues in that manner, but it doesn’t really exist in any other U.S. agreements. And so it is somewhat sui generis.

Chapter 20, which is, I think, more generally state-to-state dispute settlement, which is consistent with U.S. free trade agreements with other economies. Most of them have a chapter that is similar for resolving disputes between the parties.

And then, there is Chapter 11, which is the investor state chapter. Chapter 11 contains obligations for the treatment of investors which features the investor state dispute settlement mechanism.

I want to save that for last because the one that has the most general problems in that, I think there is a broader context of the erosion of legitimacy for investor state dispute settlement in a broad based nature, is Chapter 11. So let me take them in order. I will go from narrow to broad if I could.

We have already had a lot of discussion today on Chapter 19. Chapter 19, of course, is the provision affecting trade remedies, and thanks to Peter Clark for spending time on his panel talking about the -- sort of 'from whence it came'.

Let me just make a couple of the additional points about Chapter 19 in the current NAFTA context. First, given our U.S. trade representative's personal characteristics, one, he is a trade lawyer; has for 30 years been practicing trade remedy law, and second, his political mentor was Senator Robert Dole, for whom Ambassador Lighthizer was trade counsel on the Senate Finance Committee when Bob Dole was the chairman of the Senate Finance Committee. He has a very close relationship with Senator Dole.

He was the finance director of the 1996 Dole for president campaign. So the fact that he subscribed to some of the sovereignty concerns of his political mentor and the fact that he is a practitioner of trade remedy law and is suspicious of non-U.S. persons having any role in the U.S. legal proceeding shouldn't be surprising. So that's how Chapter 19 kind of got tabled, at least in my view.

The one thing that I would add that hasn't been said today on Chapter 19 is there was a massive missed opportunity to do something practical on Chapter 19 that I think we have now walked past it. And it is this, and I cite the data from Jeff Schott's colleague at the Peterson Institute, Chad Bown.

Chad looks a lot at sort of what goods are subject to trade remedy laws from which economies and he tracks it over time. So the five years before Donald Trump so-called 2012 through 2016, it was a very quiet period in terms of disputes in the United States that wound up with trade remedy filings and affected Canada.

So here is what Bown reports; that of U.S. antidumping and countervailing duty cases, from that five-year period, only 1.3 percent of NAFTA imports were affected by those dumping orders. Okay. Relatively small.

One of the reasons it was a quiet period is because softwood lumber was quiet then. And you know, this tends when you scrape away enough at trade remedy concerns between the U.S. and Canada, the bedrock is softwood lumber. You always find it.

It is not a surprise, but this was a quiet period, and so only 1.3 percent of NAFTA imports, that includes Mexico, Canada to the United States were subject to any kind of antidumping and countervailing order.

At the same time, Canadian application of trade remedy laws had similar kinds of figures. Only 0.1 percent of NAFTA imports were affected by Canadian dumping orders in that same five-year period. So we had this period of time when

trade remedies weren't really causing a lot of political heartburn, and if we wanted to do something about Chapter 19, that was the moment to do it, but it didn't come up.

What happened subsequently, Donald Trump won. He and his team turned our trade remedy actions, as the boys from Spinal Tap would say, up to 11, and all of a sudden it is controversial again, and all of a sudden it is heartburn for Canadians who are swept up in sort of the -- caught in the crossfire of U.S. self-initiated antidumping cases.

So we, once again, Americans have snatched defeat from the jaws of victory, but I think we are past that now, and it is going to have its own dynamic in the relationship.

Just as a final point, it is personal for Ambassador Lighthizer. It is something he believes very deeply. So in any case, enough about NAFTA Chapter 19. I hope we will have some questions. If we do, there will probably be some people in the audience with answers.

Chapter 20 -- and while someone will have the greater expertise and experience on the practical operations -- I did want to make one point on the operation of NAFTA Chapter 20 as far as resolving state to state disputes about the NAFTA, and that's that the U.S. did a very bad job early on; that I think U.S. behavior in the early cases, especially Mexico trucking, really demonstrated that this was not -- the dispute settlement mechanism where Canada and Mexico were going to get satisfaction.

Look, you can go back and read the ugly history of the trucking disputes and they got ugly very quickly, but this was a circumstance where beginning with the NAFTA Chapter 20 case and moving on all the way to the U.S. Supreme Court, Mexico did nothing but win their argument in dispute settlement, and the United States said, yeah, we are not going to do that basically.

And that I think had an effect on the interest of any of the parties bringing cases. So I would just note that while NAFTA Chapter 20 is still in force and it still has effect, there is an opportunity to forum shop and the forum shopping tends to favor the WTO. I will point out two cases.

First, the U.S. case on Canada's patent term laws could have been brought as an added NAFTA Chapter 20 case. Instead, the United States brought it as a TRIPS case in Geneva. Likewise, when there was a country of origin of meat labeling issue in the United States, Canada and Mexico both were the aggrieved parties, could have readily brought that under NAFTA Chapter 20 but instead went to the WTO.

And in both cases, the complainant prevailed as usually happens, and this is, I think, because partly the U.S. made sure NAFTA Chapter 20 got off to a bad start and our behavior early on. But I think also that was a period of time when the United States was very interested in showing respect to the WTO dispute settlement process by actually complying when it lost, which we did in the country of origin case.

I mean, I remember a day where the United States was sufficiently concerned with appearances in WTO dispute compliance that Congress changed our tax law.

This happened in 2006. This is the FSC case that Jeff brought up. So we had to change our tax law to comply with the WTO dispute.

I don't know what we do today. I have an idea, but in any case, NAFTA Chapter 20 I think deserves consideration of whether in its current form and the ability to forum shop given the similarities of obligations under the NAFTA and the WTO, whether it has a lot of future for handling state to state cases.

So with that as opening comments for Chapter 19 and 20, let me turn to Chapter 11, and this is the context that I am frankly concerned about, both in terms of the NAFTA and more broadly, which is that I think going as far back as almost 20 years ago, it was the failure of the OECD's multilateral investment agreement which happened -- we will call it 1996 or 1997 -- where that effort fell apart.

Now, this, of course, 1996 was the tail end of sort of the hay day of international investment agreements. At this point, there were about 2,400 of them in force. They seemed to be very popular. The ICSID Convention had over 136 signatories at that point in time.

So there were a lot of good things going on in the world of treaty-based investment and the OECD laid an egg with a multilateral agreement on investment, but that really began or gave voice to or gave traction to a lot of vocal opposition to the process of investor state dispute settlement.

Now, let me quote the great U.S. political commentator, Michael Barone. Michael Barone says all process objections are insincere, including this one, and he is absolutely right. So there was a lot of process objections about ISDS. There still are to this day.

Most of those process objections are framed as sort of a special deal for big business. It is an end run around legal systems, whatever it might be, but those process objections hide a tacit objection to the substantive obligations that are investor protection, which is, I think, the big concern.

During that time period, also, one of the reasons these criticisms gained traction is that the users -- the governments who had negotiated and implemented these agreements -- failed to defend them vigorously, and I noticed that sort of start to happen when capital exporters became respondents in investment disputes. Those capital exporters, including the United States, got a lot more concerned about their defensive interests and a lot less concerned about the rule of law and the importance of protecting their citizens abroad with investment treaties.

So we wind up with elected officials. We wound up with a moment it reminds me of the G.K. Chesterton's comment about there is a parable about the gate.

There is two, these two reformers walking through on a country lane, and they notice a gate that doesn't seem to do much of anything, and the younger reformer said, well, this gate is useless. Let's tear it down completely. The older reformer said wait a minute, I want you to go away and think about why somebody put that gate there, and when you can come back and explain that to me, then we will talk about tearing it down.

All right. And that's what really happened to our elected officials. They forgot about how bad things were for the treatment of aliens in the '60s and '70s. They forgot about, you know, what was happening in the United Nations and elsewhere, and they forgot about the downside of the Calvo Doctrine.

And they forgot about how bad espousal was as a way to address any of these things. State espousal is terrible. It is politicized, it is a distraction for governments. There is all kinds of problems.

So the whole investment treaty movement arose out of some real conditions that needed to be fixed. There was some genius applied, particularly in the creation of the ICSID Convention about a method to do this, drawing on commercial arbitration but creating essentially equality in that arbitration process between the investor and the state.

It is really small liberal rules executed extremely well, and our elected officials completely forgot about this. They were completely bamboozled when the criticisms began. So U.S. policy has been through a long train since the mid '90s and the failure of the MAI.

I mean, at that point in time in the United States, if you asked somebody what an investment treaty was and whether they should care about it, unless you talked to somebody in the State Department, nobody new, no elected official could answer that question. It just was sort of a lawyers' issue and very much dormant.

Then came NAFTA, and importantly, then came Mondief and ADF and cases where the United States was a respondent. And that changed the point of view and caused a real appraisal, both within the Executive Branch which had to now defend these cases.

Sometimes they were pretty ugly. I mean Mondief was a state case, and the federal government ended up defending it as they always do. But also politicians got curious about it, so this led to the big debates in 2001 and 2002, which led to the Trade Priorities Act in 2002, where Congress stipulated that foreigners should have no greater substantive rights than American investors in America.

Now, that development constrained investment policy in important ways and led to a process that resulted in the 2004 U.S. Model BIT. It is when the U.S. Model Bilateral Investment Treaty went from an eight-page document nobody paid attention to a 40-page document that everybody had a hand in. But at the same time we still have the document. There was still a model.

The model did a fairly reliable job of taking U.S. law and practice and conforming it to the principles that were operative in the international arbitration process. So it seemed to work; went a step further in the Dominican Republic-Central America Free Trade Agreement.

Senator Baucus insisted that the implementing bill included an appellate mechanism or equivalent for investment procedures in the ARCPTA. So we've toyed with the appellate mechanism as well, also reforms.

Now, the Obama Administration came into office in 2009. A lot of their supporters were the critics of ISDS, so they started another review, and much to the credit of the Obama Administration, the 2012 Model BIT, the product of that review was very similar to the 2004, and the Administration defended it all the way through 2015, the debate over trade promotion authority where there was a sudden amendment, the Warren Amendment.

Senator Warren of Massachusetts made an order and amendment to strip investor state dispute settlement from U.S. investment policy objectives. That amendment was defeated 60 to 39, with all Republicans voting no and nine

Democrats voting no. So there was pretty good bipartisan support. So what you have in the United States, at least for ISDS, the situation is probably better than its press clippings. Okay.

Now, I will move and stop with the current position, which I think is what we ought to talk about because it confuses me. Frankly, while I would side with many of the commentators today who consider our President's statements on trade to be somewhat incoherent. I do think that Ambassador Lighthizer and Secretary Ross have an agenda. Okay.

These are very results-oriented people, and their agenda is very simple. Overall they want to use the tools of U.S. trade and investment policy to incentivize U.S. production and operations. That's what they are about. That's what all their decisions focus on.

And they don't really care if it violates the nuts and bolts of trade rules. You can see that. All right. We have talked about rules of origin for autos. They are really not concerned about the industry's statements about global competitiveness. They want more production in the United States.

Look at the Korean U.S. Free Trade Agreement modifications. There is a quantitative arrangement on steel, a 70 percent quota. All right. Last I checked in GATT 94, we promised not to use quantitative measures. Big deal. We are using them. Okay? And likewise, when it comes to the rule of law and sort of the liberal order, it doesn't really matter.

Let's make investment riskier outside the United States if it achieves our objective, which is to incentivize the production and operations in the United States.

So now, Ambassador Lighthizer went so far as to call Chapter 11 a government subsidized risk insurance for outsourcing, and this week's Wall Street Journal editorial page pointed out, it criticized that statement and pointed out that you could also characterize trade remedy law in a similar way to what he has been practicing for 30 years.

But that aside, Congress, you know, Congress has spoken recently. I believe they will defend the need for and the prominence of investor state dispute settlement in the U.S. investment agreements.

But there is a missing element in U.S. policy right at the moment, and that missing element is support for sort of the liberal rules based order. From either real risk as we have, we have a group of advocates who want results.

And if they have to advocate for liberal policy to get those results, that's really okay with them, in which case power becomes superior to rules, and I think we will all miss it when it is gone. So we risk the chance of losing it. So I will stop there.

Thank you.

PROFESSOR IRISH: Power taking over from rules. Is that good for business? Over to you, Selma.

MS. LUSSENBURG: I don't know why we talk about power taking over from rules.

I heard this morning politics overcomes economic security in Trump's politics. So where does that leave us in the bigger picture? I have been coming to this -- thanks to my good friend Michael Robinson -- since 1985.

I have not always been here every year. And our title this year is a very interesting one: "Back to the Future."

And I can think back to the time where we had the Canada-US Free Trade Agreement, and we were debating similar issues, and then we had the NAFTA on the books or under negotiation. And it seems that we are going around in a circle, and while not specifically on topic, one of my concerns is, there is such a lot of protectionist rhetoric around, and the Institute, I think, has an important role or potential to play, to actually put out some thought provoking pieces about how important free trade is.

So I come to this conference as a free trader, obviously private sector. While I studied international law real extensively on trade law remedies early in my career, I don't do that on a day-to-day basis. So it is somewhat daunting to be in the room with the likes of so many individuals that have been coming to this conference for the last 30 plus years who are truly experts.

I will offer my views more from a pragmatic and from a business perspective, and number one would be is that business likes certainty. Business likes predictability.

So as much as I heard the discussions around Chapter 11 earlier today, I found it quite distressing that the reason we don't want Chapter 11 for Mexico is that it destabilizes the environment in which business can invest in a country.

I find that very, very regressive and very concerning as a free trader, and I was very heartened because I have known Dan for a very long time, when he stepped in at some point to clarify that these were not his points of views or those of Dickinson Wright, because I have to say I really thought Dan had gone south and dropped the Kool-aid as someone who used to hang out and supported the Canadian government.

So I will make a few comments about Chapter 19, and I also want to talk a little bit about some of the other dispute settlement and particularly the initiatives of the NAFTA 2022 Committee.

I was interested to hear that Scott said that due to the quiet period between 2012 and 2016 we missed an opportunity in the area of trade remedy law. So I would like to take us back and remember that when we entered into the NAFTA in the early 1990s, we did not have the WTO Agreement we have today.

We did not have the dispute settlement process that exists today under the WTO. I learned a lot and heard a lot about the shortcomings of that process or is it not as much the process as it is to how it is being applied today and that we are not necessarily satisfied with the quality or the caliber of the decisions that are being made, but those are things that could certainly be remedied.

The concept that there is something wrong with forum shopping is an interesting one because, as lawyers, we are always forum shopping. We are always looking to see if we can get the best judgment for our clients, whether that is a particular local judge, whether it is to arbitration, and I don't know that we have

countries signing trade agreements if they had to go to the lowest common denominator.

So there are benefits, and there was a decision made when we entered first into the Canada-US free trade agreement and then into the NAFTA that this would be an economic region, it would be an economic powerhouse, and as someone commented on the last panel that there would -- it would provide North America, including Mexico, with a competitive advantage on the international stage of trade.

And I would be very concerned if we lost sight of that, and therefore, to say that, well, you have to choose between -- it is not the right thing to choose between going under the NAFTA or going under the WTO. That's very counterintuitive because you always want to go where you get the best result.

Ideally, you have the same caliber of decision-making within, I will say, the NAFTA dispute resolution process as you would under the WTO, but that's not the case given how those structures exist.

I went and did a little bit of reading -- and this comes back to your comments, Scott -- about the quiet period, about the number of disputes that have been under Chapter 19, and I think that since the NAFTA started there have been, I think, over 70 cases under Chapter 19.

Forty seven of those cases were against the United States. Thirty six of those were decided unanimously. So in my view -- so that's over 80 percent.

It doesn't support a view which I am hearing in certainly the political rhetoric that the U.S. is being unfairly treated in front of binational panels. The U.S. has input into who sits on those binational panels, and perhaps it needs to identify other individuals to serve on those panels if it is not satisfied with the outcome.

But I think the reality is people have their professional reputations at stake, and notwithstanding political pressure at the end of the day, people want to maintain their own personal integrity when they are serving on these panels and not be accused of bias.

So when you say it was a missed opportunity, I would say perhaps the lack of cases over the last five years under Chapter 19 shows that it is actually working because it has a deterring effect on those that are making decisions, whether it is the ITC or the CITT or the Mexico equivalent to make decision because they know that there is an opportunity for that decision to be reviewed by a binational panel and to be criticized for the decisions that they make.

And someone earlier today made the very insightful comment, I thought or at least good observation, is one of the reasons these panels were attractive, particularly in the early 1990s, was that Canada had a very strong view, and so did Mexico, that they were mice versus the U.S. elephant, and that we were being disadvantaged in front of the ITC in the United States and that, therefore, justice was not being served or trade remedy law was not being applied fairly and equally.

And so with the passage of time, now that we have 30 years behind us, we see that there are far less of those cases. So I just throw it out there.

Does that mean that, in fact, we do think the trade remedy law is being applied more fairly today than it was 30 years ago? Coming from the aviation industry most recently, the Boeing case would suggest that, you know, the ITC did a great

job in terms of what was clearly anticompetitive, if not unfair imposition. So those are some of my comments on Chapter 19.

Now, something we don't talk about a lot -- and I guess the other question we have about Chapter 19 -- we talked about renovating the NAFTA. Is throwing out Chapter 19 really a renovation, and I would love -- Dan again had a very cute way of describing "renovating the house."

But throwing out Chapter 19 is not necessarily a renovation; that's actually just deleting something or destroying something that exists, so my question to the audience would be, if we have time is, how would you change NAFTA, NAFTA's Chapter 19. How could it be better if it is really perceived not to be working today?

One of the things we haven't heard a lot about but the leading topic of this panel, of course, is dispute resolution under the NAFTA, and that is the very successful innovation, I think, under the NAFTA of establishing the Fruit and Vegetable Dispute Resolution Corporation.

And that was under Article 707 of the NAFTA, and there wasn't identification at the time of the negotiation of the NAFTA, that one of the disputes between both Mexico and the United States, Mexico and Canada, US-Canada, all countries, however you pair them was, in fact, about produce that was crossing the border and the need for very quick and effective dispute resolution process so that goods could actually cross the border in a timely manner.

So one of the initiatives that the food industry undertook with the institutional support of all three governments was to set up this Fruit and Vegetable Dispute Resolution Corporation, which engages in binding arbitration with respect to the quality, quantity of produce that cross the border when there is a dispute. So I think that's a highlight that we should not ignore.

Then, when we look at Chapter 20, it has not been used very frequently, and it is a very good question to ask why? And perhaps, again, I could play devil's advocate and say just the mere existence of Chapter 20 may, in and of itself, provide a disincentive for bad decision-making.

I appreciate that's a bit of a rose-colored glasses view, but you have to ask yourself that question, and specifically, agricultural and sanitary, government procurement and financial services, are referred to under Chapter 20 for special consideration where a party believes that there has been, for lack of a better word, I will say a miscarriage or a misapplication of domestic law.

And I think that kind of check and balance, if you continue to subscribe to the importance of having a North American trading region, then it is very important to have that opportunity.

So I now would like to talk a little bit about NAFTA 2022. There is a bit of a juxtaposition. So far today we have really talked about what I would characterize as public international law, and this is really a private international law initiative, and it is quite unique.

It is one of the very few private international law provisions in the NAFTA, and that section I am not going to read it to you, but it starts out with framing, and I guess that shows you a little bit of my psyche in early comments that the promotion of trade is what underpins the NAFTA.

And in order for trade to succeed in the NAFTA region or in any economic relationship, there has to be confidence in the dispute settlement process that is available to businesses that invest in a foreign country, and so with that in mind, the three governments established this working committee.

It is called the Chapter 2022 Committee on the Private Resolution of Commercial Disputes or some other very lengthy title. It is comprised of ten individuals from Canada, the United States and Mexico each, so it is a working group of 30. There are government co-chairs.

When this first started, there was a tremendous amount of concern, particularly on -- within the American delegation about highly confidential information being shared, in-camera rules or whatever, and it quickly became evident that there was no need for that because really the focus of this committee was, first, to do an assessment of what the status was of alternate dispute resolution in the NAFTA region and whether there were barriers to the enforcement of ADR or arbitral awards.

And then what the focus was as well was to determine whether or not there were specific sectors, which would benefit from ADR versus others, and that's still a work-in-progress under the committee, but one group that we worked very closely with was the 707 Group under the Fruit and Vegetable Dispute Resolution Corporation.

And the Committee meets typically once a year, although since inception we probably met over 30 times. We are very politically correct. We rotate between the three countries within each country. We rotate where we meet, it is a quintessential NAFTA solution and certainly a very Canadian one where we can never have a meeting twice in the same city within the decade, which is not without its challenges.

(Laughter.)

MS. LUSSENBURG: There was also an initial focus on cooperation between arbitral institutions, alternative dispute resolution institutions, and that has sort of faded away because one of the changes that has taken place over the last 30 years is that ADR has really come into its own.

And again, when you think about it -- and I will just give the base street example where today there must be 20, if not 40, law firms or boutiques that specialize in alternative dispute resolution -- that wasn't the case when this started, and the awareness of ADR was much lower. ADR was not resorted to as frequently as it is today. It is now a very common provision in private commercial agreements to provide a multi-staffed dispute resolution clause to go from frequently executive consultation to mediation and then to binding arbitration and with an ability to appeal if there has been a misapplication of the law.

This group that I have been lucky enough to work with over the last number of years has engaged in a number of initiatives. There is a website you can find. If you plug in NAFTA 2022, the website will pop up. It has sample arbitration clauses. It has sample arbitration agreements that have been vetted by all three countries.

We have made a number of discoveries very early on in the work that we were doing. One was that arbitration was particularly important for small and medium size enterprises.

It will not be a surprise to hear that what the U.S. thought were small and medium size enterprises was very different from what the Canadians and Mexicans thought were small and medium size enterprises.

We are very much focused on businesses that were looking to expand their business opportunities and did not necessarily have in-house counsel or even have external counsel that they would use.

So how do you help these people and how do you promote trade? How do you convince investors that, if they had a dispute in a foreign jurisdiction, that they will be able to get justice, and I am not telling tails out of school.

I think there was a fair distrust amongst different members of the business community, both with the Mexico judicial system and also with certain parts of -- we would call it the 'litigation happy' American judicial system.

Since that time, we have had the privilege of class action lawsuits moving north of the border, so perhaps we, too, now could be put in the same bucket, but again, going back to when we set up the NAFTA, these were all issues.

When you go back to the underlying intention of those that entered into this agreement was to promote and facilitate trade between our respective countries and to give our businesses a competitive advantage, not only within North America but on the world stage.

More recently, we have been looking at and recommended that the mandate of this committee, were it to continue under a new NAFTA, be expanded to include mediation, to look at treaties that enforce mediation, which are few and far between.

One of the first pieces of work was to determine whether arbitral awards could be enforced between the three countries, and the short answer was yes. So that was not a problem.

But mediation is an area that is becoming increasingly popular, and if you have a binding mediation agreement, as opposed to an arbitral award, can you go out and enforce that informed jurisdiction? Would it have the same as if a judgment was issued by a court, which is the case when you have an arbitral award.

We have also more recently looked at specific sectors in the context of whether or not there should be unique dispute settlement provisions within different sectors of the economy.

Trucking is one where we have done significant work, and we have been serving the industry. So far the information we have is inconclusive. We looked at oil and gas. We looked at natural resources.

One of the other areas that is being looked at now currently is online dispute resolution within the NAFTA region, and again, it is focused on small and medium size businesses who don't want to go to court, who don't want to have an arbitral procedure.

I think many lawyers today would agree arbitration is not necessarily cheaper, and it is not necessarily faster than the court system, although the latter is more within your control, depending on how you draw your arbitral clause.

We have always had a judicial subcommittee, and part of the work of the judicial subcommittee is to look at recent arbitration decisions -- I'm sorry -- court decisions where arbitration has come up.

And one of the conclusions we came to about, I would say, a good 15 years ago was that the understanding within the judiciary with respect to the enforcement of arbitral awards was not of the same quality at the national and state level in the United States and definitely not within Mexico and also not within Canada.

So we have done significant work reaching out to the judiciary and have had training programs put into the judicial training programs that are run by states or federal governments, depending on the jurisdiction to ensure that there is a greater awareness of the basis upon which an arbitral award can be appealed, the need to enforce an arbitral award as if it was a judgment of a local court.

That is still a work in progress. Our next meeting will be in Mexico City in June, and I believe part of that program would be to do another joint session with the judiciary in Mexico City.

We have done some very innovative things. We have brought in people from industry, groups to come and talk to us about the challenges that they have encountered in the different NAFTA jurisdictions.

We have also reached out to aboriginal groups to look at alternative dispute resolution processes, particularly when you start looking at natural resource development, which is huge both in Canada and in Mexico.

And like I said, we have a website that has a lot of material on there. The composition of the committee has changed from time to time. We have had people leave the committee, come back. It is all by government appointment.

So if I wanted to look at this in the future, one of the things I would say is that what is needed and certainly the governments that participated in the NAFTA have said that that when they are negotiating new free trade agreements that came up in the Free Trade Agreement of the Americas, it came up in the Canada Central America Free Trade Agreement, and a number of others, they would put similar provisions in there.

The challenge for those that sit on the committee is there is almost no government infrastructure to support the work of the committee. People do this on an unpaid basis. It is a volunteer community service type initiative.

So it is often hard to move the yardstick forward between meetings, and I would say for a very small amount of money the work of this type of committee could have far greater value than in terms of supporting the promotion of trade within the NAFTA region.

So I will leave it at that. Thank you.

PROFESSOR IRISH: So we have a great deal for potential discussion, questions, comments, and solutions. Before I actually start to deal with audience reaction I just want to expand as well because we did mention during the day that there may be a discussion of dispute settlement through the WTO, also a potential topic for discussion.

And let us not forget dispute settlement under the side agreements in NAFTA or possibly, I guess, maybe chapters in a revised NAFTA. There are two side agreements to NAFTA, one on the environment, which has been active, and the

other one is on labor, which has not been terribly active, but we may see discussion about what would be in a labor chapter. So many things to talk about and resolve. I will start off with Larry Herman.

MR. HERMAN: I thought that was a very enlightening session. Let me try and address some of the issues and ask some questions. We have covered a lot of ground.

I am going to put a proposition, and I will ask for -- I will ask Scott Miller to answer this.

I don't see any need for ISDS between Canada and the United States. I mean, as a real practical issue, we can take that out of NAFTA if that's necessary for purposes of the negotiations.

And there are a lot of reasons for that, but you have to go back to the basics of ISDS. ISDS or BITs or FIPAs, as we called them, were developed 30 years ago to try and get capital flows into the development.

MR. MILLER: That's right.

MR. HERMAN: It is not appropriate in a Canada-US context. If you look at the genesis of investor state treaties, it is not necessary in the Canada-US context. You can, however, within chapter -- you can maintain Chapter 11 and maintain the obligations for non-discriminatory treatment for investors.

You can maintain that as a state-to-state obligation. You don't need ISDS in my view. That's a proposition. I would like to hear your comments on that.

On Chapter 19, there is a lot of myths about the binational panel review system. It is forgotten that in the original Free Trade Agreement between Canada and the United States the binational panel system had a fixed life of seven years.

It was to end after five years with a possibility of two years renewal, and it was then replicated in the NAFTA and given permanent life in that treaty.

But originally, Canada was prepared to agree to a seven-year sunset for Chapter 19. So we have to keep that in mind. It seems to me -- and I would like your reaction to this -- it seems to me that if, as a matter of political negotiation, one had to give up Chapter 19, you could rejig Chapter 20, you could rejig Chapter 20 to provide on a state-to-state basis for enhanced jurisdiction of the panels and enforcement provisions to ensure that the Mexican trucking situation didn't occur. You could do that.

MR. MILLER: Yeah.

MR. HERMAN: It is not beyond the ingenuity of lawyers to develop a proper state-to-state system.

Now, you talked about the risks of state espousal, and that is true, but in a Canada-US context, let's look at the record. All of the, if you like, the Chapter 19 cases have involved major issues of national importance for Canada.

So it is not like, you know, a small sector was affected by a trade dispute. These are usually large cases where in my view state espousal may make some sense.

So it becomes a Canada-US state-to-state dispute, for example, where Canada says the U.S. did not live up to its NAFTA obligations in this particular investigation.

MR. MILLER: Yes. Okay.

MR. HERMAN: You could do that, but it would have to be done very, very well, and in order to give up Chapter 19, Canada, I think, would have to show that there were major gains under Chapter 20. So those are some thoughts. I would like your comments.

MR. MILLER: Sure. Thank you. Let me take first the question about the applicability of an investment agreement and investor state between the U.S. and Canada. When you first suggested that, I said you probably ought to talk to the people at S.D. Myers before you come to a conclusion, but that's unfair because our legal systems are very similar, they are highly developed, and you are absolutely correct, that the original intent starting with the West Germany-Pakistan BIT of 1959 was to -- first, it was a development objective to get capital into developing countries and, second, that the need for --

MR. HERMAN: Exactly.

MR. MILLER: -- the need for a neutral arbitration forum had to do with the development of law in the developing countries and your ability to get a fair shake. So that's definitely the case.

I can tell you the United States has experimented with that. If you look at the U.S.-Australia Free Trade Agreement, the U.S.-Australia Free Trade Agreement has a chapter on investment with the same substantive obligations but without ISDS.

MR. HERMAN: Yeah.

MR. MILLER: Because at the moment that that agreement was being negotiated, the ISDS processed objections had reached a screech in Australia, and the Australian government could not handle it, particularly with the litigious United States. That was bad politics they had to deal with, and it was basically one of the last concessions.

We agreed to state-to-state dispute settlement on investment if they agreed not to bug us on sugar, and so in a magnanimous American fashion, we continued prosperity with sugar in exchange for that.

But I will tell you two things: One is, it didn't really affect U.S. Australia investment at all because like Canada, Australia is a common law jurisdiction with high quality courts and basic procedural fairness, and foreigners get a fair shake in Australian courts as they do in Canadian courts.

The second thing is, when it came time to negotiate a TransPacific Partnership many years later, Australia had no objections to undertaking ISDS as part of the TPP investment chapter, even knowing that it would expose them to cases from U.S. investors.

So the politics changed, and I would be interested in hearing -- actually, I think your question would be best answered by the Australians who had what you wanted for Canada and then in TPP accepted something else. It may have just been the complexity. It is hard to say what happened.

But I do agree with your point. I do think that if it were essential as a way to proceed, the classic barrier then, as it was in Australia, it was a tough issue that needed final resolution at very high levels, then it would be entirely possible.

MR. HERMAN: And what about Chapter 20?

MR. MILLER: Chapter 20, I actually like that solution.

Now, look, I am an old soap salesman. I don't have a lot of history with the antidumping laws to know about how Chapter 19 got there and why it is important. I do agree with you that it was a Canada -- it was a pain for Canada that needed to be addressed and needed to be addressed at their high levels. That's how it got there in the first place.

If that pain is still there, then it ought to be considered in the context of negotiation. I do admire the cleverness you are suggesting and the drafting to basically make trade remedy cases subject to state-to-state dispute settlement, which is a deft way to consolidate the two chapters. Whether anybody would accept that, I can't tell you, but I do admire the creativity.

PROFESSOR IRISH: Jon Johnson. I am moving from right to left. I am not sure how I should characterize this.

MR. MILLER: State-to-state.

PROFESSOR IRISH: State-to-state. Okay.

(Laughter.)

MR. JOHNSON: Jon Johnson. The biggest problem I have with Chapter 19 is practical and requires a great deal of cooperation on the part of the U.S. to work, and for the first ten years, we had effective cooperation on the U.S. side, and actually it worked very well.

And then, we hit number four, and essentially, you had the agencies in the U.S., the Department of Commerce, I think there were five remands back to the Department of Commerce and so on and so on.

And the Administration did an end run with section 129(1)(c) of the Uruguay Agreement, which enabled the ITC to come up with a fresh injury finding thanks to Mark Moran, by the way, your partner.

So that went to court, but the U.S. lost, but it was moot by then. And then, the U.S. wouldn't give the money back, and we won that case as well, and it was ultimately resolved in a wheat case.

I think the killer for Chapter 19 was the constitutionality has never been resolved in U.S. law. I am assured by U.S. counsel that I highly respect that they don't have a case.

On the other hand, the only way that could ever be determined is for it to go the full route, and the problem in the case where you have got these huge duties being collected is that it will cave.

I guess Chapter 19 was creative. It addressed a problem at the time. I think it would work if we did have cooperation and we didn't have this constitutional problem hanging out there.

MR. MILLER: Yes.

MR. JOHNSON: But it is. Anyway, that's true.

MR. MILLER: It might be just practically. I don't think there is a treaty mechanism that has been conceived by the mind of man that could fix softwood lumber. That's a hundred-plus year old argument that is so deeply rooted and so passionate, we shouldn't expect any mechanism to fix it.

PROFESSOR IRISH: Moving along. Yes, please, go ahead.

MR. MARGOLIS: Justin Margolis. With regards to Canada having a similar law provision, not a common law, how do American companies approach this? Do

you ever see any hesitation on your side except when it comes to private entities? I am wondering does it come up in your meetings? Does anyone address it? Is it a source of any challenges for U.S. companies?

MS. LUSSENBURG: Well, it is probably -- I am trying to think how long I have not been in private practice. It has been a long time, since sometime in the early 1990s.

I am not aware of it being an issue. I would almost defer to Michael or looking for Larry from a law firm perspective. I am not aware of it. I mean, you can carry on business in Quebec and incorporate in Ontario, incorporate federally. It is a different legal system. I am not aware of it being a deterrent to people investing.

You know, this is probably a politically incorrect statement to make, but a far greater deterrent to investment in Quebec, are the French language laws where the language in the workplace has to be French, and employers find creative ways around that, particularly given that Quebec has provided substantial grants and incentives in the high tech and the pharmaceutical industry.

And yet, many of the people that are brought into work in that sector, neither English nor French, is their first language, and I have recently heard a story from a highly, highly successful company CEO, and she was telling me that what they do when the French language office comes and checks, they send a note out the day before and suggest that people work from home.

And therefore, you only have the people whose mother tongue is French or fluently bilingual in the office. That is a significant issue and disincentive for companies to locate in the Province of Quebec far less so than the civil law system.

The civil law system operates throughout Europe very successfully, and we don't hear that that's a drawback to success, and we don't have any of the -- I'm not necessarily saying they are wrong, but it is a very different government model.

We don't have the administrative councils and the labor councils that you see in Europe, which is a different layer, but again, companies worldwide manage within those frameworks. So I don't really see it as an issue. It is the French language that is the far bigger issue.

MS. IRISH: Thank you. I am going to move in this direction next, and I should have been asking people to identify themselves for the record as you speak.

AUDIENCE MEMBER: I am a third-year law student here, which I hope you can answer my question. Earlier, Ms. Lussenburg, you mentioned that certain judiciaries don't like to implement or have difficulty implementing some of the arbitral awards.

So I was wondering if you could clarify your comment. Why do they, or is there particular sections of the awards, and what is this exactly?

MS. LUSSENBURG: Sure. International commercial arbitration has come into its own in the last 25 years. After we did the initial work within the NAFTA 2022, we turned our mind to other barriers, almost like other non-tariff barriers to enforcing arbitral awards.

And it became clear not that people were unwilling, they were unfamiliar, their training, their education, there was a reluctance, there was a lack of understanding of the basis upon which you could appeal a final arbitral award, you know, which

is a miscarriage of natural justice or an error of law and a reluctance to enforce certain awards just because they hadn't seen it before.

And again, remember that was at the beginning or, you know, NAFTA is only 30 odd years old. And so with the passage of time and increased foreign investment, particularly in Mexico but in both Canada and the United States as well, there was an increased number of disputes because that's the reality, that not every business relationship works out as you would like, and some very, very positive business relationships have gone to arbitration and continued.

And it has been the best way to take the heat off the day-to-day operations, to take it away from the plant manager or from the distributor or whomever and move it to an independent third-party so that business can continue because -- I am not making fun of this -- but often it is only a matter of money and how much money has to be paid to whom and what was the quantity of the damages that were suffered, which is quite different from, we will call it, expropriation and investor-host matters. That's a very different issue when your whole business is being undermined.

MS. IRISH: I think the next question was Todd Weiler.

MR. WEILER: Well, I am sorry, Larry, but I disagree. We have the companies Bilcon, Windstream, Abbington, S.D. Myers. I also disagree given the five awards that have been rendered against Canada for breaching its NAFTA obligations.

My only question I suppose is with regard to your agreement or seeming agreement, Larry, with regard to the treatment of the less favorable provision. Why would we want to get rid of that?

I mean, I can understand how one might say fair treatment can be covered by local courts, but that can't take care of non-discriminatory --

MR. MILLER: Yes, right.

MR. WEILER: So it seems to me we still need those, and courts -- again, you might want to have an expropriation compensation provision in there, too -- so what do you think about expropriation?

MR. MILLER: Well, look, I am not in favor of it. I am not in favor of expropriation without compensation and due process and public use for other cases.

But in any case, no, look, I think that at a practical level I think that you wind up pretty quickly, even the United States winds up being willing to accept the obligations of an arbitration clause of investor state because it wants the ability to do that in the foreign market.

In the NAFTA, I would think carving out Canada not Mexico would be a neat trick. Now, that's not to say anything unfavorable about Canadian law or any jurisdiction. Look, these cases are hard. They are sometimes decided very closely.

I would note that the U.S. pharmaceutical industry, when it came to the promise utility doctrine, did a lot better in Canadian courts than it did in a Chapter 11 case. So this stuff doesn't always -- you can't get as results-oriented as you would like to with this, but I do think that the reason the United States has obligated itself to submit to arbitration despite success, despite our Article III courts being pretty darn favorable in terms of favorable treatment of foreign entities, is the fact

that at the International Court of Claims complainants win all the time against the United States.

So there is -- having a good legal system is not an adequate reason to exclude this. I think the principle involved here is that capital exporters and, more importantly, economies with high quality legal systems ought to embrace the notion that if there is a dispute settlement procedure on the side, if you have this commercial arbitration procedure, it doesn't really interfere with who we are as an economy.

It doesn't say anything about our legal system, but making it available protects our investors abroad and advances the small and liberal order. So I was basically exploring the question of: Would it be politically possible but actually, I think the United States has always accepted these obligations, even the cases that are really messy.

I mean Glamis Gold was some Mickey Mouse regulation by the state of California, and the Office of Legal Counsel did a heroic job. Sometimes we go overboard, and for instance, I think that the right thing to do with the Loewen case would have been to settle it and then for the feds to go after the state of Mississippi for that little version of Mississippi justice. Okay.

But we tried to win and managed to bankrupt the Loewen company in order to win. So you could go too far in almost of any of these. But as a practical matter, look, I am a fan of the Canadian legal system. I ran one of Proctor and Gamble's businesses in Canada for three years. I am familiar enough with it enough to know it is reliable.

At the same time, if you want to be a capital exporting company and you want to promote the values that are inherent in the liberal order, then accepting access to dispute settlement seems a small price.

PROFESSOR IRISH: I am going to go in order in which I saw the questions. There is a question there -- I think I saw Michael Robinson first, and then I will move over here. So Michael first.

MS. LUSSENBURG: Chi has been given the mic.

PROFESSOR IRISH: Okay. Chi has the mike. I have been overruled. I'm sorry. And I will defer to the organizers.

Yes, Chi, please proceed.

PROFESSOR CARMODY: So my question is to the panel, and perhaps one of you would like to comment on this rather than the others, but one of the things that has sort of ebbed and flowed today has been this constitutional crisis that has been going on and brewing in the appellate body of the WTO over U.S. blockage of appointments to the Appellate Body.

This is a situation that takes great, I guess, takes center stage right now given the attitude of the U.S. Administration. But it is actually something that goes back quite some time, and I am curious why successive administrations have allowed the situation to fester like this.

Is this sort of, in your view, a deliberate attempt to knee cap the WTO, or is this just something that somebody forgot about and is now taking on this very, very serious face, if you will?

MR. MILLER: Well, I can talk about what I think is going on in the U.S. politics. You are right, this has been a long time coming. And as international institutions go, the WTO would rank highly on the list of the least bad. There are some things it hasn't done in a while like come up with an agreement, not much of anything.

But the WTO in general and the dispute settlement understanding in particular is functioning not terribly, and when you are President of the United States or running -- and the executive agency in the United States, you got a lot of problems.

So this one I don't think rose to the top of the list for anybody. My experience -- and this goes back, too -- I had to explain to members of Congress why we had to explain our tax law, and what the explanation came down to, I am sorry to say, is we got our footnote -- we didn't get our footnote, and the Europeans got theirs.

And somebody decided we had to change, and it is really an unsatisfactory explanation for any politician, and I got chased out of some offices trying to make that explanation.

So it goes back at least that far, but the United States has -- because the WTO dispute settlement understanding has provided some overall benefits, often sort of look the other way on some of these issues.

So I think it was a matter of priority calls. What we have now is an Administration that is by its campaign promises disruptive. Okay.

And you have a Trade Representative as essentially a 30-year practitioner in trade law who has some very clear views on this and has the President's ear, and so I think that's what has caused it to arise.

I think the other compounding factor, I guess about a month ago we finally swore in our Geneva Ambassador, and so there has been a lot of this that has been handled long distance, which I think probably made it more difficult and sort of escalated attentions. So it was a variety of factors.

The presidents of the United States have a lot of problems, and this was an irritant, and a lot of trade lawyers and practitioners in the United States were concerned about the direction that the WTO Appellate Body, in particular, was going, but I think they had other problems to raise, and we are just raising them now. I don't have a better answer. Sorry.

PROFESSOR IRISH: Now, Michael.

MR. ROBINSON: Thank you. Just a short comment in response to the question about civil law in Quebec and how it might be factored in. I think it is always important to remember, as I used to tell classes when I taught at Western on NAFTA, that both section 102(2) and 1131.1 say that the applicable law is international law.

So the issue isn't going to arise unless there is something in international law that says one must have some sort of deference to civil law. In that connection, I don't think it will arise, and of course, the other chapter that does have national law is Chapter 19, of course.

MR. MILLER: Yes.

MR. ROBINSON: Because it just goes back to the particular jurisdiction. I would make one comment: I would agree with Larry, and I am not sure what the concern is, that if we had to get some concession on Chapter 11 to get this darn

agreement otherwise quite acceptable through, then we could move Chapter 11 into Chapter 20, the dispute settlement portion, of course.

We can't move the performance, prohibition against the performance requirements, or the whole thing would collapse.

MR. MILLER: Yes.

MR. ROBINSON: I would be interested in Scott's reaction to that.

MR. MILLER: Well, first, just a point in terms of U.S. politics, that would be a step backwards given the statement of the chairman of the Ways and Means Committee and the chairman of Senate Finance Committee, who are both defending ISDS and saying it is an essential element.

Now, the thing in politics may be and probably are different. It is an interesting thought experiment for a tradeoff, but it is not necessarily one where there is a lot of agreement.

MR. ROBINSON: We always lose. That's why.

MR. MILLER: Yeah, I understand.

MR. ROBINSON: We have a different attitude.

MR. MILLER: Yeah, understood.

PROFESSOR IRISH: Further resolutions, comments, suggestions. I get the sense we haven't solved everything; we just kind of stopped. And as I said at the beginning, sometimes that can be a very good thing.

We have been through a whole lot of thinking and all kinds of discussions today, so if we don't have solutions today, maybe we'll have them tomorrow. Right? Signing off is Pollyanna.

MR. MILLER: Just one thing I wanted to pick up on.

MS. IRISH: Yes.

MR. MILLER: -- a comment about this quiet period in antidumping. There is actually a commercial reason underlying that, and if you look, just very practically look at it, about two thirds of the cases in both the U.S. and Canada are in steel and chemicals, and because of NAFTA, the North American steel industry, North American chemical industry are highly integrated. What a surprise after 20 years.

So what you have particularly in the steel cases is, you have the same labor union, the same ownership of a lot of the mills, the same products. You also have the same cases being filed against the same importers on the same classes of products.

So one of the reasons that things got quiet on antidumping is a very sound commercial reason called commercial integration, which is exactly what we are trying for in the US-Canada Free Trade Agreement in the NAFTA.

It is probably still a lost opportunity, but NAFTA did something, and that's, at least, one of the reasons we are not fighting about these things other than lumber as much.

PROFESSOR IRISH: With that, I would like to thank the panels and members of the audience for a very interesting discussion.

(Applause.)

PROFESSOR PARRAN: Thank you all for yet another great discussion. At this point, all of our substantive discussions have pretty much finished. We have Chi Carmody, our Canadian National Director, who will close us out, and I know

it is Friday afternoon, so instead of taking a break and doing that, and we might as well just do that right now.

So, Chi?

PROFESSOR CARMODY: So for those of you I haven't met, my name is Chi Carmody. As announced, I'm the Canadian National Director of the Canada-US Law Institute. I teach at Western University Faculty of Law.

And I have attended these annual conferences since 2000, and the title of this year's conference – "Back to the Future" -- suggested that this conference, in particular, was going to be one of the more interesting ones that we were invited to attend and hear about.

The theme of this year's conference "Back to the Future: the Canada-United States relationship are the Crossroads", riffs on a 1985 adventure film that many of you may be familiar with, "Back to the Future", directed by Robert Zemeckis and starring the Canadian actor Michael J. Fox.

And in that film as many of you remember -- it happens to be one of my personal favorites -- Fox played the teenager Marty McFly, who is sent back in time from 1985 to 1955, and it is there that he meets his future parents.

And he becomes oddly his mother's own love interest. And an eccentric scientist, Doc Brown, inventor of a time traveling DeLorean car, helps Marty to repair history and return to 1985.

And I think Zemeckis' film has become a classic, in part, because it metaphorically captures the way in which we, at this time, are in something of an uncharted time, and more broadly, there is sort of contrapuntal impulses in our current political landscape.

"Back to the Future" is shorthand, I think, for universal human longing to return to sort of an idyllic past that was apparently problem-free. The problem with this idea is that the past had its problems too.

I think as we were profiled in the last panel and as Scott Miller reminded us in reference to espousal in international investment law, there were a lot of problems. Before we had NAFTA, before we had the WTO Agreement, there were many problems that I think it is easy to forget about in an era that has become 'squeak free', if you will.

And in Zemeckis' telling of the tale, McFly finds out about these problems by going back to fictional Hill Valley, California, where he sees the beginnings of his family, and there are all sorts of madcap adventures that the film is famous for.

But if you look closely at that film -- and I have watched it a few times -- you will see that through Marty's eyes what he sees is the stifling conformity of the 1950s. He sees the racial discrimination of that era, and he also sees the suspicion of a lot of new things pointed out most prominently and evidently in the down filled vest that he wears, that is derided by a bunch of Hill Valley bullies as a 'life preserver'.

And I think we have seen that same idea, that same concern with novelty "Back to the Future" being expressed and having a powerful resonance in the current political landscape.

We have powers in place in what appears to be their apogee whose political base would like to go Back to the Future. Why? Because the perception is that things in the past used to be a lot better.

No one can ignore the words that were spoken at this very conference last year by the Washington trade lawyer Terrence Stewart and echoed this year by Jim Blanchard, who noted that there has for 40 years been essentially stagnant income in a considerable portion of the U.S. population.

And so for people like that, the past was rosier, kind of like Marty McFly might have imagined prior to his particular time frame. And what also struck me from a look at last year's conference proceedings was an observation made by former U.S. ambassador to Canada Bruce Heyman about the fact that what we should expect going forward is an Administration that will not assume an entirely rational approach to trade negotiations.

The Administration will pursue, as he said, an asymmetrical trade strategy, and what we are seeing is exactly that. What we are seeing is perhaps the high watermark of such asymmetry.

As Minister MacKay said last night, the daily uncertainty of life today is a killer. Consul General George pointed out this morning how business in Indiana and elsewhere is now very worried about the possibility and the actuality of retaliation by China. Canada may land in the crosshairs of that.

Businesses need certainty. They need stability, and yet, it is also true that a certain sector of the public has kind of enjoyed all of this. You know, it is sort of thrilling. It makes the hairs stand on your neck every morning to see what kind of madcap adventures are being engaged in every time you look at the internets.

And it is a little bit like taking a ride in a souped-up DeLorean car back to the future. So I think that's all really very interesting, and yet, at the same time, if one cares to sort of parse the record, what's going on as well in some ways is a bit of a very great turning, and that very great turning is, first of all, on NAFTA itself.

The President still tweets and, in fact, has just tweeted earlier this week about ending NAFTA, but his views seem to be sort of discordant in the context of discussions that are going on.

Just the other day we also had press reports, and those of you who are involved in the trade area will know that on the TPP, the President wants to get back in to that agreement and has instructed U.S. officials that he is interested in that.

On the Paris climate change agreement, he would like to remain in the agreement if he can get a better deal, and on the Korea U.S. Free Trade Agreement, he has already extracted some concessions, even if those are in Dick Cunningham's notable words totally cosmetic.

So I think we have to remember that there is some very significant things going on, notwithstanding some of the heavy weather, the asymmetrical trade strategy that we are seeing today.

And I think it is also important to remember that all of this is coming from a president who promised us on his Inauguration day that "on this day forward a new vision will govern this land. From this day -- from this moment on, it is going to be America First."

Well, what did we have? In the January Davos conference, that very same person issued a clarification and said “America first doesn’t mean American alone”. And one has to wonder what that means. Does that mean everybody else second?

That’s not going to fly. And at the same time, even with these changes and terms, there seems to be a lot of sort of contrapuntal evidence, both within the Administration and elsewhere, evidence that I think has coursed through our discussions today.

I think that notwithstanding the turn, the great turn in the ship of state that may be taking place in this Administration’s position, there was some grudging acknowledgment by a number of people that the President’s strategy, what Ambassador Jacobson called his “rough justice”, is, in fact, right. No matter how haphazard, no matter how much of a zigzag we may be viewing at the time being, it is a shrewd set of tactics.

Now, we have to be careful that that shrewd set of tactics, that zigzagging doesn’t get out of hand. As Jim Blanchard has reminded us, a full-blown trade war with China doesn’t jive with the world’s need of China to contain a nuclear North Korea. So on all sides, there is going to have to be some pragmatism and I think some give and take. There is so much uncertainty at present.

We were lucky to have a historical testament by none other than John Tennant who told us that in the auto sector, at least, what’s going on is kind of resonant with what happened three decades ago. Change the players around a little bit, and you have got something of a similar dynamic playing out, but the reality is that these tactics have already had some effect. They have already worked, in part, against Korea as Dick Cunningham pointed out, and it may be that the U.S. exemption on steel and aluminum tariffs may be used as a bit of a prod to get Canada and Mexico to agree to -- or at least suspend -- the NAFTA discussions on favorable terms to the United States so that the President can take that to the electorate, indicate to them that some progress has been made.

Now, that has to be countenanced, and that has to be assessed against the fact that, as Jeff Schott pointed out and reminded us, NAFTA has always been controversial. That’s why we haven’t fixed it before, and of course, another outcome could be that the passage of time simply means that at the end of the day something like NAFTA may take second place to more immediate and emerging priorities and events, and that will be returned to or may not be returned to in 2019.

But there has been no momentum right now in the political structure to get a deal done, no political will behind these changes, and if there had been or if there was, maybe we could get some sort of interesting outcomes.

For example, Jim Peterson mentioned in passing this morning that a solution to the current constitutional crisis in the WTO might be a requirement that consensus should not be required for every WTO issue.

It takes some vision to do something like that, and it intriguingly would take us away from something like an American-First position. But for the time being, what do we have? We have kind of got this limbo that, as Dan Ujczko pointed out, is a win for the president, something he can spin to groups that are in support of him.

Now, the concern, of course, is that this limbo, attractive though it might be to the President, is something that will only go on for a while or can only go on for a while.

We still haven't seen the full force of the ag lobby against venting its fury against the Chinese, letting thousands and thousands of illegal immigrants cross Mexican territory and show up at the U.S. border, or a disinterested Canada that stands back and says, okay, let NAFTA fail because, like Ambassador Jacobson said this morning, maybe the collapse of NAFTA may do less damage than is anticipated.

So my point is that there is a time limit to what we are seeing to all of this, and it is hard to see whether any of these changes and any of these discussions and any of these maneuvers -- and you might even call them antics -- are going to have in the long-term an impact and make a difference for people in Indiana or Missouri or Alabama, who have to contend with low wages and who believe that, rightly or wrongly, they have somehow been wounded by international trade.

And this scenario seems to give credence to the view expressed by Minister MacKay last night that we all share something in common, even if that common vision at the moment seems to be a little thin, a little thread bare, a little worn.

And it seems to cohere with what he said, there is no going back. There is no going back to the future. We are all involved in this in common. We can't go back. We have to move forward together, and so these are some serious thoughts perhaps, I hope perhaps not too somber, to think about as we come to the end of this 42nd Annual Conference of the Canada-U.S. Law Institute.

In closing, I would like to thank our sponsors, particularly our platinum sponsors, DLA Piper and Cleveland Cliffs and our silver sponsors Parker Hannifin, Formica, the Consulate General of Canada in Cleveland, sorry, in Detroit, and the law firm of Steptoe & Johnson.

I would like to also thank my fellow co-directors, Steve Petras of Baker Hostetler and his lovely wife Colleen, who joins us here today, and especially to the Institute's indefatigable Managing Director who many of you have met, Ted Parran. Both he and Steve have worked very hard the last few months to put this conference together.

And they always do so with great efficiency and great aplomb, and in Ted's case, I think he gets most of his energy from his lovely Mexican wife, Adriana, and that's a small pitch to keep NAFTA together as a trilateral endeavour.

(Laughter.)

(Greeting in French.)

PROFESSOR CARMODY: Safe travels home, and we look forward to seeing all of you next year. Thank you.

(Applause.)

HON. JAMES PETERSON: Chi, that was a great summary. Let me say thanks to the people that were thanked so properly by Chi, but let me also -- Jim Blanchard couldn't be here -- but he wanted me to give a real special thanks to the people from the University here who have made this possible on such a high level.

I want to thank on behalf of Jim Blanchard and myself and all of you the people who have participated on our panels today. I was -- I thought every one of them was really good and really worthwhile. I got writer's cramp taking notes.

Thank you for imparting the wisdom and knowledge and experience that you have brought to this discussion, and thanks to the people who have attended, who have such a wealth of experience in many cases and knowledge.

Having said that, I hope you get home safely and look forward to seeing you next year. Many, many thanks to all of you.

(Applause.)

PROFESSOR PARRAN: All right. One final thing before you all go. For those of you who are able to stick around, we will be having dinner nearby in Little Italy, 6:00 p.m., so if you want to meet at the Glidden House, which is right across the street just ten minutes or so before, I will have transportation available.

If I could just get a show of hands for those who think they might be able to join.

AUDIENCE MEMBER: Could we walk?

PROFESSOR PARRAN: Sure you could walk. The weather is great, but there is transportation. All right. Thank you very much, and thanks, everyone, for coming. It has been a pleasure.