

UNITED STATES INTERNATIONAL TRADE COMMISSION

CENTENNIAL CONFERENCE

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Thursday, September 8, 2016
Voice of America
Building Auditorium
330 Independence Avenue, SW
(C Street between 3rd & 4th)
Washington, D.C.

The meeting commenced pursuant to notice at
9:15 a.m., Chairman Irving A. Williamson, presiding.

1 ITC COMMISSIONERS

2

3 Vice-Chairman David S. Johanson (Moderator)

4 Commissioner Dean A. Pinkert (Moderator)

5 Commissioner Scott F. Kieff (Moderator)

6 Commissioner Rhonda K. Schmidtlein (Moderator)

7 Commissioner Meredith M. Broadbent (Moderator)

8

9

10 KEYNOTE SPEAKERS

11

12 The Honorable Kevin Brady, Chairman of the House
13 Committee on Ways and Means

14

15 Ambassador Michael Froman, U.S. Trade
16 Representative

17

18 Chief Judge Sharon Prost, U.S. Court of Appeals
19 for the Federal Circuit

20 Everett Eissenstat, Chief International Trade
21 Counsel, U.S. Senate Committee on Finance
22 (Majority)

23

24

25

1 KEYNOTE SPEAKERS (CONTINUED)

2

3 Jayme White, Chief Advisor for International
4 Competitiveness and Innovation, U.S. Senate
5 Committee on Finance (Minority)

6

7 Angela Ellard, Chief Trade Counsel and Trade
8 Subcommittee Staff Director, U.S. House Committee
9 on Ways and Means (Majority)

10

11 Jason Kearns, Chief International Trade Counsel,
12 U.S. House Committee on Ways and Means (Minority)

13

14 The Honorable Judge Leo M. Gordon, U.S. Court of
15 International Trade

16

17

18 PANEL PARTICIPANTS

19

20 Professor Andrew Reamer, The George Washington
21 University

22

23 Professor W. Elliot Brownlee, University of
24 California, Santa Barbara

25

1 PANEL PARTICIPANTS (CONTINUED)

2

3 Professor Douglas Irwin, Dartmouth College;
4 Robert Enholm, Woodrow Wilson House

5

6 Professor Alfred Eckes, Ohio University

7

8 Gene Rosengarden, Former USITC Director of the
9 Office of Tariff Affairs and Trade Agreements

10

11 Janice Summers, USITC

12

13 Arun Butcher, USITC

14

15 Lynn Featherstone, Former USITC Director of
16 Investigations

17

18 James Lyons, Former USITC General Counsel

19

20 Professor Kara Reynolds, American University

21

22 Terence P. Stewart, Partner at Stewart and
23 Stewart

24 Professor Chad Brown, Peterson Institute

25

1 PANEL PARTICIPANTS (CONTINUED)

2

3 Kenneth Mason, Former Secretary of the Commission

4

5 V. James Adduci, Adduci, Mastriani & Schaumberg

6

7 Sarah Hamblin, Adduci, Mastriani & Schaumberg

8

9 Deanna Tanner Okun, Adduci, Mastriani &

10 Schaumberg

11

12 N. Timor Yaworski, Former USITC Assistant General

13 Counsel

14

15 Stephanie Roberts, Steptoe and Johnson

16

17 Dr. Michael Ferrantino, World Bank

18

19 Professor Michael Moore, The George Washington

20 University

21

22 Commissioner Thelma Askey, Rockardt Group

23

24 Catherine Field, Former USTR Deputy General

25 Counsel

1 PANEL PARTICIPANTS (CONTINUED)

2

3 Professor Thomas Prusa, Rutgers University

4

5 Neena Shenai, Medtronics

6

7 F. David Foster, Foster, Murphy, Altman and

8 Nickel

9

10 Shara Aranoff, Covington and Burling

11

12 Daniel Pearson, Cato Institute

13

14 Paul Bardos, Editor-in-Chief of USITC Centennial

15 Book

16

17 Lynn Bragg, Glass Packaging Institute

18

19 Daniel Leahy, Former USITC Director of the Office

20 of External Relation

21

22

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1 PROCEEDINGS

2 (9:08 a.m.)

3 MR. BARDOS: I am Paul Bardos. I want to welcome
4 you. I am the Editor-in-Chief of the Commission's
5 Centennial Book, and I have a number of announcements.

6 Oh, good. Thank you. So I am very pleased to
7 say that we have all parts of our book in and they're now
8 under review. It's 16 chapters. And I want to thank very
9 much all the contributors and reviewers for their excellent
10 work on this project. It's been a lot of fun for me, and I
11 hope it has been for them as well.

12 Now our plans for what to do with the book:

13 First we plan to push the book on the
14 Commission's website, and we're hoping to do that in the
15 next couple of months. And then we're also exploring the
16 idea of publishing a hard cover book version. And there is
17 a sign-in sheet out in front if you're interested in buying
18 one of these hard copies. We don't know yet how much this
19 is going to cost, but we hope to keep it under \$70. We
20 anticipate publishing the hard copy by the end of this year.

21 And I want to say also, summaries of today's
22 discussions will be drafted for publication in a special
23 volume of the Commission's staff-run Journal of
24 International Commerce and Economics. If you have any
25 questions or concerns about this, please let me know and

1 I'll pass them on to the JICE people.

2 And the conference is being watched live at the
3 Commission building by staff and others, and it is being
4 videotaped and transcribed. Both the video and
5 transcription will be posted on the Commission's website in
6 a few weeks.

7 I want to point out, we have some conference
8 coordinators and facilitators. They are the ones with the
9 ribbon on their ID, and they have "How may we help you?"
10 They are here to help in any way they can.

11 We are continuing to run a shuttle on a
12 continuous loop to the Commission building, leaving every 15
13 minutes or so from the C Street entrance here near the
14 pedestrian crosswalk, and it will be dropping off right in
15 front of the Commission building.

16 And then with respect to lunch, we recommend that
17 you eat lunch in the cafeteria downstairs here in this
18 building. They are ready for us. They have prepared box
19 lunches and hot food so you can eat and get back within the
20 lunch hour.

21 And for me the most important thing, the
22 restrooms. If you go out the back here, turn right, and
23 then left past the elevators are the restrooms.

24 And finally, please remember to join us for our
25 fabulous reception starting at 6:15. So those are the

1 administrative announcements I have, and I want to then turn
2 it over to Chairman Irving Williamson.

3 (Applause.)

4 CHAIRMAN WILLIAMSON: Thank you, Paul.

5 I am extremely pleased to welcome you to this
6 Conference celebrating the 100th anniversary of the founding
7 of the U.S. International Trade Commission.

8 In thinking about how to celebrate our
9 Centennial, the Commission decided that one of the most
10 useful and lasting things we could do is to do the detailed
11 written history. And Paul has already told you about the
12 book.

13 Our goal was to create a work that describes the
14 circumstances that led to the Commission's creation, the
15 goals of its founders, the evolution and expansion of its
16 responsibilities, the changes in the trade laws it
17 administers, changes in its structure, and the challenges it
18 has faced.

19 We hope that the readers of this history will not
20 only gain an appreciation of how far the Commission has
21 come, but will also gather insights into how the Commission
22 can engage the challenges that lay ahead.

23 As you will hear many times today, in 1916 the
24 creators of the Commission wanted an agency that was
25 independent, bipartisan, expert, and objective.

1 President Woodrow Wilson in his own quaint way
2 emphasized that the evidence-focused role of the Commission
3 should be as the following:

4 Do not let a fact catch you napping because you
5 will get the worst of it if you do. And the object of the
6 Tariff Commission is that we should see the facts coming
7 first so they could not catch us. This you will find in
8 Chapter 3 of the book.

9 The United States is a far different country than
10 it was in 1916. We are so much more diverse and more
11 globally connected. International trade is also far
12 different than it was in 1916. Our trading partners are
13 more diverse, and what we consider international trade today
14 is far broader than what was imagined in 1916. And trade is
15 conducted in ways today that were unimaginable in 1916.

16 What has not changed in 100 years is the
17 controversial nature of trade and tariff policy, and the
18 need for a voice in the debate that all can trust.

19 Please give some thought today as to how the
20 USITC can continue to serve the American people for another
21 100 years.

22 What is clear is that the Commission was created
23 to be of service to the President, the Executive Branch, and
24 the Congress. It is therefore appropriate that we start off
25 today's conference with messages from those we serve, and

1 the first message is from President Barak Obama. It is in
2 your program, but I would like to read it:

3 "I am pleased to join in commemorating the 100th
4 anniversary of the United States International Trade
5 Commission. Since its founding one century ago, the USITC
6 has provided 17 Presidents and 50 Congresses with the
7 technical skills and advice they need to strengthen our
8 Nation's trade policies.

9 "Countless American businesses and workers have
10 benefitted from the USITC, whether through your efforts to
11 end harmful trade practices, or provide insight on our
12 country's competitiveness. Although we have come a long way
13 since this small but robust agency was founded, its mission
14 is as critical now more than ever, as we continue to expand
15 our Nation's reach in an ever-expanding global economy.

16 "I commend the men and women, past and present,
17 of the United States International Trade Commission. Your
18 tireless efforts support American businesses and workers,
19 and I am confident that your dedication will continue to
20 leave a lasting impact for generations to come.

21 "As you mark this special milestone, you have my
22 best wishes." Signed, "President Barak Obama."

23 (Pause.)

24 Okay, I'm sorry. Excuse me. I just got some
25 pages out of order. Here we go.

1 As you will read in Chapter 3 of the Centennial
2 History, the House Ways and Means Committee under the
3 leadership of Claude Kitchin of North Carolina played a key
4 role in the creation of the Commission.

5 It gives me great pleasure to present to you the
6 current Chairman of the House Ways and Means Committee,
7 Kevin Brady. As you can see from his bio, Congressman Brady
8 is from Texas and has long been an important voice on trade
9 matters. Through 2013 he served as Chairman of the Trades
10 Committee of the House Ways and Means Committee.

11 I present to you Chairman Brady.

12 (Applause.)

13 CONGRESSMAN BRADY: Thank you. Chairman, it is
14 nice to see you. Thank you very much for having me here
15 today. Thank you for your leadership of this organization,
16 and thank you to Vice Chairman Johanson, and a special
17 shout-out to Meredith Broadbent who has her Ways and Means
18 credentials in leading ITC, which we love to see over here.
19 And thank you for making note, before I did, that the Ways
20 and Means Committee initiated the creation of the Commission
21 when it was established in 1916.

22 So throughout the hundred-year history of the
23 Commission, you have served an invaluable role in providing
24 Congress and the Administration with the tools needed to
25 accomplish our trade policy goals.

1 So this morning I want to first start by offering
2 my sincerest gratitude to the Commission and its staff, past
3 and present, for your commitment to excellence, and to your
4 outstanding work throughout the years. Trade is incredibly
5 important. It is, in my view, our greatest economic
6 freedom, the freedom to buy and sell and compete throughout
7 the world with as low government interference as possible is
8 really at the heart of our free enterprise system.

9 It allows fair and free trade. It allows
10 individuals, families, communities, and countries to raise
11 themselves out of poverty and into prosperity. It ensures
12 -- done right, it ensures that that entrepreneur working
13 through the night, or with that new idea in the garage, or
14 that medical breakthrough they've been working years on, has
15 the opportunity to sell that product and make it available
16 throughout the world. It is the freedom for that parent to
17 buy whatever product they choose at the price that they can
18 best afford for their family.

19 It is critically important today in a world where
20 global trade has changed and impacted everyone's life. It
21 is extremely important that America understand the freedom
22 to trade isn't about China, it isn't about Mexico, it isn't
23 about Europe, it's about America and our individual freedom
24 to trade. The Commission plays an incredibly important role
25 in the policies that we set as a Congress in this area.

1 Over the past century we've seen, as you know,
2 dramatic changes to nearly every facet of global commerce.
3 These changes have opened incredibly new doors of
4 opportunity, but they've also posed significant challenges
5 for policymakers. Specifically, in the face of an
6 ever-shifting global economic landscape.

7 So how do we set trade policies that support
8 competition and growth to benefit our economy? And how do
9 we do so in a balanced way, taking into account the position
10 of all U.S. companies and workers?

11 These are incredibly complex questions to answer,
12 and it is all but impossible without thoroughly reliable,
13 unbiased information on the effects of our trade policies.
14 That is where this Commission comes in. And through the
15 objective analysis and impartial administration of our trade
16 remedy laws, the ITC has in many ways made the impossible
17 possible.

18 Today the Commission's work is essential. The
19 development of sound U.S. trade policy that can stand up to
20 the challenges of the 20st Century global economy.

21 That is why we needed to created, for example, a
22 miscellaneous tariff bill process that is transparent,
23 objective, and through. And when we needed to, we turned to
24 the ITC. And with the Commission's support, we will be able
25 to deliver legislation that offers critical tariff relief to

1 American manufacturers, while also upholding the House's
2 earmark ban.

3 Our MTB process legislation passed the House by a
4 vote of 415 to 2, a rare occasion in today's political
5 climate, and was signed into law in May. But none of that
6 would have been possible without the confidence that the ITC
7 has earned in Congress among both parties and in both
8 Chambers.

9 Over the past 100 years, the ITC and staff has
10 been the center of so many outstanding accomplishments.
11 Your work has made a truly meaningful difference in the
12 lives of countless Americans who may not even know who the
13 ITC is.

14 So in your honor, I have submitted a statement to
15 the Congressional Record and have ordered a flag flown over
16 the Capitol. I have the Congressional Record framed and
17 here today. And so on behalf of the United States House of
18 Representatives, I want to congratulate the Commission on a
19 century of professionalism, expertise, and excellence.
20 Thank you for your distinguished service to our Nation and
21 to the American People.

22 And, Chairman, I would like to present this
23 framed certificate. We just want to make sure the whole
24 country knew the role of the ITC in so many of our lives.
25 Congratulations.

1 (Presentation made.)

2 CHAIRMAN WILLIAMSON: Thank you, very much.

3 CONGRESSMAN BRADY: Thank you, Chairman.

4 CHAIRMAN WILLIAMSON: On behalf of the Commission,
5 I thank you.

6 CONGRESSMAN BRADY: My pleasure. Thank you.

7 (Applause.)

8 CHAIRMAN WILLIAMSON: A key element of the mission
9 of the Commission is to investigate and make determinations
10 in unfair trade cases. Given this role, it is appropriate
11 that we hear from members of the court that review our
12 determinations. The Court of Appeals for the Federal
13 Circuit reviews all appeals of the Commission's
14 determinations in Section 337. And in Title VII cases, the
15 court hears appeals of these decisions in the Court of
16 International Trade in New York.

17 I'm sure the importance of the Commission's
18 International Judicial Branch is something that the founders
19 of the Commission did not anticipate, but it is very
20 important to us now.

21 And so with that, I would like to ask Judge
22 Sharon Prost, who is Chief Judge for the Court of Appeals
23 for the Federal Circuit, and she has been a judge in the
24 Federal Circuit since 2001 and has been Chief Judge since
25 2014.

1 I am extremely proud that she is able to join us
2 today. Judge Prost?

3 (Applause.)

4 JUDGE PROST: Thank you. I am delighted to be
5 here. Congratulations to the Commission on their Century.
6 The Federal Circuit is only 35 years old, so I feel very
7 young and new to the game to be here with you today.

8 I am honored to be on this distinguished panel.
9 I have spent my 40 working years in government, divided
10 between all three Branches of government, and I am always
11 particularly happy to join colleagues. Once, always a Senate
12 staffer, so that's where my head is and I'm particularly
13 delighted to be here with members of the Senate and the
14 House staff.

15 Again, all I have to do here is, on behalf of my
16 17 colleagues on the Court of Appeals for the Federal
17 Circuit, is to congratulate you and thank you for all that
18 you do. Your cases are among the most challenging and
19 interesting that we get at the Court of Appeals for the
20 Federal Circuit, so we're always appreciative of your hard
21 work. And I think you understand and appreciate and share
22 with us the delight in doing the work that we do. Trade,
23 intellectual property, you know, they always say the law by
24 definition looks backwards, but we are fortunate enough to
25 be in the challenging fields of trade law and intellectual

1 property law. So we as judges and you as members of the
2 Executive Branch and otherwise are always chasing the
3 science and technology, chasing changes in our global
4 economy, and just trying to readjust the law so that it
5 makes sense and we get it right.

6 And that's what I know everyone at the Commission
7 does every day. My congratulations to the Commissioners and
8 to your staff, and we look forward to the next 100 years.
9 Thank you.

10 (Applause.)

11 CHAIRMAN WILLIAMSON: Thank you, Judge Prost.

12 One of the major themes of the Centennial Book is
13 the many ways that over the years the staff of the ITC has
14 worked with the staff of the Trade Subcommittees of the
15 House Ways and Means Committee and the Senate Finance
16 Committee.

17 The ITC staff has sought to provide the
18 committees with the information and analysis that the
19 committees need to carry out their responsibilities. This
20 collaboration continues today and is very much evidenced in
21 the new Miscellaneous Tariff bill process that the
22 Commission received in the petition--received and evaluated
23 temporary duty suspensions and reductions. Congressman
24 Brady talked about that, but that is another milestone that
25 we are--another new role we're taking on.

1 In light of all this continuous collaboration, I
2 am very pleased that the Majority and Minority staff
3 directors from the Trades Committees can be with us today,
4 and I would like each of them to come up and say a few
5 words. And we'll start with Everett Eissenstat, Chief
6 International Trade Counsel, Senate Finance Committee.

7 (Applause.)

8 MR. EISSENSTAT: Well I never thought I'd have
9 this honor to be here and commemorating the ITC. I didn't
10 think I'd be on the Hill for as long as I've been, but it
11 just goes to show you if you stick around good things
12 happen. So I thank you, Mr. Chairman, for that.

13 And you definitely recognized the important
14 relationship that Congress and the International Trade
15 Commission have, and it is a special relationship.

16 As you know, Congress created the International
17 Trade Commission and gave it some clear missions. The
18 fulfillment of those missions are done on a daily basis.
19 The administration of the Trade Remedy laws, protection of
20 Intellectual Property Rights, and of course one of the
21 under-looked tasks that the Commission takes on is the
22 economic analysis that they provide to the Administration
23 and Congress.

24 And one of the things that I think is most
25 important about the institution and its people, and Chairman

1 Hatch along with Ranking Member Wyden will be introducing a
2 statement for the record today commemorating the
3 International Trade Commission's Centennial.

4 One of the things that statement recognizes is
5 that the people are key to the institution. Congress can
6 create the laws. We can build the buildings. But if the
7 people are not there with the daily commitment to fulfill
8 those missions, they don't serve their purpose.

9 And my experience has been that the Commission
10 has some of the best people that we've worked with. And I
11 think we all know the Commissioners are great. They
12 probably hear it on a daily basis. I'll tell you again, the
13 Commissioners are great. But we also, what you may not hear
14 so often, is that the people we work with, the economists
15 and the policy analysts, and the Congressional Affairs are
16 absolutely outstanding.

17 And among the government agencies we work with,
18 they are truly exceptional. And on behalf of Chairman Hatch
19 and the staff of the Committee, I want to thank all of the
20 members, not just of the Commission but of the International
21 Trade agency itself for everything that they do that makes
22 all the work possible.

23 We look forward to the continuation of that
24 relationship, and I will look forward to hearing some more
25 remarks, and also reading that exceptionally ambitious book.

1 I think it is going to be very interesting. And I commend
2 the Commissioners and the institution for bringing that
3 forward.

4 So thank you very much. It's an honor.

5 (Applause.)

6 CHAIRMAN WILLIAMSON: As you will see in Chapter 3
7 of the Centennial Book, President Wilson's Executive Branch
8 advisors on trade, tariff and revenue matters were deeply
9 involved in the creation of the Commission.

10 While the Office of the U.S. Trade Representative
11 was not created until much later, since its creation it has
12 been the Commission's main point of contact with the
13 Executive Branch.

14 Michael Froman has been the U.S. Trade
15 Representative since 2013. Under his leadership, USTR has
16 continued to seek from the ITC the facts that are essential
17 to the formulation of sound U.S. trade policies.

18 In truth, if you know anything about his trade
19 negotiating agenda, the trade negotiating agenda that
20 Ambassador Froman has pursued, you appreciate how busy he
21 has kept the ITC.

22 It gives me great pleasure to present Ambassador
23 Michael Froman.

24 (Applause.)

25 AMBASSADOR FROMAN: Well thanks, Irv, and thanks

1 for letting me join you this morning. I ran into Chairman
2 Brady outside, and he told me he had warmed you up and
3 announced the TPP was almost through Congress, and TTIP was
4 almost done. So I said I hope you didn't raise the bar too
5 high, so they--but I think it was great that he was here,
6 and it just underscores both the bipartisan nature of our
7 enterprise and the fact that there's so much
8 Congressional-Executive collaboration over trade policy.
9 And the ITC is the clear manifestation of that.

10 I want to congratulate you all on the Centennial.
11 As Irv noted, we're about half as old as you are. We're a
12 mere baby compared to the ITC. And when we think about all
13 the things that the ITC has accomplished over the last 100
14 years, it is really quite remarkable.

15 Remember that before the ITC was created, it was
16 Congress that not only was doing trade policymaking, but
17 also having to sort through the factual basis of various
18 requests for tariff actions. In the 1920s, there was an
19 Institute for Government Research report that talked about
20 before the ITC was created, or the Tariff Commission as it
21 was then called, statements, and I quote, "Statements were
22 made by members of Congress who participated in tariff
23 legislation that they believed their lives had been
24 shortened by the strain to which they were subjected as
25 members of committees preparing tariff bills."

1 (Laughter.)

2 AMBASSADOR FROMAN: So when President Wilson
3 created the precursor of the ITC, whether it was for the
4 sake of good policymaking, or for the longevity of
5 legislators, it served a very important purpose. Think
6 about the last 100 years. You have seen everything from the
7 move from Depression-era protectionism to the 21st Century
8 local trading system, and hopefully not a return to
9 protectionism; from the last of the sailing cargo vessels,
10 the Model-T, and Boeing's first mail-carrying bi-plane, to
11 the 19,000 TEU Container Ships, the driverless car, and over
12 \$400 billion worth of American air freight exports a year.

13 We have seen the change from manual typewriters
14 and Morse Code Telegraph, to websites, satellites, fiber
15 optic cable. And from largely rural, high-tariff and
16 isolationist economy to the world's largest, most
17 productive, most open and most advanced economy.

18 And over these years, as each phase of the
19 economy evolved, you've seen new issues with new
20 opportunities and new challenges. And in each one of those
21 cases, the ITC has been very much involved in wrestling with
22 those issues.

23 You have had formal hearings on topics ranging on
24 everything from watch making, to services' trade. You've
25 acted on over 2,500 anti-dumping and countervailing duty

1 cases. And you've produced a set of very valuable tools
2 like the DataWeb, to Trade Remedy Spreadsheets that have
3 helped the rest of the government and the industry as a
4 whole do their job.

5 Of course you have also produced a number of very
6 important reports:

7 An Evaluation of The Contribution of The Digital
8 Data To The Economy; a study of the trade barriers
9 particularly affecting small and medium sized businesses. A
10 formal estimate of the substantial and measurable
11 contribution of our 14 Free Trade Agreements. By the way, I
12 cite that report quite actively on the Hill these days. And
13 not to mention, of course, the report on competition,
14 subsidies, and labeling of olive oil.

15 (Laughter.)

16 AMBASSADOR FROMAN: So everything from the mighty
17 to the less mighty, but all very important. And in each
18 case, the words of W.M. Stewart, the first Acting Secretary
19 of the ITC, still ring true, and I quote: "The Tariff
20 Commission approaches its problems in an absolutely
21 nonpartisan attitude with a total absence of prejudice. It
22 has no doctrine to preach, and no panacea to prescribe."

23 And sometimes from the Executive Branch some
24 would love you to have a panacea to prescribe, but we very
25 much respect the nonpartisan fact-based approach that you

1 take to all of your work.

2 And that work has helped 17 Presidents and 50
3 Congresses collaborate on 19 grants of trade promotion
4 authority, on the negotiation of GATT rounds, WTO
5 agreements, FTAs, accession agreements, on the creation of
6 preference programs, on decisions on safeguards and trade
7 remedy actions, and on enforcement cases. And those
8 policies in turn have helped open markets, promote research
9 innovation, enforce American rights, raise farm incomes, and
10 family purchasing power, and support high-wage jobs. So you
11 have a lot to be very proud of.

12 And at certain key points in our history, the
13 kinds of intellectual capital that the ITC has put out has
14 really shaped the direction of our country.

15 The Reciprocal Trade Agreement of 1934, for
16 example, and the support of the GATT system provided for the
17 alliance of democracies during the Cold War. The bulwark of
18 the WTO rules and the FTAs provided against protectionist
19 actions to the 2008 financial crisis.

20 And we are now at a similarly important point in
21 history as we work with Congress to ratify TPP. As you all
22 know, it is a complex agreement. It takes time to read.
23 You've read it all. You may be some of the few people who
24 have read it all. It eliminates 18,000 tariffs on U.S.
25 goods. It encourages trade by small and medium sized

1 businesses. It promotes high labor and environmental
2 standards. It strengthens intellectual property rights, and
3 addresses new issues like the flows of digital data and the
4 growing phenomenon of state-owned enterprises.

5 And dealing with these issues, we believe very
6 much, will help ensure that American values and interests
7 shape the global trading system going forward, in addition
8 to creating real, tangible benefits for America's workers,
9 farmers, ranchers, and businesses of all sizes.

10 The ITC's formal estimates drawn from cautious,
11 very cautious and conservative methods have additional
12 worker income, net gain in jobs, and a higher GDP are
13 proving to be an important part of the debate over the
14 agreement, and we very much look forward to working with you
15 as Congress takes up TPP to ensure that they have all the
16 information and analysis available to them.

17 With that, I just want to thank you again. As
18 Irv mentioned, we have probably kept you quite busy, whether
19 it's on trade agreements, certainly on trade remedies, and
20 new issues that have been on the agenda. We very much
21 appreciate both the professionalism and the responsiveness
22 of the Commissioners and the ITC staff. And from USTR's
23 perspective, we have borrowed and stolen some of our best
24 people from you. We very much appreciate the collaborative
25 relationship we have with you and look forward to many more

1 years to come.

2 Congratulations, and thanks again.

3 (Applause.)

4 CHAIRMAN WILLIAMSON: I told you we collaborated
5 with the USTR in many, many ways. And Ambassador Froman has
6 mentioned one of those, and that is the important role I
7 think the Commission has played over the years in the
8 training ground for many of the professionals throughout the
9 government who work on trade policy.

10 One of those places where I hope we have provided
11 some good people over the years is to the Congressional
12 committees. And I would now like to continue with hearing
13 from the staff directors, and will ask Jayme White, who is
14 Chief Advisor for International Competitiveness and
15 Innovation on the Finance Committee on the Minority side.
16 Jayme, if you would come up. Thank you.

17 (Applause.)

18 MR. WHITE: Well first, it's great to be here this
19 morning. And I want to align myself with the comments of
20 the previous speakers.

21 From the perspective of the Finance and Ways and
22 Means Committee, we very much value and view the work of the
23 ITC as not just valuable but critical to what we have to do
24 on the Hill.

25 The analysis of the complexity of global trade

1 and the impact of trade agreements on the U.S. economy is
2 vital to our understanding as to whether to pass new trade
3 agreements and how to negotiate trade agreements in the
4 future.

5 The work of the ITC to help Congress understand
6 new issues, for example the 3-3-2s on digital trade, are
7 essential to our work on the Hill, and especially to the
8 analysis that we have to do on the Finance Committee.

9 Of course the work of the ITC to determine
10 whether imports are infringing on intellectual property is
11 essential to America's innovators. And of course the
12 application of trade remedy laws and the analysis as to
13 whether imports are harming American workers and
14 manufacturers is essential to ensuring that Americans have
15 confidence in our global trading regime and our trade laws.

16 So it is an honor to be here. And
17 congratulations to the ITC for 100 years of what is really,
18 truly excellence. A former Defense Secretary said something
19 like we don't necessarily go to war with the military we
20 want, but instead the military we have. With respect to the
21 ITC, I would say that Congress has the Commission it wants,
22 not a Commission it has. And so congratulations to the ITC
23 for tremendous work, and for valuable information to the
24 Congress not only in the past but we have confidence that we
25 will have good analysis in the future, too.

1 So thank you.

2 (Applause.)

3 CHAIRMAN WILLIAMSON: Both Congressman Brady and I
4 have talked about the important role that the House Ways and
5 Means Committee played in the creation of the Commission, as
6 well as the Finance Committee, and it is a pleasure now to
7 turn to the House side and I welcome to the podium Angela
8 Ellard, who is Chief Trade Counsel and Trade Committee Staff
9 Director for the House Ways and Means Committee. And you
10 all know her, so she needs no further introduction.

11 (Applause.)

12 MS. ELLARD: Good morning everyone. It definitely
13 is a pleasure to be here to celebrate this event, but I do
14 have to say that it's perhaps a bit overshadowed by another
15 anniversary today. It is the 50th anniversary of the first
16 episode of Star Trek.

17 (Laughter.)

18 MS. ELLARD: But I think that Star Trek has
19 perhaps learned a few lessons from the ITC, because you all
20 do probable economic effect analyses, and we do know that in
21 Star Trek one of the key Vulcan themes is the needs of the
22 many outweigh the needs of the few. So what after all is a
23 probable economic effects analysis other than that kind of
24 cost/benefit thing.

25 So in any event, I have to say that I personally

1 am very proud of the role of the Ways and Means Committee in
2 helping to create the ITC, the Tariff Commission, its
3 precursor entity. And as Ambassador Froman was mentioning
4 the sleepless nights of the Members beforehand in trying to
5 announce that, I guarantee you it wasn't the Members; it was
6 the staff.

7 (Laughter.)

8 MS. ELLARD: So we I think are very grateful for
9 that. And of course -- well, I mean, you know, Members in
10 fact sometimes. I remember Sam Gibbons always saying every
11 Member is entitled to his own facts. But of course the ITC
12 investigates these independently, as many have said, without
13 party affiliation and in an objective and excellent way that
14 we rely on.

15 And I know that my Members know, whenever we say
16 the ITC, sometimes you need to spell out words. We don't
17 need to spell out what the ITC is. They know it, and they
18 rely very heavily on the work of this very important agency.

19 And I know too that you all spend a lot of time
20 meeting with us at the staff level, many, many hours in
21 going through explaining the rigor of your analysis and how
22 you came to various conclusions.

23 And I found in my office a book from the Tariff
24 Commission. This is the report from 1936, and it's very old
25 and dusty but beautifully bound, but it's amazing to me how

1 many of the issues that the Tariff Commission worked on then
2 are very similar to what you all are working on now:

3 Investigations about products like linseed oil, and plate
4 glass, electric light bulbs--well, maybe not so much anymore
5 -- but even rayon filaments in yarn. And I didn't really--I
6 didn't realize that that was around in 1936. I thought that
7 was newer.

8 So your work has definitely stood the test of
9 time. So in the words of Mr. Spock, "Live long and
10 prosper."

11 (Laughter and applause.)

12 CHAIRMAN WILLIAMSON: Thank you, Angela. And we
13 have next Jason Kearns, who is Chief International Trade
14 Counsel, Ways and Means, Minority. Jason, we'll welcome you
15 to the podium.

16 (Applause.)

17 MR. KEARNS: Thanks, Irv. This is a very special
18 day, and not just because of the Star Trek connection to the
19 ITC. The stars really are aligned today I think. And as a
20 very strong Denver Broncos fan, I also appreciate the fact
21 that the ITC is having a pre-kickoff party this evening.

22 (Laughter.)

23 MR. KEARNS: So I really think we've got this
24 right.

25 So in addition to the statements that Chairman

1 Brady and his counterparts in the Senate have entered into
2 the record, my boss, Ranking Member Levin, has also done so,
3 congratulating the ITC for its 100 years, and expressing
4 great appreciation for the hard work that all of its staff
5 has done.

6 And as previous speakers have said, we have seen
7 that first hand in a number of different contexts, including
8 the fact that we have from time to time had a number of
9 different ITC staffers serving as detailees on our staff,
10 and have always been very impressed with all of their work.

11 Another thing, though, that I think Mr. Levin
12 focused on in his statement--I won't read the whole thing to
13 you; I'm sure you all will consult with the Congressional
14 Record on your own--but he also said a few words about the
15 future of the ITC and the need to incorporate new thinking
16 on trade in its work.

17 And I think, you know, we as staffers for
18 Congress, I think we're always attuned to the need to
19 provide clear direction when we legislate, but also to
20 provide flexibility in the way we draft things so that the
21 law can sort of withstand the test of time.

22 And I think that is particularly important for
23 the ITC. We have seen how the ITC has used this. We were
24 approached a number of years ago about some concerns about
25 the way the 3-3-7 process works, for example. And I think

1 many of us were hesitant to legislate in that area. But I
2 think the ITC showed -- did a great job of seeing how it
3 could work within the structure that Congress has provided
4 to sort of efficiently and fairly continue to address 3-3-7
5 cases.

6 And that kind of creative thinking I think within
7 the constraints of the law is really what Congress expects
8 and appreciates from the work of the ITC. One thing my boss
9 said, I think he's looking to see some of the same kind of
10 creative thinking and objectivity that we continue to see
11 with the ITC in the area of economic analysis.

12 So he wrote that we need new models and new
13 thinking regarding how we analyze the impact of
14 international trade. And it is important that the
15 Commission be a leader in that regard.

16 One of the things I think the ITC has done very
17 well, when it comes to trade debates these are often
18 incredibly heated and more heat than light, I think, when it
19 comes to how trade policy will affect the U.S. economy. And
20 I think we have depended on the ITC to provide more
21 objectivity in its analysis, and we look forward to doing
22 that in the future.

23 So as much as we look back, I think we also
24 should look forward to the next 100 years. And in that, I
25 think we look forward to working with the ITC to ensure that

1 it continues to achieve the mission that it has for the
2 first 100 years.

3 So thank you very much.

4 (Applause.)

5 CHAIRMAN WILLIAMSON: Thank you very much, Jason.
6 And I particularly appreciate what you've had to say about
7 the challenges going forward. Because one of the goals for
8 today is not just to celebrate our past, but also to think
9 about what do we do in the next 100 years? And Jason has
10 started that discussion.

11 And I also want to say, for any organization it
12 is important to hear from our customers. We've heard from
13 our customers this morning, and I really, on behalf of the
14 Commission, thank you all for especially the kind words
15 you've had to say, and to let you know the importance of our
16 relationship. So thank you very much, and I wanted to
17 express appreciation to all of you for that.

18 Today, as I said, it is also about history. I
19 think it is important that we recognize those who have
20 played a role in making that history. So I would like all
21 of the former Commissioners who are present today to stand
22 so that we can recognize you, because we are building on
23 your backs.

24 (Former Commissioners stand to applause.)

25 CHAIRMAN WILLIAMSON: Thank you. You will be

1 seeing the current Commissioners later today, so they can
2 stand then. But I also would like, we've heard a lot of
3 words about the importance of the staff and the work they've
4 done over the years, and there are many former staff here
5 today. So I would like them to stand, too. So all former
6 staff of the ITC.

7 (Former ITC staff stand to applause.)

8 CHAIRMAN WILLIAMSON: Thank you. And all of the
9 current staff who are here in the room. You will be seeing
10 many of them later today.

11 Today's event has entailed a great deal of work
12 by many people. Before we take a break and begin our first
13 panel, I wanted to thank all of those people who have helped
14 put the conference and reception together.

15 I first want to thank Paul Bardos, our former
16 administrative assistant general counsel for administration.

17 (Applause.)

18 CHAIRMAN WILLIAMSON: Paul came out of retirement
19 to organize and be editor-in-chief of the Centennial Book,
20 and to help organize this conference.

21 I also want to thank Alex Hammer, the
22 Commission's Deputy Chief of Staff. Alex has worked
23 tirelessly over the past several months on the arrangements,
24 the logistics, and all the other details that go into making
25 an event such as this.

1 I also want to thank Vince Litt, Lisa Barton, Deb
2 Bridges, Michael Straud, and Katie Heiner, and Carol Varadi
3 for their work on the conference.

4 There are also many other people whose names I'm
5 not going to mention who have helped us greatly with this,
6 and I want to extend thanks to them. So let's give them all
7 a round of applause.

8 (Applause.)

9 CHAIRMAN WILLIAMSON: I guess, Paul, do you want
10 to speak to logistics?

11 MR. BARDOS: We're running a little bit ahead of
12 time, which is nice, so we can take our break now and we
13 will start the first panel afterwards. And I think there
14 are plenty of refreshments out there still. Thank you.

15 (Whereupon, at 9:53 a.m., a break is taken.)

16 MR. BARDOS: Please take your seats. So it's time
17 for the first panel, Commissioner Broadbent as moderator.

18 COMMISSIONER BROADBENT: It's great to have so
19 many colleagues back together here. We hate to break up
20 your conversations, but if you could come on in that would
21 be great.

22 (Pause.)

23 These really are klieg lights up here. Doug, do
24 you want to come up? You can be up with us, too. That
25 would be great.

1 My name is Meredith Broadbent. I'm a
2 Commissioner here at the Commission, and I have the pleasure
3 of moderating our first discussion here today. And I think
4 the Commission, as we grope and consider carefully all
5 different issues, we got together to discuss about a year
6 ago how we would commemorate our 100-year anniversary. And
7 we all looked at ourselves and said, well, we could write a
8 book. And then we thought what that would entail.

9 And then the next suggestion, I think by
10 Professor Kieff known in academia, was we could ask other
11 people to write a book for us.

12 (Laughter.)

13 COMMISSIONER BROADBENT: And we have been just
14 overwhelmed with the gratitude for folks who have
15 contributed their scholarship to looking at our particular
16 place in history. And I am very honored to introduce, very
17 quickly, because their bios are in your book, Dr. Elliott
18 Brownlee who is a Professor Emeritus of History at the
19 University of California Santa Barbara. He's a published
20 authority on Woodrow Wilson and the Federal Income Tax. And
21 he wrote Chapter 3 of our book, The Creation of The
22 Commission.

23 And he will be followed with another 15-minute
24 presentation by Andrew Reamer of George Washington
25 University, who is a Professor of Economics at George

1 Washington, and an authority on the history of federal
2 agencies. And he wrote of the period before the U.S. Tariff
3 Commission was created.

4 So I will yield to our speakers, and then we have
5 two very distinguished commentators, Dr. Doug Irwin,
6 Professor of Economics at Dartmouth, and who is writing a
7 book, The Battle over U.S. Trade Policy, which will be
8 finished next year. The battle may be over by then, but
9 we're looking forward to that book.

10 (Laughter.)

11 COMMISSIONER BROADBENT: And then the second
12 reviewer will be Robert Enholm, the Executive Director of
13 the Woodrow Wilson House here in D.C.

14 So we are looking forward to the commentators at
15 the end, but first we will start with Professor Brownlee.

16 (Applause.)

17 PROFESSOR BROWNLEE: It's very bright up here,
18 but a little dim on my lectern. And I'm going to read,
19 unfortunately, in order to pack in as much history as I can
20 in the next 15 minutes.

21 It's a great pleasure and honor to be here. For
22 a scholar of the Federal Income Tax and Wartime Finance and
23 Woodrow Wilson, these centennials are a great thing for me.
24 Beginning in 1913 with the Income Tax, extending through the
25 Centennial of American entry into World War I and the

1 financial measures, but this is a particularly important
2 centennial because of the contemporary importance of trade
3 issues and the fact that historians frankly have had
4 relatively little to say in depth about the history of this
5 Commission, and indeed tariff policy.

6 Let me take you back to the political world of
7 1916. I have to give you a little background first. First
8 with regard to the late 19th Century. During the 19th
9 Century, American political leaders had little interest in
10 fact in independent, nonpartisan tax commissions. Their
11 interest instead was in the tight control of information by
12 either Executive or Legislative interests.

13 My story in Chapter 3 was how political
14 conditions shifted in a way that overcame these preferences
15 and produced the U.S. Tariff Commission a hundred years ago.
16 During the Civil War, the United States adopted a trade
17 policy that was rigorously protectionist and maintained that
18 policy for over two generations, and perhaps longer
19 depending on your point of view.

20 Until 1913, the ratio between duties and the
21 value of dutiable goods rarely dropped below 40 percent, and
22 was frequently close to 50 percent. Throughout this period,
23 until the creation of the Tariff Commission, there was
24 little enhancement of the capacity of government to study
25 and understand this complex tariff regime in any systematic

1 way.

2 One major reason was the powerful complex of
3 beneficiaries organized by the dominant Republican Party.
4 The Party leaders were worried that scientific understanding
5 in the system might lead to its unraveling, especially since
6 the emerging profession of economics seemed to be coalescing
7 around ideas of free trade.

8 The second major reason was the Democratic Party.
9 It mounted an important challenge to the protectionist
10 system, but feared that protectionism would capture a
11 commission.

12 In the late 1890s, the Tariff Commission idea
13 began to attract supporters, especially merchants and small
14 manufacturers, and as a means of advancing reciprocal trade
15 agreements.

16 At the same time, rising inflation and a dramatic
17 wave of corporate mergers increased national support for the
18 Democratic Party's call for drastic reductions of tariffs.

19 The national leadership of the Republican Party,
20 especially President William Howard Taft, tried to use the
21 Tariff Commission idea as a way of maintaining Party unity.
22 But growing disagreements among the defending Republican
23 groups, protectionists opposed to any Tariff Commission,
24 tariff revisionists, and anti-monopoly reformers prevented
25 the Party from developing coherent proposals.

1 During the Presidential election of 1912, that
2 was the highly dramatic three-way election between
3 Republicans, Democrats, and Progressives.

4 During that election, Theodore Roosevelt raised
5 the visibility of the idea of a Tariff Commission. In his
6 third-party campaign as the Progressive Party candidate for
7 President, he associated himself with the tariff-reforming
8 wing of the Republican Party and sharpened his proposal for
9 the Tariff Commission.

10 The Republican Party, which TR had abandoned,
11 nominated Taft for re-election and endorsed a vague proposal
12 for a permanent tax commission.

13 The Democratic Candidate, Woodrow Wilson, chose
14 to ignore the commission proposals altogether. He advocated
15 dramatic cutting of rates, declaring, quote, "The tariff
16 question is at the heart of every other economic question we
17 have to deal with, and until we have dealt with that
18 properly we can deal with nothing in a way that will be
19 satisfactory and lasting."

20 Wilson stressed the connections between the
21 tariff and the rise of the monopoly power in industry. Taft
22 became identified with conventional protectionism. And
23 Roosevelt failed to generate significant support among the
24 Democratic voters for his approach.

25 Wilson won the White House with what most

1 observers believe was a mandate for an across-the-board
2 significant rollback in tariff rates. And in 1913, he
3 engineered just that: passage of the Underwood Tariff would
4 slash rates on the average by about one-third in one year.

5 During the deliberations over the Underwood
6 Tariff, neither Wilson nor the Democratic leaders in
7 Congress paid much attention to the idea of a Tariff
8 Commission. Wilson focused instead on establishing a
9 process, a political process that would continue to produce
10 major cuts and ultimately bring about something like free
11 trade.

12 For Wilson, the call for scientific tariff-making
13 by a commission of experts was merely an excuse to delay
14 substantive reform and maintain the status quo until the
15 Republicans could return to dominance in Congress.

16 With the passage of the Underwood Tariff, the
17 Tariff Commission idea seemed off the table. The guns of
18 August, however, intervened. During 1914, former small
19 business advocates of a Tariff Commission began to fear that
20 the post-war world would be chaotic, demanding a better
21 understanding of the political economy of commerce and
22 expanded administrative discretion in setting tariff rates.

23 With this argument, the traditional leaders of
24 the Tariff Commission movement won new recruits to their
25 cause among large corporations, the labor movement, and a

1 variety of civic leaders.

2 At the same time, an economic recession that had
3 begun in 1913 worsened and the closing of the New York Stock
4 Exchange shook the economy for nearly six months in late
5 1914. Public concern about the economic future,
6 particularly after the War, grew.

7 Meanwhile, the recession increased federal
8 deficits and in October 1914 the Wilson Administration,
9 fearing that the deficit would produce a banking crisis and
10 a worsening recession, led to the enactment of \$100 million
11 in new taxes. The next month, no surprise, the Democrats
12 suffered severe losses in Congressional elections, barely
13 holding on to control of Congress.

14 Leading Democrats, including Wilson's Cabinet
15 members, began to doubt his prospects for re-election in
16 1916, especially if the Republican Party was united by TR's
17 return. Democratic leaders urged the Administration to
18 prepare for the 1916 election by crafting a proposal for a
19 permanent tax commission that would appeal to former
20 Progressive voters, appeal to the TR voters.

21 Wilson strongly resisted, sticking to his
22 anti-tariff political strategy, but the War continued to
23 disrupt. The German torpedoing of two British passenger
24 liners and the death of American passengers energized a
25 movement for American preparedness for entry into the War,

1 military preparedness.

2 During December 1915 and January 1916, it became
3 clear to Wilson and the Democratic leadership in the House
4 that preparedness would require even more tax increases.
5 Because of the power of populist Democrats, particularly
6 Southern, in the House led by Claude Kitchin, who you heard
7 about earlier today, who was both chair of the House Ways
8 and Means Committee and House Majority Leader, the increases
9 would almost certainly include huge hikes in the taxation of
10 corporations, and the introduction of excess profits'
11 taxation.

12 Wilson supported this approach, but worried about
13 the backlash both from business and from voters,
14 particularly in the Northeast, who might punish the
15 President for tax increases. Within the Wilson
16 Administration, a new tactical idea took hold. The
17 Administration's support for the Tariff Commission idea,
18 Cabinet members in particular, thought could do more than
19 simply appeal to Roosevelt Progressives; it could help ease
20 business hostility to the ambitious and radical income tax
21 plan.

22 Wilson, however, remained rigid. Several of his
23 Cabinet members led by Secretary of the Treasury McAdoo were
24 especially enthusiastic about embracing a tax commission and
25 continued to pressure Wilson.

1 McAdoo was the best-connected New York politician
2 in the Cabinet, and he concluded a Tariff Commission might
3 be a useful tool for the Treasury to begin to bargain for
4 more favorable treatment of American exports.

5 Wilson continued to agonize, but in late January
6 1916 under pressure from McAdoo in particular, he finally
7 caved in. His next step was delicate, negotiating with
8 Claude Kitchin. Wilson knew that Kitchin was certain to
9 dislike any proposal for a nonpartisan commission because it
10 would seem to threaten Congressional prerogatives, and to
11 reverse the partisan tax reform that had prevailed in 1913.

12 Wilson was not surprised when the very next day
13 after making his proposal, his aide Joseph Tumulty let the
14 President know that he had spoken with Kitchin who would be
15 arriving at the White House that day, quote, "to oppose the
16 idea of a Tariff Commission," unquote.

17 Tumulty also reminded Wilson that Kitchin himself
18 had made two speeches against it and were, in the audience
19 anyway, very well received.

20 After Kitchin arrived, he and Wilson reached a
21 meeting of the minds. Wilson formally agreed that the
22 Commission would focus on fact-gathering rather than
23 policy-making, and its main assignment would be to assist
24 legislators in writing free trade laws after the War.

25 Kitchin and Wilson also agreed that McAdoo and

1 his Treasury staff would draft a bill, and that
2 Representative Henry Rainey of Illinois, the second-ranking
3 Democrat on Ways and Means, rather than Kitchin, would
4 introduce it in the House.

5 But the Rainey bill introduced did not advance in
6 the House. The revenue legislation, the main revenue
7 legislation was Kitchin's top priority, and Kitchin still
8 had doubts about the Tariff Commission proposal.

9 In June, once the Ways and Means Committee
10 hammered out its version of the revenue legislation, Kitchin
11 decided the contents of the Rainey bill might be useful as a
12 vehicle to dampen vigorous opposition to the revenue
13 legislation.

14 Kitchin, after private discussions with McAdoo,
15 included the Tariff Commission proposal in one section of
16 the revenue bill that the committee reported out on July 1,
17 1916. You have that section in its ultimate form in your
18 package.

19 The bill included another measure that the Wilson
20 Administration had proposed to appease business: the
21 imposition of a new tariff that included duties of 30
22 percent on the importation of dye stuffs, medicines, and
23 synthetics. The goal was to protect the American chemical
24 industry from German competition, specifically the German
25 Farben Trust, both during and after the War, when the

1 American industry anticipated price cutting and dumping.

2 On the floor of the House, Kitchin admitted to
3 his fellow Democrats that, quote, "If I were as good a
4 Democrat as I used to be, I would be fighting the dye stuffs
5 provision, but I am going to take this bill with that dye
6 stuffs provision and the Tariff Commission in it like I used
7 to take a bad pill when I was a boy. I would take it down
8 all at once."

9 He appealed to Republicans as well. And many
10 House Republicans responded favorably. Even Ohio
11 Representative Nicholas Longworth, a protectionist stalwart,
12 declared that he would vote for the bill if he had to vote
13 between choosing to voting it all up or voting it all down.

14 He embraced preparedness, the creation of the
15 Tariff Commission, and the protective duties on dyes and
16 dyestuffs.

17 When the bill was under discussion in the House,
18 the anti-tariff Democrats, Senator William Jennings Bryan,
19 among them who supported the Progressive revenue measure,
20 assured his no-tariff colleagues in the House that the
21 Tariff Commission provision does no harm.

22 The Democratic leadership in the House allowed
23 virtually no tampering with the Kitchin Committee's report.
24 His committee held no formal hearings, and the Democrats
25 introduced the legislation as a privilege bill to make

1 amendments difficult.

2 On July 10th, only four days after consideration
3 of the bill began, the House passed the Kitchin package,
4 joined by 39 Republicans. The Democrats established a
5 100-vote margin of victory.

6 On the Senate side, the divisions within the
7 Democratic Party were more severe than in the House.
8 Free-trade Democrats, led by Senator Underwood, threatened
9 to break ranks and oppose the entire revenue package.

10 In the final debate in the Senate, Underwood
11 tried to encumber the revenue act with a kind of poison
12 pill, a severe reduction in the personal exemption in the
13 income tax. In late August, in response, Wilson actively
14 intervened and succeeded in defeating Underwood's poison
15 pill ploy.

16 On September 6th, the Senate passed the revenue
17 bill, including the Tariff Commission provision, by a margin
18 of 42 to 16. However, many Democrats with major
19 reservations about the Commission chose not to vote. The
20 next day, Congress accepted a reconciliation of the two
21 bills, and on September 8th, 100 years ago to the day,
22 Wilson signed the measure into law.

23 If I had time today, I would relate how Wilson
24 proceeded to appoint the first members of the Commission.
25 It's a significant story reflecting how Wilson tried to

1 balance his desire to make the Commission nonpartisan with
2 his continuing commitment to the low-tariff program of the
3 Democratic Party and its hostilities to Republican
4 protectionism. You will have to read the book for that
5 story.

6 (Laughter.)

7 PROFESSOR BROWNLEE: What I would like to do is I
8 think end with some words from Wilson on the tariff.
9 Woodrow Wilson, during World War I, reflected that the
10 global political, and economic experience of the War had
11 demonstrated the importance of freely flowing commerce to
12 international harmony.

13 In other words, the War only intensified his
14 faith in the power of free trade, which he thought all along
15 ought to be a fundamental objective of the Tariff
16 Commission.

17 In 1918, in crafting the third of his fourteen
18 points, Wilson advanced one of his most eloquent and concise
19 statements for free trade. He called for, quote, "The
20 removal so far as possible of all economic barriers in the
21 establishment of an equality of trade conditions among all
22 the nations, consenting to the peace, and associating
23 themselves for its maintenance."

24 This was to Wilson more than economics. He
25 declared, "What we ourselves are seeking is a basis that

1 will be fair to all and which will nowhere plant the seeds
2 of such jealousy and discontent and restraint of development
3 as would certainly breed fresh wars."

4 Perhaps one of the most important questions to
5 address in evaluating Wilson's long-term accomplishments in
6 creating the Tariff Commission is whether or not the
7 Commission succeeded in advancing the lofty goals he
8 promoted and he said forth for promoting international
9 comity in his 14 points.

10 Thank you.

11 (Applause.)

12 PROFESSOR REAMER: Good morning. It's a pleasure
13 to be here, and an honor to be here. Congratulations to the
14 USITC on its 100th Anniversary.

15 I am going to talk about some of the history
16 prior to the development of the Tariff Commission, and the
17 evolution of the learning Congress went through to come to
18 the point of figuring out how to construct a Commission.

19 So the U.S. Tariff Commission's establishment in
20 1916 was really the culmination of 127 years of efforts by
21 Congress to generate the data and analyses that it thought
22 it needed to knowledgeably set tariffs.

23 From 1789 forward, debates over tariff laws--and
24 there were 42 tariff laws passed between 1789 and 1916--
25 reflected profound differences in perspectives about the

1 economic interests of Members' constituents. There were
2 certain tensions around the appropriate level of government
3 revenue, protectionism versus free trade, and the interests
4 of the Nation versus regions versus industry A versus
5 industry B versus consumers who were always present.

6 As a result, over this 127 years deliberations in
7 Congress over tariffs were always complex, passionate,
8 divisive, and lengthy.

9 To understand the context here, it is really
10 important to appreciate the centrality of tariffs to
11 American Government and politics in the Nation's early
12 history.

13 Between 1789 and the Civil War, tariffs provided
14 nearly all of federal revenue, like in the high 90 percent.
15 Between the Civil War and the passage of the Sixteenth
16 Amendment, the Income Tax Amendment, it was roughly half.
17 So from a revenue perspective, tariffs were critical to the
18 operation of the Federal Government.

19 And while slavery and race were the paramount
20 political issues of the 19th Century, the role of tariffs
21 and the nature of tariffs were right behind. It was very,
22 very central to the politics of the period.

23 At the same time, Congress's task in commerce
24 really had skin in the game. One of the prior speakers
25 talked about, you know, that Members of Congress lost sleep

1 and years off their lives trying to figure out tariff
2 levels. Well, they had to set tariffs, line by line.

3 And the 1789 Act was three pages long. The
4 Smoot-Hawley Act of 1930 was 200 pages long. So as the
5 Nation progressed industrially, the complexity of Congress's
6 task grew exponentially.

7 Whatever their perspective, Members of Congress
8 sought data and analysis to inform their views and bolster
9 their arguments. From the 1790s forward, Congress
10 periodically passed legislation directing the Executive
11 Branch to produce reports and data so that Congress could
12 rationally set tariffs.

13 And the result was a multi-decade trajectory of
14 trials, errors, and experimentation that ultimately led to
15 the creation of the Tariff Commission.;

16 So what I want to do is give you this overview,
17 kind of the thread of this trajectory over the first 127
18 years of the Nation's history. So when Congress had to
19 figure the stuff out, Members had to consider three factors:

20 Federal revenue, national economic development,
21 and constituent interest. As I mentioned, tariffs are
22 really essential to the operation of the Federal Government.
23 So there were questions about, so what should the Federal
24 Government do? And how much money do we need to do it?

25 Secondly was national economic development. The

1 strategic use of tariffs to protect and promote job, wealth,
2 and revenue generating industries, particularly
3 manufacturing.

4 So just from the get-go there was this tension
5 regarding tariffs and setting them between its role in
6 providing federal revenue and as a protectionist tool, as a
7 neomercantilist tool, to use a term of economic history and
8 theory, to promote U.S. industry.

9 And in the 19th Century there was a notion called
10 the American System of Economics, which was basically a new
11 mercantilist strategy of stimulating national economic
12 development through strategically setting tariffs on key
13 industries, for key industries that would collectively
14 generate the revenue to fund transportation infrastructure,
15 the canals and the roads of the time. And so, promote
16 internal market development.

17 And the primary, the first explicit articulation
18 of this was by Henry Clay in 1832, but he really built on
19 work that Alexander Hamilton had done in his Report on
20 Manufacturers in 1791. Lincoln, the Republicans from
21 Lincoln through Taft, supported major elements of this
22 American System of Economics, and protectionism was a key
23 part of that.

24 And then the third driver of course was
25 constituent interest. Whether you were, you know, a

1 Congressman from Lowell, Massachusetts, representing textile
2 manufacturers, or a Southern Representative representing
3 cotton growers selling to England, you cared a lot, and your
4 political life was on the line. You had to address the
5 needs of your constituents.

6 So this process of Congress having to set tariffs
7 line by line, and then figure out Member by Member how these
8 three things of revenue, of national economic development,
9 and protecting constituent interest, fit together. That was
10 a lot, a lot to do. And, yes, a cause for a lot of strain
11 and stress, and they wanted data to help them figure out how
12 to kind of thread this needle.

13 So to get to the point of being able to design
14 the Tariff Commission, Congress had to go through, as I
15 said, a long series of experiences so it could develop some
16 understandings. And these understandings were as follows:

17 One is, clearly they didn't think this way but
18 this was the result, the distinctions between data and
19 information and knowledge. And the administrative and the
20 statistical and the political methods for generating data,
21 information, and knowledge. So collecting comprehensive,
22 reliable data on specific economic activities like an
23 imported shipment. They had to figure out how to do that.

24 Turning data into useful statistical information,
25 detailed objective, reliable, descriptions of whole

1 activities, exports, imports, by year, by state, by port.
2 The industrial structure.

3 And then the third element was transforming that
4 information into actionable knowledge, some analysis that
5 helped Congress figure out okay this is what we do. And
6 there was no playbook for how to do this. And it took them
7 a long time to build the capacity and the understanding for
8 what was necessary.

9 So if you look at the pre-Tariff Commission
10 history, I divide it into two periods: From 1789 to 1850,
11 and then from 1850 forward. And I'll describe those.

12 In 1790--Congress first asked for knowledge, and
13 in 1790 and then three more times in 1809, 1815, and 1832,
14 Congress went to the--Congress passed a resolution asking
15 the Treasury Department to give a manufacturing plan, a plan
16 for promoting manufacturing in the U.S., and what the tariff
17 should be for that, for those industries.

18 So it was going to Treasury and saying tell us
19 what we should do. And each time, each of those four times,
20 Treasury came back and said this is what we think you should
21 do but we don't have the information to tell you because we
22 don't have good data.

23 The second time this happened, the Secretary of
24 the Treasury, Albert Gallatin, said to Congress: Look,
25 here's my plan for you. The data is lousy, but this is my

1 suggestion. You just passed the Census Act of 1810. Go
2 back and amend it and do a Census of Manufacturers. In that
3 way, we can figure out what kind of manufacturing you have
4 in this country.

5 So the Congress said, great. They amended it.
6 And that was the first Census of Manufacturers. It didn't
7 work. They didn't know how to run a census of
8 manufacturers. So they tried again in 1820. Again, it
9 didn't work. They skipped 1830 because they were
10 frustrated.

11 In 1832, Congress went to the Secretary of the
12 Treasury, a guy named McLane, and said we want a
13 manufacturing plan. McLane did his own ad hoc manufacturing
14 census which was not great but, you know, it was a little
15 bit better.

16 And then at the end of the decade, President Van
17 Buren went to Congress and said, okay look, we need
18 information on the manufacturing. We don't have a sense of
19 what the manufacturing industry looks like in this Nation,
20 and it's growing quickly. We do know that.

21 And so Congress reinstated the Census of
22 Manufacturers in 1840, and it was better. Some learning
23 went on. And so Congress went to Treasury and asked for
24 knowledge. Treasury comes back and says we need better
25 information, let's do a Census of Manufacturers.

1 The second stream of activity in this first
2 period was trade reports. And from the get-go, Alexander
3 Hamilton, the first Treasury Secretary, was sending to
4 Congress reports on what was--how much money was being
5 raised through tariffs. And between 1792 and 1798, each
6 House of Congress acting independently passed resolutions
7 saying, no, we want better information from you.

8 And so over time a process developed where the
9 Treasury Department was sending reports annually to each
10 House separately regarding imports and exports of only
11 dutiable goods. It was not a full accounting of all trade.

12 And this system remained in place until 1820.
13 Congress again continued to be frustrated, not having enough
14 information to set tariffs, and so in 1820 a New York
15 Senator, a guy named Sanford, convinced Congress to describe
16 the kinds of annual reports that it should get from
17 Treasury. One report, not two reports to each House, and
18 covering all imports and exports, not just imports that were
19 dutiable.

20 This was a major advance. The problem is that
21 these reports themselves ended up not being that good
22 initially. There were lots of omissions. How do you do the
23 accounting? Human error. Inconsistencies. So the result
24 was that Congress was still kind of working in the dark
25 here.

1 In the 1840s, Congress tried two more things
2 which started well and then kind of fell apart. One is they
3 asked the State Department to describe tariffs laws in other
4 countries. State produced two reports and then stopped
5 doing it. And then the Treasury Department was told to
6 prepare a much more comprehensive set of economic reports,
7 almost like an 1840 version of what used to be the
8 Statistical Abstract. And Treasury did that twice and then
9 stopped.

10 So Congress was mandating these reports, but they
11 weren't getting back. There was not the capacity in these
12 departments to do this work. So there we are in 1850, and
13 all we have are these 1820 reports, the reports with the
14 format mandated in the 1820s, and a kind of semi-useful 1840
15 Manufacturing Census.

16 But in 1850 things really changed dramatically.
17 The progress in statistical science and Congress was very
18 helpful, and Congress figured out that it needed a
19 management board for the 1850 Census. So it created a
20 management board. It brought in statistical experts. It
21 figured out better ways of--the experts had better ways of
22 tabulating, and the result was the 1850 Census both for
23 population and manufacturing was a success.

24 And then things took off from there. So you can
25 look at the 1850 to 1916 period as a progressive and

1 historically relatively quick going up the ladder of
2 learning. So in 1856, Congress created a--Congress shifted
3 from demanding reports to creating statistical agencies with
4 mandates, and money, and staff. So they did it in State, and
5 they got those missing foreign tariff reports to be sent.
6 It created a Bureau of Statistics in the Treasury Department
7 to create the reports that Treasury was supposed to create
8 20 years earlier. And then--so it was creating reliable
9 streams of information.

10 And the second thing it did was it started asking
11 experts for opinions. It began with the 1850 Census. In
12 1865, Congress set up a U.S. Revenue Commission because the
13 Civil War was ending. There were all these emergency
14 measures regarding taxation, and Congress wanted to figure
15 out, okay, so what should our revenue streams be in the
16 future, and for what purposes?

17 So it was a one-time commission. They made some
18 recommendations about internal--so Internal Revenue comes
19 from this period, right, because there were tariffs, and
20 then there was Internal Revenue, which was kind of a new
21 thing.

22 This commission went in great depth about
23 Internal Revenue, but punted on tariffs because it lacked
24 the information. Congress liked this idea of having an
25 expert, so it created a special commissioner for revenue in

1 the Treasury Department to give it advice on an annual basis
2 about its revenue streams, including tariffs.

3 And Congress asked for this expert opinion
4 several times throughout this period, and each time the
5 experts came back and said: Congress, you should lower
6 tariffs because protectionism is hurting the economy. And
7 the Republican-dominated Congress didn't want to hear that.
8 So it either terminated the experts, or just ignored their
9 advice.

10 In this case of the special commission for
11 revenue in Treasury, they just let the office lapse. In
12 1882, there was a Tariff Commission created that again said
13 lower tariffs, and Congress said no. And then later in the
14 1880s, the notion of scientific tariff setting became
15 popular. This notion that you could take data and set
16 tariffs scientifically so that the costs of production in
17 the U.S. and the costs of production in foreign countries
18 would equalize.

19 And this was very much a topic of focus and
20 conversation in the 30 years between the 1880s and the
21 creation of the Tariff Commission. What became the Bureau
22 of Labor Statistics was charged with creating these reports
23 about equalizing costs of production.

24 The government got really good at producing huge
25 volumes of data, but the problem was they didn't know how to

1 translate the data into actionable knowledge.

2 So the next step was the creation of the Tariff
3 Board in 1909. As you know, that was something that
4 President Taft found kind of wiggle room in the Payne
5 Aldrich bill, created a Tariff Board. Again they called for
6 lower tariffs. Congress didn't like that, and so they
7 stopped funding the Tariff Board.

8 But by the end of this period, there was the
9 capacity to create lots of information, the desire to rely
10 on experts, and what the Tariff Board did that no one had
11 done before was take enormous amounts of data and actually
12 come up with some recommendations. Congress ignored them,
13 but the result was, after this 127-year period, the
14 government and Congress were in a position to then create a
15 Tariff Commission to continue this work.

16 So with that, thank you very much.

17 (Applause.)

18 COMMISSIONER BROADBENT: Great. Thank you, Dr.
19 Reamer. Would our two commentators like to stay in their
20 seats, or speak at the podium? Please.

21 PROFESSOR IRWIN: So I have to start with Star
22 Trek. Angela Ellard started that way. One of the things I
23 show my class is the Customs Declaration Form for the Apollo
24 Astronauts when they splash down in the Pacific with moon
25 rocks. Now there's no tariff line for moon rocks, but they

1 did have to fill out the form. It was processed. NASA
2 didn't have to pay duties to the Treasury Department because
3 they weren't duty free, but I think this indicates the ITC's
4 role in the 21st Century, which is as we move to
5 interplanetary trade, as private sector moves to mining
6 Mars, mining the Moon to bring things back, you're going to
7 need some reports indicating what is the impact on the
8 domestic mining industry when we start bringing back these
9 rocks?

10 At any rate, that's the future. We're here to
11 talk about the past. I very much appreciate the opportunity
12 to be here at this conference and talk about these two
13 papers.

14 Historically they're quite accurate and they're
15 quite good, and I do recommend you read them. I don't have
16 any substantive comments on them.

17 Professor Reamer talked about the difficulties
18 with Congress getting new and better data on international
19 trade, and I just have to have two thank-yous to the
20 International Trade Commission for what they do in this
21 realm.

22 First is the DataWeb. The DataWeb is an
23 invaluable resource for practitioners, researchers, in terms
24 of getting access to U.S. trade data. So I commend very
25 much the ITC for providing that service.

1 In addition, I would like to thank the ITC
2 Library of International Trade and the librarians at the
3 ITC. It's incredibly valuable, the resources that they have
4 there. They maintain the whole historical record. They're
5 putting up a lot of documents on PBS, on the website which
6 is very useful for those of us who don't live in Washington.
7 So I am very grateful. I know I speak for a lot of people
8 in the trade policy community, very grateful to the ITC
9 librarians for all they do.

10 In terms of the two papers, I just want to
11 provide a little bit of color, because we're talking about
12 legislation, laws, this Congress, that Congress, but there's
13 some personalities and individuals that are very important
14 in these two periods.

15 The person I'd like to highlight for the period
16 that Professor Reamer talks about, the pre-Tariff Commission
17 period, is David Wells, who was the first Special
18 Commissioner of Revenue in 1866 to 1869 or so, and he
19 produced some very large and important reports on tariff
20 policy during that period, in the post-Civil War period.

21 And what's interesting and fascinating about him
22 is he underwent an intellectual conversion. He had been
23 vetted by the Republicans, the protectionists at the time.
24 He was a safe appointment. Henry Carey, who was a leading
25 intellectual in favor of high tariffs at this time, was a

1 good friend of his, trusted him, but in his role as Special
2 Commissioner he began to see the politics behind the tariff.
3 And he was appalled and disgusted by the difficulty of
4 getting reform through Congress.

5 He thought the Tariff Code was a complete mess.
6 It actually didn't protect a lot of manufacturers because
7 the duties on raw materials were so high it was actually a
8 negative effect on protection for downstream producers. He
9 wanted to clean that up. And he lost a lot of friends and
10 was excoriated in Congress for producing these reports that
11 said we need thorough-going tariff reform.

12 The second personality I would like to point out
13 for the second period, for Professor Brownlee's period, and
14 this is a person really who I hope gets his due on an
15 occasion like this and for the International Trade
16 Commission's Centennial, and that is Frank Taussig. Frank
17 Taussig is a towering figure in the history of trade and
18 trade policy. He was Professor of Economics at Harvard. He
19 was a tremendous scholar, an inspiring teacher. He wrote
20 the key memo to David Houston, who was the Secretary of
21 Agriculture in the Wilson Administration, proposing, or at
22 least providing a justification for the creation of a Tariff
23 Commission. And that memo was very important in convincing
24 President Wilson to change his position and adopt and
25 advocate for a Tariff Commission.

1 And of course he was later appointed as the first
2 Chairperson of, Chairman of the Tariff Commission, and he
3 brought three things to that role. He brought tremendous
4 good sense. He brought expert knowledge -- there's probably
5 no person in America who knew more about tariff and tariff
6 history at that time. And perhaps most importantly, he
7 brought integrity, because he was respected across the aisle
8 for this views and his knowledge. And starting the Tariff
9 Commission on a good step forward in terms of being sound,
10 trusted, was very important. Because as we look a little
11 bit later, as we look at the Tariff Commission in the 1920s,
12 we will see integrity is not the first word that would come
13 to mind in describing the commission at that time.

14 I would also like to say that Dr. Taussig was
15 responsible for one of the most important reports,
16 government reports on trade policy in U.S. history, I would
17 say one of the top three or four reports of all time.
18 Obviously Hamilton's report on Manufacturers is up there as
19 well.

20 In 1919 there was a Tariff Commission Report on
21 Reciprocity Treaties, and this lay the groundwork for the
22 adoption of the Unconditional Most Favored Nation Clause in
23 U.S. Commercial Treaties by the Harding Administration in
24 1923.

25 That 1919 Report is still worth reading today.

1 It is exceptionally interesting and very sound in terms of
2 its judgments on the future direction of U.S. trade policy,
3 and I think is a tribute to what the Tariff Commission has
4 done in the past and hopefully will continue to do in the
5 future in terms of providing analysis and insight into U.S.
6 trade policy that we've seen.

7 So it's a pleasure to be here, and thanks to the
8 International Trade Commission staff for all they do for us
9 who use their work.

10 (Applause.)

11 COMMISSIONER BROADBENT: Thank you, Professor
12 Irwin. And our last reviewer will be Mr. Robert Enholm, who
13 is the Executive Director of the Woodrow Wilson House.

14 MR. ENHOLM: Thank you. And happy birthday to the
15 Commission. Let me--years ago, my daughters convinced me
16 that I didn't need a wristwatch, I should just use my phone.
17 And there are times like this where I think it would be nice
18 to have a watch. But then I use my phone.

19 So my name is Bob Enholm. I am the Director of
20 the Woodrow Wilson House. For those of you who are local to
21 Washington, D.C., you may know it. The House is on S
22 Street, near Massachusetts Avenue, in the Kalorama
23 Neighborhood. It's where President Obama has announced that
24 he's intending to live after leaving the White House, and he
25 will be only the second American President to stay in

1 Washington, D.C., immediately after leaving office.

2 President Wilson was the first and, until now, has been the
3 only American President to stay in Washington.

4 Let me also thank Chairman Williamson and also
5 Commissioner Johanson, whom I have met, who actually visited
6 the Woodrow Wilson House a couple of times, and I think
7 ultimately was responsible for my being included on this
8 panel. I am delighted to do this.

9 Part of my job is not only running the House and
10 making sure the electricity bill gets paid, but figuring out
11 ways to use that House, which is a 100-year-old house, the
12 home in which President Wilson lived from the day he left
13 the White House in 1921 until his death in 1924, and where
14 his widow lived until her passing actually in 1961. Just
15 pause and reflect on Edith Wilson living until President
16 Kennedy's Administration, a woman who sat in a gallery of
17 the Joint Session of Congress when President Wilson sought a
18 Declaration of War in 1917. The Centennial of that is
19 coming up.

20 So part of my job is to figure out ways to use
21 that House to teach history. And as someone who was a
22 history undergraduate, although I was a lawyer for 25 years--
23 --my mother now thinks I've finally found the perfect job for
24 me--but I understand that good history is meaningful today.
25 And I think the papers have done a good job of explaining

1 what went on then and how it relates to what's going on
2 today.

3 And I want to add some anecdotes and give you
4 from my perspective the importance of the founding of the
5 ITC and put it in the context of the broader events that
6 were going on in American history at that time.

7 I would be remiss if I didn't mention the
8 national spotlight that is currently focused on the racism
9 of Woodrow Wilson's era and his responsibility for that.
10 Let me let you know that at the Woodrow Wilson House we are
11 quite well aware of that, and trying to use that spotlight
12 as a way to create opportunities for all of us to learn
13 about the history of race in the United States. And,
14 importantly, to think about how the mistakes made by our
15 grandparents and great grandparents can be studied and
16 reveal ways we can improve our society today.

17 So that is an important aspect of what we do, is
18 to think about how different Woodrow Wilson's times were,
19 and then to think about how those can--

20 There we are.

21 (Laughter.)

22 MR. ENHOLM: I assume the microphone still works,
23 so we will carry on. How the history relates to our own
24 times--oh, that's nice. I can see you're all here,
25 actually, so that's good.

1 So let me jump into that, then, very quickly and
2 say that Woodrow Wilson is often considered one of the first
3 modern American Presidents, and that is because he really
4 did see the opportunity to create a rational Federal
5 Government system with the associated processes and, dare I
6 say, bureaucracies which in this town I think is not a
7 pejorative term, and he did that. He grew up in an era of,
8 you know, he was born in 1857 and really came of age in the
9 late 19th Century.

10 We have alluded a couple of times to the growing
11 sense of rationalism of that era. Wilson was one of the
12 founders of political science as a discipline, and many of
13 the areas that we think of as college majors were really
14 created as academic disciplines in the late 19th Century
15 when people around the world were convinced that there was
16 an objective truth and it fell to us to discern it.

17 And it is in that spirit that the ITC was
18 founded. It was in an era of a sense of searching for
19 economic efficiency. Wilson, we all know, and Theodore
20 Roosevelt as well, were progressives, and progressivism
21 stood for a number of things. But they included good
22 government, whether Democrat or Republican, and for rational
23 decision making with good information.

24 And today we are so steeped in a thought of data,
25 data, data, setting metrics, setting goals, and managing to

1 them. That really was not something that Woodrow Wilson was
2 raised to think about and really came about during his
3 lifetime.

4 Some of you might know Frederick Taylor, who was
5 the founder of so-called "Taylorism" in this era. Basically
6 he's credited, for better or worse, as being the founder of
7 business management. But his book entitled THE SCIENTIFIC
8 PRINCIPLES OF MANAGEMENT I think was published in 1911 and
9 really was confirming the sense that people had that there
10 ought to be a rational way to conduct business and to
11 conduct government. And Wilson was very much a part of
12 that.

13 Let me also mention, and I'll just conclude by
14 saying we take figures of history and pigeonhole them into
15 the times that they're most famous for. President Wilson of
16 course, for World War I, but sometimes we neglect to
17 remember that they were once children, once young parents,
18 once starting their careers with hopes and aspirations.

19 And we also need to not know, or to unlearn the
20 things that they didn't know in their time. Many people
21 come to the Woodrow Wilson House with sort of a mad-on about
22 Wilson's having laid the foundation for the nanny state, as
23 it's sometimes characterized, but I like to point out that
24 Wilson didn't know that World War II or the Great Depression
25 were going to come. He didn't even know that World War I

1 was going to come. It came as a complete shock to the
2 people of that era. And, frankly, world trade was beginning
3 to burgeon in that time before World War I, and it was that
4 War and the cataclysm that it represented that set back
5 world trade really for decades.

6 And so the founding of the ITC in that era laid
7 the foundation for the continued growth of what was to be an
8 important part of history. And so let me conclude by
9 inviting all of you to come to the Woodrow Wilson House. I
10 would be happy to greet you there, but in any event it's a
11 great place to come and also to send relatives when they're
12 visiting our Nation's Capital from out of town and have run
13 out of things to do. Okay? I look forward to taking part
14 in the conversation.

15 (Applause.)

16 COMMISSIONER BROADBENT: Thank you very much.
17 That was a great presentation.

18 I guess I'll start, as the moderator, with my
19 prerogative here to see if we can sort of discern who is the
20 strongest father of the International Trade Commission. If
21 we were to build a statue outside the front, who would get
22 the honor of being the person that drove it with their
23 energy and vision?

24 PROFESSOR IRWIN: I'd vote for Taussig. Because,
25 once again, it was his--remember Professor Brownlee's

1 presentation made this very clear--President Wilson was very
2 undecided, was opposed to a tariff commission initially.
3 House Ways and Means was very much opposed, as well. They
4 didn't want to give up the prerogative.

5 There was sort of political pressure and economic
6 pressure to have a commission of some sort, and it was
7 Taussig's memo I think that got the ball rolling, at least
8 within the Administration to help bring that about.

9 MR. ENHOLM: And I would just add that President
10 Wilson was intent on having either, we'd say today,
11 nonpartisanship or bipartisanship, and Wilson himself was an
12 academic, a former professor professionally and a university
13 president. And so he very much respected Taussig's
14 intellect and independence, and that was the key.

15 I think the Commission required a division
16 between the political parties. Taussig was at least
17 nominally a Republican, but sort of ensured that the
18 Commission would be seen as being even-handed.

19 PROFESSOR BROWNLEE: Is this working? I'm just
20 going to nuance that a little bit. I think it's very
21 difficult to pick one person. There is an interesting
22 intellectual nexus. Wilson, David Houston, and Frank
23 Taussig. They all knew each other well and had a
24 significant academic background in common.

25 It is very difficult to sort out, among the three

1 of them, who really shaped the final ideas. Wilson liked
2 Houston's approach, which was narrow. He wanted a
3 well-defined, limited tax commission, a fact-finding body, a
4 very technocratic.

5 Wilson was very worried politically that a tax
6 commission improperly constructed would become in itself a
7 partisan vehicle. And that was his major concern. So he's
8 from a very early point open to the idea of a tax
9 commission.

10 He had one other concern which was related to the
11 other. He in general disagreed a little bit with the notion
12 of, of -- Wilson's enthusiasm for modern government. He had
13 great concern about executive discretion, and he preferred,
14 when possible, providing a regulatory structure that would
15 shape behavior rather than relying on Executive
16 interventions in economic life.

17 And that was characteristic of the Democratic
18 Party leadership certainly from the East Coast during this
19 period. And the major difference between the Republicans
20 was the major difference between Wilson and TR, probably
21 philosophic is most important difference. TR was much more
22 of an activist.

23 I think the statue should go to TR. I think he's
24 the one who elevated this issue nationally for the first
25 time. I think without TR and the leadership of the

1 Progressive Republican Party this idea would have gotten
2 nowhere. It would not have made it through the Wilson
3 Administration. McAdoo was intellectually the closest to
4 TR. So I would trace it from actually TR to McAdoo to the
5 final proposal.

6 Another candidate, and this goes beyond political
7 correctness, might be Jane Adams who had a huge impact on
8 the public discussion of the Tariff Commission. And
9 arguably her writing, muckraking as it once was called,
10 about the contribution of the tariff to the high cost of
11 living, and her advocacy of the Tariff Commission. She
12 converted a number of civic leaders to the Tariff Commission
13 movement.

14 And that Tariff Commission movement was very
15 important behind TR. And it's very hard to pick out one
16 person that really generated the crystalized support for the
17 Tariff Commission within that movement. But if I would pick
18 on person, I would pick Jane Adams.

19 COMMISSIONER BROADBENT: Good. I want to come at
20 that question from maybe the reverse perspective. It sounds
21 from Dr. Reamer's presentation that there was a perceived
22 need for the Tariff Commission for hundreds of years, for a
23 hundred years before we were actually established, and that
24 tariff policy was central really to most big political
25 debates and elections and so forth.

1 Why did it take so long to establish the
2 Commission?

3 PROFESSOR REAMER: I think it was a huge learning
4 curve. There was a lot of magical thinking that, you know,
5 Congress could ask the Treasury Department in 1790 for a
6 manufacturing plan with specific recommendations on tariffs,
7 and Congress could then act on that.

8 So it really took a long time for Congress to
9 appreciate the incredible intricacies of how you collect
10 data in a way that's reliable and consistent over space and
11 time. How you--when you're getting information from ship
12 masters and getting information from factory owners, how you
13 do that. Protection of confidentiality was an important
14 aha! And then how you create administrative structures to
15 take these huge amounts of data, right, and it's all on
16 paper in those days, to make sense of it.

17 And then, I think part of the learning was the
18 recognition for outside experts. And I mentioned that, that
19 after the Civil War that there was a--Congress came to a
20 consensus, we need experts.

21 And then there was a long battle. As I said,
22 they would rely on experts and then--but Members of Congress
23 who had private interests to protect, didn't want to hear
24 what the experts were saying.

25 So there was a long process. The rise of

1 academic disciplines, as was mentioned, and the notion that
2 there could be a, quote/unquote "objective truth" was
3 something that was relatively new.

4 So it just took time for all these things to come
5 together. And it was really to Congress's credit that it
6 happened when it did. I mean, I appreciate that in one way
7 it looks like it took a long time. In another way, I really
8 have great admiration for the persistence of Members of
9 Congress from the 1st to the 64th to keep trying, and to
10 create some things that had never been created before:
11 objective data analysis, a whole administrative structure
12 that could take information and come up with
13 recommendations. This was all, there was no playbook for
14 this. They had to make the playbook first to get to the
15 point of a commission, I think.

16 COMMISSIONER BROADBENT: Okay--Sure.

17 PROFESSOR BROWNLEE: Just let me -- I agree with
18 everything you just said, Andrew, but I would like to add
19 the political headlines. The tariff was the most divisive
20 national political issue in the late 19th and early 20th
21 Century, and that's fundamentally what's going on
22 politically.

23 The Democratic Party saw tariff commissions as a
24 potential for permanent capture on the part of
25 protectionists. Republicans viewed tariff commissions as

1 being the covert way of working toward free trade.

2 We can find all kinds of examples in contemporary
3 politics, and I won't take us into that, where both parties
4 look at something that could be very much in their interest
5 but don't move forward because of the basic partisanship
6 that divides Democrats and Republicans.

7 Wilson's preferred way around that, to come back
8 to TR indirectly, was to beef up the Executive departments,
9 Commerce and Treasury and Congressional staffs, rather than
10 go the tariff commission route.

11 TR broke open that partisan division by taking
12 out the tariff-lowering, Republicans' tariff-reforming
13 elements of the Republicans, and creating the possibility
14 for bipartisan alignment between Progressive Republicans and
15 Democrats. And that was the bipartisan nature of the
16 formation of the first Tariff Commission, to give you a
17 preview, and that broke down when protectionist Republicans
18 resumed their influence in Congress after World War I.

19 COMMISSIONER BROADBENT: Okay, that's great.
20 Let's talk about President Wilson a little bit in terms of
21 the political environment in 1915 leading up to the 1916
22 Presidential election.

23 What convinced Wilson that maybe he should push
24 for a tariff commission?

25 PROFESSOR BROWNLEE: I think it was ultimately the

1 ability of his Cabinet members, and I think McAdoo was
2 actually the most persuasive one, saying you're going to
3 lose this election in 1916. We're going to lose possibly
4 control in Congress at the same time. Unless you find a way
5 to bridge the gap to appeal to the TR voters.

6 The Republican Party was the dominant party in
7 terms of voter alignment from the Civil War down to 1932.
8 So the demography, the registration, all the measures we
9 talk about today were very much on the Republican side.
10 Nothing changed really in 1912.

11 The only way that Wilson could get re-elected in
12 1916 was by reaching out to Roosevelt's Republicans, which
13 is what he did through the Tariff Commission.

14 MR. ENHOLM: Let me add sort of a personal note,
15 and I know Professor Brownlee knows this, but William McAdoo
16 actually had become Woodrow Wilson's son-in-law. So when we
17 talk about his persuasiveness with the President, there's
18 that added dimension, that he had married one of Wilson's
19 daughters in 1916.

20 PROFESSOR BROWNLEE: And that actually could work
21 against him.

22 (Laughter.)

23 MR. ENHOLM: I well understand that. And McAdoo
24 wanted the old man's endorsement to run for President, as
25 you certainly know, and never got it. So there were limits.

1 But still he certainly had the old man's ear, and I think
2 that is an interesting point.

3 COMMISSIONER BROADBENT: Good. Well I'm getting
4 the hook here, and we just appreciate all of your
5 contributions. Thank you, very much.

6 (Applause.)

7 MR. BARDOS: Thank you very much to the first
8 panel. And we can now move on to the second Panel on Tariff
9 Activities, moderated by Vice Chairman Johanson.

10 (Pause.)

11 VICE CHAIRMAN JOHANSON: Alright, well I would
12 like to welcome all of you to the Panel on Tariff
13 Activities. I would like to begin by thanking Paul Bardos
14 and Alexander Hammer for their work in putting this
15 conference together. I know it took a lot of work on their
16 part.

17 I would also like to make a pitch for the Woodrow
18 Wilson House, of which Mr. Enholm spoke a minute ago. I
19 visited there. I found it interesting. He said it's a
20 place to go when you've done everything else with your folks
21 in town, and in my experience it's the opposite. It's the
22 place to go when your folks are tired of dealing with the
23 crowds at the Smithsonian. So I encourage you all to go
24 there if you're interested in American history.

25 Well I'm pleased to be the moderator for today's

1 Panel on Tariff Activities. I've always enjoyed working on
2 tariff matters, and in particular I've enjoyed working with
3 the Harmonized Tariff Schedule of the United States, or the
4 HTS.

5 During my Senate confirmation hearing, I made it
6 a point to emphasize the important role of the ITC in
7 maintaining the Harmonized Tariff Schedule. In fact, I
8 mentioned the HTS not once but twice in my hearing
9 statement, and it was a short statement.

10 So it is clear to me that a centennial conference
11 on the ITC would not be complete without a panel on tariff
12 activities. I see three reasons for us to focus today on
13 tariff matters.

14 First, tariffs have been at the center of the
15 ITC's activities since the day that it opened its doors in
16 1917. After all, throughout most of its existence the
17 United States International Trade Commission was the United
18 States Tariff Commission.

19 The Revenue Act of 1916, the founding statute of
20 the Commission, provides that: The Commission shall have the
21 power to investigate the tariff relations between the United
22 States and foreign countries.

23 Second, for trade practitioners tariffs are at
24 the heart of what we do. I began my legal career as an
25 associate attorney at the law firm of Stewart and Stewart.

1 During one of my early weeks there, Terence Stewart, the
2 firm's managing partner, told me that the first step to take
3 when working on any trade matter is to go to the Harmonized
4 Tariff Schedule and look up the relevant article's HTS
5 number.

6 That was sound advice. Whenever you're involved
7 in an antidumping, countervailing duty, or Section 337
8 investigation, you're going to visit the HTS early on.

9 Now changing directions for a moment, I spent
10 most of--much of my career focusing on agricultural trade.
11 Convenient for me, the headings for agricultural products
12 are found in the beginning of the HTS, like the very
13 beginning.

14 (Laughter.)

15 VICE CHAIRMAN JOHANSON: In the mid-1990s, I
16 worked on a trade case involving live cattle, which are
17 classified in the second heading of the HTS at 01.02. I
18 later worked for Senator Chuck Grassley who represents Iowa,
19 a major hog-producing state.

20 Not surprisingly, I became familiar with the
21 third heading of the HTS, 01.03, which covers live swine.
22 One day I was inspired to turn the page to look up the first
23 heading of the HTS. Out of the 1,224 four-digit headings of
24 the HTS, the very first one, 01.01, covers live horses,
25 asses, mules, and hennies.

1 (Laughter.)

2 VICE CHAIRMAN JOHANSON: For those of you who are
3 wondering what a "hennie" is, it is the offspring of a
4 female donkey and a male horse.

5 Before today, did anyone in the audience know
6 what a hennie is? If so, please raise your hand. Okay, I
7 see two people, and they probably worked with Chapter 1
8 quite a bit.

9 That brings me to my third point, which is that
10 tariff matters are worthy of our attention because they're
11 so incredibly interesting. Whenever you pick up the HTS,
12 you find something new. Sticking to Chapter 1 of the HTS
13 which covers live animals, I learned just yesterday that a
14 statistical breakout for leaf-cutter bee larvae was created
15 in recent years.

16 Using the ITS's Trade DataWeb, I discovered that,
17 much to my surprise the United States imported 288,000
18 kilograms of these larvae in 2015, almost double the amount
19 from 2012. Leaf-cutter bee larvae trade numbers are
20 important to someone--

21 (Laughter.)

22 VICE CHAIRMAN JOHANSON: --and the HTS makes the
23 discovery of these data possible. Some of today's panelists
24 are fortunate to have spent decades working on tariff
25 matters.

1 Alfred Eckes is a former Chairman of the ITC. He
2 is currently a Professor at Ohio University. Gene
3 Rosengarden was the first Director of the ITC's Office of
4 Tariff and Trade Agreements. Janice Summers has worked in
5 the ITC's Office of Tariff Affairs on Trade Agreements since
6 1981. Another of the panelists, Arun Butcher, is just now
7 embarking on a career involving tariff matters. He is a new
8 attorney and works in the ITC's Office of Tariff Affairs and
9 Trade Agreements.

10 Our first reviewer is Barbara Norton, who spent
11 almost four decades working on tariff matters at the ITC,
12 and then at the Office of the U.S. Trade Representative.
13 And our second reviewer is Kenneth Mason, who was the
14 Secretary of the ITC from 1969 to 1992.

15 With that, I ask Professor Eckes to start the
16 conversation. I should add, as well, that I am going to be
17 looking at my Blackberry during this. I'm not checking my
18 emails. I'm checking the time to make sure we don't go
19 over. Thank you.

20 (Applause.)

21 PROFESSOR ECKES: Thank you, Mr. Vice Chairman.
22 Good morning everyone. It's great to be back with you. I
23 do have a tendency to shout, so I want to push the mike back
24 a little bit. But if you can't hear me, why raise your
25 hands and I will jump around a bit.

1 I confess I know very little about the Harmonized
2 Code, and what I learned was from Gene Rosengarden 25 years
3 ago. So I refer all questions about the Harmonized Code to
4 him, and to Janice, and to others who have worked on it more
5 recently.

6 My comments are more about a sad chapter in the
7 Commission's existence. The decade of the 1920s when the
8 Commission was in seemingly perpetual turmoil. It was an
9 unpleasant chapter, but one that I think is highly
10 instructive. And indeed if it were my wish, I would suggest
11 that all new Commissioners and all staff members gain some
12 familiarity with what went wrong in the 1920s.

13 I must say that my comments are based on primary
14 research. That is, we historians refer to diaries and
15 personal papers of early Commissioners and Congressional
16 leaders and the like as "primary papers."

17 The most useful for me were the diaries of an
18 individual many of you have heard about in a most negative
19 manner, and that is former Senate Finance Committee Chairman
20 Reed Smoot, who accumulated a vast amount of information and
21 squirreled it away at Brigham Young University. We remember
22 him as one of the principal authors of the 1930 Tariff, but
23 you know he left a significant imprint on the Tariff
24 Commission.

25 And if Commissioner Broadbent had asked the

1 question to me that she did of the previous panel, I would
2 suggest that Reed Smoot is one of several who merits a
3 statue outside the Commission building.

4 Another I would nominate, incidentally, to be
5 truly bipartisan, is Russell Long, again a Senate Finance
6 Committee Chairman, and I'll explain why in a few moments.

7 Smoot was a Congressional workhorse in an era
8 when the Congress had few staff members. He mastered the
9 Tariff Schedules in a way that Gene Rosengarden would
10 admire, if Gene had met him. He was suspicious of Wilson's
11 Tariff Commission and perceived it initially as a political
12 vehicle for Cobdonites such as the first Commission Chairman
13 Frank Taussig, to promote their free trade philosophy.

14 In 1919, Smoot nearly succeeded in eliminating
15 the Commission's appropriation and, to use the word of that
16 era, submarining the agency. By 1923, however, with
17 President Harding in the White House, Smoot had come to
18 recognize the value of the Commission. As the Chairman of
19 the Public Buildings Commission, the forerunner of the
20 General Services Administration, he personally arranged for
21 the Tariff Commission to acquire additional space in the
22 General Post office Building at 701 E Street, Northwest.

23 The Commission remained in Smoot's office space
24 until the 1980s when structural problems and rodents in the
25 basement promoted the Commissioners to ask Congress for new

1 facilities. I will always remember the occasion in April of
2 1983 when Chairman Bob Dole and former Chairman Russell
3 Long, and several colleagues, came to a Chinese carry-out
4 luncheon that we had prepared in the old building.

5 We sat down at the table. Dole looked at me and
6 he said: Mr. Chairman, what do you want? Having come from
7 the Academy, I was unaccustomed to being so direct, but I
8 managed to blurt out a response. And within a few moments,
9 he and Russell Long had worked out a procedure to obtain a
10 new building for the ITC.

11 And by the 1980s--in the 1980s, then, the
12 Commission could count on strong Congressional support, not
13 something they had in the 1920s.

14 Let me return to those trials and tribulations
15 for a few moments. It is worth emphasizing that after World
16 War I the tariff issue was high on the policy agenda. And
17 for more than a decade the Tariff Commission occupied center
18 stage.

19 President Warren Harding, and President Calvin
20 Coolidge occasionally called the Commissioners to the White
21 House, dined them, sought their advice. President Hoover
22 also devoted a lot of time to recruiting Commissioners.

23 I suspect the last President to pay much personal
24 attention to the Commission--and I could be wrong on this--
25 was President Jimmy Carter, who reportedly sat in the White

1 House and actually read and underlined and put marginal
2 notes in our reports. Some would say that he missed an
3 opportunity to occupy himself with more significant issues,
4 but those in this room may feel differently.

5 The first Tariff Commission, chaired by Taussig,
6 construed narrowly the Commission's mission to involve only
7 fact-finding and research. The youngest Commissioner, Billy
8 Culbertson, a progressive Republican, pressed for an
9 activist agenda involving scientific tariff-making. He and
10 Edward Costigan, another Progressive and Wilson appointee,
11 perceived the Commission as an instrument of revolutionary
12 tariff reform as a vehicle for scientific tariff making--
13 though they weren't certain exactly what it was, but it
14 involved a panel of experts.

15 They also hoped that this approach would lead the
16 Commission to becoming actively involved in negotiating
17 commercial treaties.

18 Well, President Harding was struggling for an
19 answer other than a general tariff revision, and he accepted
20 Culbertson's suggestion and made it to Congress, and indeed
21 the Fordney-McCumber Tariff Act contained a provision that
22 made the Commission for a while one of the government's most
23 important and apparently powerful agencies.

24 It would help establish the tariff, or at least
25 make recommendations. That is, until the Commission

1 imploded during the much-publicized and politicized sugar
2 investigation of 1924. That investigation tested the
3 Commission's competence, which would be assailed, the lack
4 of collegiality among Commissioners was exposed, the
5 integrity of individual Commissioners impugned.

6 One target was Commissioner Henry Glassey of
7 Louisiana whose family held interests in the sugarcane
8 growing business. At one Commission meeting in 1923,
9 Culbertson and Glassey exchanged heated words. Glassey
10 called Culbertson a liar. Culbertson then threw his tobacco
11 pouch at Glassey, hitting him in the eye. The other
12 Commissioners stepped in between the two to avoid a
13 fistfight.

14 (Laughter.)

15 PROFESSOR ECKES: At the first public hearing on
16 sugar in 1924, Culbertson and two of his colleagues,
17 Costigan and Lewis, challenged Glassey's eligibility to sit
18 on the case, alleging a conflict of interest.

19 Culbertson had raised it previously with
20 President Coolidge, who told Glassey to do his duty as he
21 saw it, and Glassey said that it would be an act of moral
22 cowardice to refuse to sit on the case.

23 His example created a bitter division within the
24 Commission, and Congress sided with Culbertson's majority.
25 It amended the Tariff Commission's appropriation to bar

1 salary payments to any Commissioner participating in a case
2 in which any member of his family had personal financial
3 interest.

4 The turmoil and deadlock in the Commission
5 continued. There were efforts to disqualify Culbertson
6 because he taught an evening course at Georgetown. Turmoil
7 and deadlock led to the Senate Special Investigation in 1926
8 which generated much adverse publicity.

9 The New York Times would editorialize that the
10 Commission was an ineffective and almost useless agency of
11 government. The Washington Post put it simply, "The Tariff
12 Commission has no excuse for existence. It should be
13 abolished."

14 To make a long story short, the Coolidge and
15 Hoover Administrations gradually replaced the fractious
16 Commissioners, and in 1930 in the process of enacting the
17 General Tariff Reform, Congress effectively terminated the
18 entire Commissioners and gave President Hoover authority
19 with Senate approval to appoint six new ones.

20 Interestingly, Edgar Brossard of Utah, the
21 agricultural economist who served over 33 years on the
22 Commission, survived. He was the patron--his patron was
23 Senator Smoot who just happened to chair the committee.

24 We do not have time to revisit Commission
25 activities after the 1934 Reciprocal Trade Agreements Act

1 was passed, but another set of issues arose. As the
2 Commission became actively involved in the Reciprocal Trade
3 Agreements Program, indeed Commissioners engaged in
4 negotiations. Staff members were involved in more than
5 supplying information to the State Department which handled
6 negotiations. Some of the staff members engaged in
7 negotiations.

8 By the late 1940s, Members of Congress were
9 questioning whether an independent agency, which the Senate
10 Finance Committee then considered a legislative agency,
11 should also be involved actively in Executive Branch policy
12 decisions and tariff negotiations.

13 For a fuller discussion of these issues, I will
14 refer you to Chapter 8, and I suspect this afternoon my
15 colleague, Will Leonard, will have a few points to make
16 about the evolution of the Commission.

17 It is plain that his patron, Russell Long, did
18 something to establish the Commission's independence. He
19 gave us the Commission power to represent itself in the
20 courts, and he established a budget procedure which I
21 believe is still in place in which the Commission sends its
22 budget to OMB, but OMB sends it unchanged to our oversight
23 committees.

24 Thank you very much. I look forward to your
25 questions.

1 (Applause.)

2 VICE CHAIRMAN JOHANSON: Thank you. And our next
3 panelist is Gene Rosengarden, the former Director of the
4 Office--I'm sorry, Jan Summers, who currently works in the
5 Office of Tariff Affairs and Trade Agreements. Thank you.

6 MS. SUMMERS: I don't really propose to cover in
7 depth the first 50 years of the tariff laws that the
8 Commission has been involved in working with. I think
9 others are talking about that in great depth, and so will
10 our Centennial Book.

11 Just as our agency has evolved over time, so have
12 the tariff laws, and now the Tariff Schedules. From many
13 individual Tariff Acts covering one product, or a small
14 number of products, to omnibus Tariff Acts, to the paragraph
15 system of the old Tariff Act of 1930, about 100 pages of
16 this are devoted to the old dutiable list and free list that
17 covered named types of merchandise and trade, to the very
18 structured tariff schedules we work with today.

19 I think the chief benefits in this regard for
20 business in particular are the greater clarity and greater
21 predictability that our Tariff Schedules and the Structured
22 Duty Rates that we present entail for them. It is a
23 comprehensive structure covering everything in trade,
24 underlying all trade data used by the Commission in its
25 analysis, as well as by policy makers and everyone in

1 business planning and economic analysis.

2 I think the role of trade data, as many have
3 pointed out, is quite huge. And I would just briefly end my
4 tiny introduction to the craft of tariff preparation by
5 referencing the commentator's note about Moon rocks. Our
6 office had to draft the provision for goods returned from
7 Space, not because of the Moon rocks but because the robot
8 manipulator arm of the Space Shuttle was made in Canada--

9 (Laughter.)

10 MS. SUMMERS: --and therefore was dutiable.

11 (Laughter.)

12 MS. SUMMERS: So we crafted a special tariff line
13 just for them, just an instance of how we work with everyone
14 to be responsive to the needs of others.

15 (Applause.)

16 VICE CHAIRMAN JOHANSON: Thank you, Jan. And
17 remember I said a moment ago, when you pick, up the HTS you
18 always find something incredibly interesting, and the
19 Canadian Rocket Arm is one of those products.

20 Our next speaker is Gene Rosengarden, the former
21 Director of the Office of Tariffs and Trade Affairs at the
22 ITC.

23 MR. ROSENGARDEN: Thank you. I'm glad somebody
24 finds the HTS interesting.

25 (Laughter.)

1 MR. ROSENGARDEN: My wife never did.

2 (Laughter.)

3 MR. ROSENGARDEN: I have about seven or eight
4 minutes to discuss the last 62 years, and I'm going to fly.
5 1954, Congress passes the Tariff Simplification Act of 1954
6 requiring the Commission to compile logical schedules,
7 reasonable and consistent in arrangement and terminology.

8 The study was completed in 1960 and consumed
9 about 300 work years. But it was really the work of one
10 person who was supported by those other 294 years or so, and
11 that was Russ Schumacher, who at the time was the Assistant
12 General Counsel and later became General Counsel.

13 He was a brilliant technician in drafting complex
14 provisions, and organizing things really very well. And in
15 fact the Tariff Schedules of the United States represent a
16 sea change in tariff discipline which we spearheaded for
17 others, as well, for other countries, even though it was
18 referred to in other forums.

19 The Schedules presented in tabular arrangement
20 with consistent numbering, annotative statistical
21 subdivisions for the first time in our history, the idea
22 being that between the adversarial relationship of an
23 importer and the tax guy you probably get proper
24 classification, accurate classification. And finding the
25 right church in terms of the tariff helps you to find the

1 right pew in terms of the statistical category under it.

2 So that was the first time that was done. It had
3 head notes and legal notes, general interpretative rules to
4 ensure that each product was classified in one place and one
5 place only. And compared to the Tariff Act of 1930, which
6 was a system of paragraphs unrelated to one another without
7 much in the way of priorities, the only good thing that came
8 out of it in terms of tariff discipline, frankly, was the
9 large body of court-made law as a result of all of the
10 litigation that that tariff presented.

11 Russ was a giant, as I said. He became the
12 General Counsel of the Commission for many years. And the
13 tariff was implemented in 1963, in August of '63, and lasted
14 26 years, which is quite a long time.

15 Besides Russ, I need to mention just very briefly
16 Bill Hart. Bill was head of the Office of Executive
17 Liaison. He attended the opening of GATT. He was there at
18 the birth of GATT, and he was in effect the government's
19 institutional memory on trade.

20 When he finally left, there were 96 full cabinets
21 in his office--

22 (Laughter.)

23 MR. ROSENGARDEN: --that had to be archived. I
24 think it was 96. And he could find a document in any one of
25 them. He was really rather amazing.

1 This brings us to the Harmonized System. In 1973
2 DOT, which is not really considered a trade agency, does a
3 study and finds that as goods move from the purview of the
4 shipper to the ultimate consignee, it can go under
5 classification within the purview of about 17 classification
6 systems, not just the government systems but the transport
7 systems as well.

8 They thought this was a tremendous barrier to
9 transport trade. They wanted to facilitate it. They wanted
10 one master classification for everything. Very naive. They
11 make a presentation to Customs. Customs sends them over to
12 what is now the World Customs Organization in Brussels.

13 The WCO--it was called the CCC, the Customs
14 Cooperation Counsel originally, had the nomenclature,
15 maintained the nomenclature that was used by the European
16 communities to establish the common market. This work was
17 done in the 1940s after the War. It was based on a League
18 of Nations' nomenclature that was created in the 1930s.

19 And it was maintained, and there were about 46
20 signatories to it, and more countries used it, however. But
21 it was old, and it was out-of-date. And it was not a big
22 nomenclature, only about 1,000 categories.

23 They wanted to in effect modernize it, and they
24 wanted to expand the influence of the organization. So they
25 greeted it. They wanted it. And they wanted the United

1 States in the game, the U.S., and Canada, and Australia were
2 not yet in that game.

3 And they established a negotiation essentially in
4 1973. In 1974, I firmly believe that Harry Lamar, who was
5 Chief of Staff at the Ways and Means Subcommittee on Trade,
6 after the markup session, walked into his office probably at
7 ten o'clock at night and drafted Section 608 of the Tariff--
8 of the Trade Act of 1974, requiring the Commission to
9 undertake an investigation that would serve as the technical
10 basis for developing the U.S. contribution to the Harmonized
11 System effort, to ensure that U.S. business interests were
12 recognized in the development of the Code.

13 And I was assigned to head that project. And
14 Paul Jugierre and I, Paul was head of the delegation from
15 Customs, walked into the lion's den in Brussels. Decisions
16 are made by voting. You look at each line. You discuss
17 proposals for that line, and subdivisions, and product
18 subdivisions, and so forth. And what you find is that you
19 vote. We had one vote. Canada had a vote. Japan had a
20 vote. Australia, the European Union, the European community
21 at the time, had a vote. The member states had a vote. And
22 the European countries aligned with the EC all had a vote.
23 Spain, Switzerland, the Nordics, usually Austria, although
24 Austria agreed with us a lot.

25 We tried to modernize as much as we can, but the

1 great lesson that we learned basically was that you don't
2 get what you want, you're lucky to get what you need. And
3 we got what we need. We had an enormous amount of support
4 from industry, and reasonably so I think because they had so
5 much at stake here.

6 It took seven years for the technical work, and
7 then a year for the umbrella agreement over that. And the--
8 what I'm most proud of in fact was the fact that we were
9 instrumental in proposing and getting what they call a
10 Review Subcommittee. This is a special subcommittee under
11 the Maintenance Committee designed with the authority to
12 propose amendments to the Harmonized System to keep it
13 abreast of trading patterns and technology. And in fact
14 thousands of amendments have come into play as a result of
15 their work.

16 So the United States, for example, originally had
17 proposed a four-digit category for semiconductor
18 manufacturing machines. That was not accepted at the time,
19 but it has since been accepted. The same with products like
20 high-tech ceramic materials, and more recently anti-malaria
21 commodities.

22 HS had to go through five forums. After the WCO,
23 it came back to the Commission. We had 19 months to prepare
24 a tariff based on these new codes. That report was 11
25 pounds. It included not only the nomenclature but

1 cross-references between the old and the new, the source of
2 all the rates of duty, and so everybody could tell where
3 their ox was being gored.

4 Finally, it was enacted May the 2nd, January
5 1989. It was a 15-year effort. After it came to us, it
6 went to USTR for a line-by-line review. Then they had to go
7 to the WTO because we were changing a lot of rates by reason
8 of simplifying the tariff as much as we could.

9 That submission had to include not only the new
10 tariff--oh, running out of time--the new tariff, but also
11 the top three suppliers of that rate, of that particular
12 rate, and trade data for three years. That' submission
13 weighed 110 pounds, and Terry O'Brien from Office of Tariff
14 Affairs had a lot to do with that.

15 What are the benefits? We had always felt that
16 if the EU, Europe, U.S., Canada, Japan, and Australia used
17 the system, the rest of the world would follow. And in fact
18 it has. Over 200 countries now are Harmonized System
19 countries. Not all of them are signatories to the
20 Agreement, but all of them follow it.

21 It facilitated, if not enabled, all of these 200
22 Free Trade Agreements that you see. Because if you're not
23 using the same system for tariffs, negotiations are really
24 prolonged. In addition, we had U.S. imports and exports on
25 the same system now. That's the first time. And we have a

1 promise from the Commerce Department to seek comparability
2 with imports and exports with their output information, so
3 you can more easily determine U.S. consumption of a product.

4 Finally, we have an agreement with Canada whereby
5 U.S. exports to Canada are collected by the Canadian Customs
6 in their system, and Canadian exports to the U.S. are
7 collected by us. They use our import data for their export
8 declarations, and vice versa for the U.S., eliminating over
9 9 million documents a year, at least at that time.

10 The most important aspect of this, however, is
11 for U.S. exporters. Here in the Commission you generally
12 talk about imports, but exporters. Can you imagine, for
13 example, what the traffic manager at Boeing Aircraft has to
14 go through to send hundreds of thousands of airplane parts
15 to over 100 countries? A hundred different tariffs. It's a
16 mess. This simplifies their arrangement.

17 You also have some countries where it takes two
18 to three weeks to process goods through Customs, and
19 classification issues are frequently one of the major
20 problems there. We're the world's largest exporter of
21 perishable agricultural commodities. It's a really great
22 boon to our export interests to have the world on the same
23 system.

24 If I could take a minute and a half, there's
25 something else I'd just like to mention about the Commission

1 and its work practices. Working in an independent agency in
2 this town is a luxury, but it's also a responsibility. And
3 I believe that the work practices of the Commission and the
4 organization and the way the work is done really strikes at
5 the soul of the place.

6 There is an organizational chart that shows who
7 works for who. The fact of the matter is that work isn't
8 necessarily done that way. When you have an investigation,
9 you are calling on different offices. You're creating
10 teams. If you have specific industry, more or less
11 micro-economic analysis, you call on the Office of
12 Industries for people. For macro, you call on the Office of
13 Economics. You always get a lawyer from the General
14 Counsel's Office to work on these.

15 So you create these teams. If you have a
16 nomenclature problem with defining an investigation, you
17 call on Tariff Affairs, and so forth. Executive liaison
18 sometimes if you need help with international obligations.
19 And that's how work is conducted.

20 It's a tribute I think to the reorganization
21 under Chairman Leonard and the Commission at that time that
22 the organization of the Commission has not changed in the
23 last 38 years or so in any great degree, because it works so
24 well, this kind of a matrix approach to the work.

25 In addition, the senior staffs of the Commission

1 staff always work as cooperatively as possible with one
2 another, because the problem isn't people, the problem is
3 the problem of that investigation.

4 In addition, when you do get an investigation you
5 immediately set up essentially a little business plan in
6 effect to handle it. You put an action jacket together for
7 the Commissioners to sign. It involves understanding the
8 requests, the nature of the investigation. It concerns
9 creating a modus operandi to how you're going to do it. You
10 identify the resources and you identify all of the
11 milestones with dates so you're not going to miss statutory
12 deadlines, and they don't.

13 So it works very well. And I think it should be
14 indicated in the report, and I hope Paul writes it up that
15 way. Thank you.

16 (Applause.)

17 VICE CHAIRMAN JOHANSON: All right. Thank you,
18 Mr. Rosengarden. I would now like to ask Barbara Norton to
19 give about five minutes in response, and then we will have
20 Mr. Mason speak and we'll open up to questions. Thank you.

21 MS. NORTON: Thank you. And thank you very much
22 for inviting me to come and participate in this birthday
23 celebration today. It's great to see so many old friends
24 and colleagues, former bosses, several former lawyers here.
25 So I'm really enjoying it.

1 I was asked to participate on this panel because
2 in 1982 when I was working in the Commission's Office of
3 Economics I was detailed over to USTR to assist in the
4 Executive Branch review of the conversion of the TSUS to the
5 Harmonized System.

6 We got the conversion in June of 1983, and this
7 Executive Branch review went on for five years until 1988.
8 So it was a big job. And we had a lot of interagency
9 assistance during this period. USTR led the TPSC review of
10 the 11 pounds and the Concordance Tables. I think it was
11 8,000 tariff lines that we had to go through line by line at
12 the time.

13 So we relied a lot on other people from the
14 Commission to help us out, as well as people from Commerce,
15 the Department of Agriculture, and Treasury/Customs.

16 As Gene was mentioning, there were three phases
17 to this review. There was first the line-by-line review
18 undertaken by the Executive Branch of all of these tariff
19 lines.

20 Secondly, we went to Geneva for intense Article
21 XXVIII negotiations with all of our GATT trading partners to
22 ensure that a balance of concessions was maintained with
23 each of the, both in respect of our tariff and then for us
24 in respect of their tariff conversions.

25 And then thirdly, we had to do the implementing

1 legislation to implement the Harmonized Tariff Schedule in
2 1988.

3 So after we received the conversion from the ITC
4 in June of 1983, USTR published a Federal Register notice
5 seeking industry comments on the conversion, and on the duty
6 rates.

7 A lot of the comments that we received were from
8 companies, industry people who were concerned that their
9 product was going to have a duty increase in the Harmonized
10 System. And even though we had these Concordance Tables
11 that Gene mentioned, these were not public so we couldn't,
12 you know, tell them, well, no, sorry, the ITC only told us 5
13 percent of the TSUS-7 was going to this HS item. But we
14 would just get a lot of concerns raised, and we'd have to go
15 back and forth and study the classifications, and try to
16 figure out whether in fact we needed to--the product was
17 sufficiently important that we would need to create a new
18 breakout to accommodate the old TSUS rate under the
19 Harmonized System, or whether we in fact thought that the
20 product would not be classified in the area where the
21 industry was concerned that it would be.

22 There were also some concerns of course, not just
23 about duty rates going up, or going down, but going the
24 other way where there are occasionally, would be people who
25 were importing things from other countries as inputs, and so

1 they, you know, wanted to make sure that their tariff rate
2 wasn't going up, and that would have been a problem for
3 their production processes.

4 So then the second phase of the negotiations
5 began in 1985. After we completed the line-by-line review,
6 we put together a draft Schedule 20 to table in Geneva, and
7 we had to go over there and have many of the same types of
8 discussions with our trading partners who would look at the
9 items, look at the HS categories and raise concerns about
10 products that they exported to the United States, and the
11 possibility that the duty was going up on these items,
12 particularly if they were one of the top three suppliers.

13 And so we would have to discuss with them whether
14 the classification where they thought the item was going to
15 be classified was in fact where we thought it was going to
16 be classified, and determine whether they were correct, or
17 we were correct, and whether we needed to make a new
18 breakout to accommodate them.

19 Sometimes we would try to convince them that
20 there were other areas in the Tariff Schedule where the rate
21 was being lowered, and that would benefit them so therefore
22 they were having, having a balance of concessions.

23 And at the same time that we were defending our
24 own tariff conversion, we had to be analyzing the Tariff
25 Schedules and the tariff conversions of all of our trading

1 partners to make sure that in fact our industries were being
2 protected and would not suffer tariff increases abroad.

3 And this was, I think as Gene gave a flavor, a
4 huge negotiation. We had stacks of papers. There wasn't
5 much computer support back in those days, so we did a lot of
6 it by hand, like little handwritten data entry sheets for
7 every, you know, Japan, 85-42-10, what did they say?
8 Different colors.

9 I just wanted to give a little bit of a shout-out
10 to some of the people who helped us a lot during the
11 process. And we had details from Commerce, Customs, and the
12 ITC during these five years who helped us a lot with the
13 process.

14 We had Joe Elbert from the Commission's Chemical
15 Office who helped us with all the chemical chapters. None
16 of us over at USTR knew very much about chemicals, and
17 chemical nomenclature. We had Paul Gigeir and Homme Kapler
18 who were both posted to USTR Geneva, one for a year and the
19 other for two years, to help us out on all these
20 classification questions that came up during the Article
21 XXVIII negotiations.

22 We also had Andy Rollick who I saw here earlier
23 today from the Commission's Computer Data Division. He was
24 in Geneva, and he also spent time in USTR Washington helping
25 us with statistical and other technical analysis, and also

1 Larry Butler who was an industry analyst at the Commission
2 and he, along with Andy, had spent time in Geneva and at
3 USTR Washington.

4 We also had two people full time from Commerce.
5 Skip Jones, who is still at Commerce. He was in Geneva for
6 several years, sort of like USTR Geneva person is now, but
7 he was over there making sure that U.S. industry interests
8 were protected. And, before him, Nancy Morgan.

9 Then just finally, the last issue is that after
10 we finished the Article XXVIII negotiations and we had to
11 begin preparing the implementing legislation, and this was a
12 time when we benefitted particularly from the expertise of
13 Bill Hart and Terry O'Brien, we had to table the new
14 Schedule 20 in Geneva and also work with Congress on the
15 implementing legislation.

16 And of course during the whole process, all three
17 phases, Gene's office was always available to answer endless
18 questions and requests that we received on how we determined
19 that particular products should be classified in new HS
20 categories, and how we determined the proposed Harmonized
21 System Tariff Rates.

22 And just finally, I would say that I agree
23 completely with Gene on all of the trade facilitation
24 benefits that he mentioned. I had it on the import side, on
25 the export side, as helping to facilitate negotiations and

1 for transport and shipping documents, as well as just
2 overall uniformity and predictability in tariff
3 classifications.

4 Thank you.

5 (Applause.)

6 VICE CHAIRMAN JOHANSON: Thank you, Ms. Norton.

7 And our last commenter will be Kenneth Mason, who is -- was
8 formerly Secretary at the ITC.

9 MR. MASON: It seems I have the dubious honor of
10 being the last speaker before lunch. I want to first put to
11 rest a story I've heard a couple times. I was definitely
12 not at the signing of the Tariff Act of 1930.

13 (Laughter.)

14 MR. MASON: I had a dentist appointment that day.

15 (Laughter.)

16 MR. MASON: I want to echo Gene's remarks
17 regarding Bill Hart and Russ Schumacher. As many of you
18 knew both of them, you'll understand this story.

19 When Russ passed away, one of the speakers at his
20 funeral was Bill Hart, who pointed out that when you asked
21 Russ what time it was, he proceeded to tell you how to make
22 a watch, and what all the TSUS numbers applicable to the
23 parts were provided for.

24 (Laughter.)

25 MR. MASON: I'm not going to get into the details

1 of the previous speakers. I went to the Commission in 1960.
2 I was in the Agriculture Division -- Mr. Vice Chairman, you
3 didn't see me. You were out of my -- I was out of your
4 sight. I raised my hand. I know what a Hennie is.

5 (Laughter.)

6 MR. MASON: I was the analyst at the Agriculture
7 Division for the first items in the HTS. So fortunately it
8 was one of the simpler things to do. Everybody pretty much,
9 with the exception of the Hennie, knew what cattle, sheep,
10 hogs, and about the only controversy we had was whether to
11 make a statistical breakout for imports of live worms.

12 (Laughter.)

13 MR. MASON: I don't know what you did with that.
14 I also had the experience in 1963 of going to Geneva on an
15 Article XXVIII team of about 20 people from various agencies
16 to explain the change from the Tariff paragraphs and
17 Schedule A numbers to the TSUSA numbers.

18 We spent three months there. I'm not sure we
19 convinced anyone that we hadn't somehow abrogated all of our
20 treaty obligations. And three years later I got to go back
21 again to redo it with the Japanese. The fact that we go
22 through it is close to a miracle.

23 With that, Mr. Vice Chairman, I will turn it back
24 to you.

25 VICE CHAIRMAN JOHANSON: Thank you, Mr. Mason, for

1 your comments.

2 (Applause.)

3 VICE CHAIRMAN JOHANSON: I am very impressed with
4 your knowledge of Hennies.

5 (Laughter.)

6 VICE CHAIRMAN JOHANSON: But I'm going to begin
7 with a question. That is, we have heard today about the
8 improvements made through the Harmonized Tariff System.
9 Several speakers have touched upon that. And it is all that
10 I've known in my career, and I've been happy with it.

11 That being said, how can it be improved?

12 MR. ROSENGARDEN: We're a little spoiled now in
13 certain respects in that there is a mechanism in Brussels
14 for improving the system. You have opportunities there.
15 And there is an administrative framework for getting them
16 implemented in this country.

17 We wanted to be able to change the tariff every
18 couple of years, but we got outvoted because everyone has to
19 go through the parliamentary procedures. It's painful. And
20 so they decided on every five years.

21 One of the issues that I think you're interested
22 in, too, is the accuracy of data. And generally rates are
23 very low. I mean, I think the trade rate average now is
24 probably about one percent, or one percent-and-a-fraction.
25 Exchange rates differ more than that.

1 And we did a report on accuracy a number of years
2 ago, around 25 years ago now, and the results were pretty
3 good. I don't know if they would still be good, but a
4 self-initiated study on the accuracy of imports would
5 certainly pinpoint some problems perhaps, and send a message
6 to those agencies that collect the data, Customs
7 particularly, Commerce, as to how good a job they're doing.

8 But there is no really administrative or other
9 legal mechanism for improving, as far as I know.

10 VICE CHAIRMAN JOHANSON: Would anyone else like to
11 comment on that?

12 (No response.)

13 VICE CHAIRMAN JOHANSON: If so, let me know. If
14 not, I'm wondering if the audience has any questions. We
15 have a lot of experts out there. If you don't, I've got
16 plenty of more.

17 (No response.)

18 VICE CHAIRMAN JOHANSON: No one. This fascinating
19 subject, which I love so much, isn't shared by everyone, I
20 guess. But that's okay.

21 Another question I have for you is, can you all
22 discuss the attempts to bring new technology into the HTS?
23 An example I know of is that most people in the room have
24 mobile phones, or Smart Phones. How are they handled in the
25 current HTS, given the constant change in technology?

1 MR. ROSENGARDEN: I guess a phone is a phone,
2 whether it's wireless or not. The problem is, you're always
3 behind in this business. You can't ever catch up. You
4 don't know what's happening in the laboratory. If you go to
5 Brussels with a new product that's just on the market,
6 they'll tell you there's not enough trade to isolate it yet.
7 That's one of the problems. They want probably \$50 million
8 in world trade to isolate the good.

9 So it is very difficult to keep up. Thankfully,
10 the rates are very low, so it may not be much significance
11 to it, unless you're going to do a study, and then you have
12 a problem.

13 VICE CHAIRMAN JOHANSON: Thank you, Mr.
14 Rosengarden. We do have one question from the audience. If
15 you could please introduce yourself and then ask your
16 question.

17 CHAD HOUSTON: My name is Chad Houston
18 (off-microphone). Getting back to the issue of how you can
19 potentially improve upon data collection in the HTS, we've
20 noticed in sort of the economic research literature with the
21 global fragmentation of production and supply chains that
22 there is a growing disconnect between how, you know, we
23 record trade at the border which is gross flows, and what
24 really matters, which is value-added flows.

25 So for those of you folks that are in charge of,

1 you know, kind of keeping track of the nomenclature, do you
2 foresee a period down the line in which we actually might
3 get data on value-added trade flows and stop having to use
4 input/output techniques that us economists can come up with,
5 but that are somewhat inaccurate in terms of trying to come
6 up with the actual value-added numbers?

7 MR. ROSENGARDEN: I have no idea.

8 (Laughter.)

9 MR. ROSENGARDEN: The problem, we did a lot of
10 studies and were involved in the negotiation on the Rules of
11 Origin, and some of our European friends wanted to use the
12 value-added system for determining Origin. But the problem
13 is, there are so many different techniques to valuation, and
14 there are so many ways that companies want the profits over
15 there, or they want the profits over here. A lot of
16 related-party issues arise. It's very difficult to handle
17 value, or value-added.

18 VICE CHAIRMAN JOHANSON: All right. I think that
19 our time is about expired. I appreciate you all being here
20 today. I certainly thank the panelists for being here
21 today. Once again, the HTS always raises a lot of questions
22 in our minds. And once again, I was thumbing through it
23 again yesterday and, going back to Chapter 1, I am going to
24 leave you all with a question. That is: Why do live foxes
25 have a relatively high tariff of 4.8 percent? And why are

1 live foxes not covered under GSP? Somebody has the answer.
2 I can't figure out what it is.

3 And I will leave you all with that before we go
4 to lunch. Thank you.

5 (Applause.)

6 MR. BARDOS: Okay, thank you. So we are now
7 adjourning for lunch. Please come back at 1:10. Thank you.

8 (Whereupon, at 12:10 p.m., the meeting was
9 recessed, to reconvene at 1:10 p.m., this same day.)

10

11 AFTERNOON SESSION

12 (1:10 p.m.)

13 CHAIRMAN WILLIAMSON: Good afternoon, everyone.

14 As I had noted earlier, a key element of the mission of the
15 Commission is to investigate and make determinations in
16 unfair trade cases. And given this role, it is appropriate
17 that we hear from members of the courts that review our
18 determinations.

19 You have already heard from Judge Prost, and I
20 would now like to introduce Judge Leo Gordon of the Court of
21 International Trade. As you know, all appeals of our
22 determinations in Title VII cases go first to the CIT.

23 Judge Gordon has been on the CIT since 2006, and
24 before that he was Clerk of the Court. As you can see from
25 his bio, he has long and rich experience. It gives us

1 particular pleasure to welcome him from New York to come
2 down and join us today for this event, and to say a few
3 words.

4 Judge Gordon?

5 (Applause.)

6 JUDGE GORDON: You'll have to forgive me for one
7 second. I'm trying to use the technology to the best of my
8 ability.

9 Chairman Williamson, members of the Commission
10 past and present, staff of the Commission, honored guests,
11 ladies and gentlemen, it is indeed an honor and a privilege
12 to be with you today and to share some brief remarks.

13 I bring you greetings and congratulations from
14 the members of the United States Court of International
15 Trade on the Centennial Celebration of the International
16 Trade Commission.

17 One hundred years are truly an outstanding
18 accomplishment, just not only as a testament to longevity
19 but one based on a record of outstanding service, quality
20 decision making, and commitment to our country.

21 As a brief aside, I am joined here today by the
22 court's newest judge, the Honorable Jennifer Choe Groves.
23 And if you have a chance, please take an opportunity later
24 today to greet and welcome her to this wonderful trade
25 community to which we all belong. Jennifer? Judge Choe

1 Groves.

2 (Applause.)

3 JUDGE GORDON: Judge Choe Groves and the rest of
4 the court will soon be joined by Judge Gary Katzmann who
5 will take the oath of office later this month. This will
6 put us at a point where we have two of the four vacancies
7 filled, which will be wonderful for not only the members of
8 the court but the Bar because there will be more folks to
9 share the load.

10 From its humble beginnings to today, the
11 Commission has served a critical role in the development of
12 and the administration and enforcement of the modern world's
13 trade remedy laws.

14 As the entity responsible for the first level of
15 review of injury decisions and dumping and countervailing
16 duty cases, the court sees first-hand the professionalism,
17 dedication, and commitment to excellence and the rule of law
18 that the Commission brings to making complex decisions that
19 are committed to the substantive province of the Commission.

20 Throughout the years, leastwise in the past 38
21 years from my perspective first as a Hill staffer, then as a
22 member of the staff of the Clerk's office of the Court of
23 International Trade, and now as a judge, I have witnessed
24 personally the cooperation of the Commission and its staff
25 in making the litigation process meet the goals of US CIT

1 Rule One. Namely, the just, speedy, and cost-effective
2 disposition of trade cases.

3 Additionally, the Commission and its staff have
4 always been a willing partner to educate the court and the
5 members of the Bar at the court's periodic judicial
6 conferences and as a key constituent member of the court's
7 planning and advisory committees. For this, the Commission
8 and its staff has our appreciation and deepest thanks.

9 As the past is prologue, I can confidently say
10 today that the Commission's first 100 years has provided a
11 solid foundation for what all who have an interest in the
12 work of the Commission expect will be a truly successful and
13 accomplished next 100 years.

14 So on behalf of the court and our Bar, we again
15 congratulate the Commission on its Centennial anniversary
16 and wish it well in the days, months, and years to come.
17 Thank you for your kind attention.

18 (Applause.)

19 MR. BARDOS: Thank you very much, Judge Gordon.
20 The next panel will be on Import Injury and will be
21 moderated by Commissioner Pinkert. So, please, if you would
22 come up and take control.

23 COMMISSIONER PINKERT: As Alexander Haig once
24 said, "I'm in control now."

25 (Laughter.)

1 COMMISSIONER PINKERT: We have a great panel to
2 start off the afternoon, but I want to commend all of the
3 speakers thus far, all the panelists, and Judge Gordon of
4 course, for doing such a great job with the history of the
5 ITC, with the Tariff Schedule, and so forth.

6 I learned about hennies this morning, which is
7 perhaps a specialized field of knowledge, but very
8 interesting. I learned about the 1920s and how fractious
9 the Commission was at that time. And I can assure everybody
10 in the audience that in my experience at the Commission over
11 the past 10-some-odd years, that there's been tremendous
12 collegiality among the Commissioners. That's partly just
13 good fortune to have had such terrific colleagues over the
14 past 10 years, and there's really a tradition of working
15 together, communicating, and trying to express our
16 disagreements in a constructive way when we have
17 disagreements.

18 So I hope that continues over the next 100 years
19 and that we don't repeat the 1920s, if possible.

20 Now to begin the session this afternoon, we are
21 going to turn things over to Jim Lyons and Lynn Featherstone
22 to talk about ADCBD. Jim Lyons is a former General Counsel
23 of the U.S. International Trade Commission. He served in
24 that capacity from December 2004 until July 2012, and was
25 the Deputy General Counsel from 2001 to 2004.

1 He has practiced international trade law for more
2 than 35 years, with an emphasis on trade remedy law and
3 customs-related issues. After graduating from Georgetown
4 University Law Center in 1977, he worked in the General
5 Counsel's offices of the Departments of Treasury and
6 Commerce, and he entered private practice in 1982 before
7 returning to federal service.

8 From 1997 to 2001, he was Assistant General
9 Counsel with the Office of the U.S. Trade Representative.

10 Lynn Featherstone served as the Commission's
11 Director of Investigations from 1988 until 2003 when he
12 retired. Prior to that, he was Supervisory Investigator and
13 Commodity Industry Analyst at the Commission. Between
14 Undergraduate and graduate schools, he served two years as a
15 captain and two as a lieutenant in the U.S. Army.

16 So Lynn and Jim, take it away.

17 MR. FEATHERSTONE. Thank you very much. It's
18 good to be back. I appreciate the opportunity. Jim and I
19 split the chapter on Import Injury, with him handling
20 litigation and me handling the Commission's conduct of the
21 investigations.

22 I'll kind of run through the sequential order of
23 the chapter. First, the antidumping investigations, and I
24 would refer any of those interested to the Commission's
25 website where there is an antidumping and countervailing

1 duty handbook. It has lots of good information.

2 `The first Antidumping Act was actually the
3 Revenue Act of 1916, which also established the Commission,
4 but the Commission had no role in those cases which were
5 adjudicative in nature.

6 The first antidumping law with administrative--
7 with provisions for administrative determinations was the
8 Antidumping Act of 1921, but the Commission still had no
9 role in that until 1954 when an amendment tasked the agency
10 with making injury determinations.

11 From then until 1979 when the Act was repealed,
12 the Commission conducted 225 of those cases, and in those
13 where it made a determination 46 percent were affirmative
14 and 54 percent were negative.

15 Title VII was then added to the Tariff Act of
16 1930 in 1979, which provided for antidumping investigations,
17 and from then until 2014, the last year for which full data
18 are available, the Commission conducted 1,257 of these
19 cases, made affirmative determinations in 55 percent, and
20 negative in 45 percent.

21 The first countervailing duty law was back in the
22 1800s, 1890, that addressed only sugar. Then there was a
23 Tariff Act in 1897 that extended coverage to all dutiable
24 imports, but the Commission had no role until 1974 when the
25 Trade Act of that year extended coverage to duty-free

1 imports subject to an injury determination by the
2 Commission.

3 There were a few of these conducted. They were
4 under Section 303 of the Tariff Act of 1930. And of 10
5 determinations, it made an affirmative determination in one
6 and negative in nine.

7 As I mentioned, Title VII also provided for
8 countervailing duty investigations. And from its enactment
9 in 1980 through 2014, there have been 545 countervailing
10 duty cases, with the Commission making affirmative
11 determinations in 44 percent, and negative in 56 percent.

12 There were also some other provisions, especially
13 in 303, for countries that were not signatories. But there
14 were again fewer of those cases.

15 Overall, Title VII cases since 1980 when it was
16 enacted have resulted in affirmative determinations in 52
17 percent and negative in 48 percent. So some change since
18 those under the Antidumping Act, but maybe not significant.

19 Cases covering the largest volumes of imports
20 included those on many steel products, software, lumber,
21 minivans, shrimp, and wooden bedroom furniture. As of the
22 end of last year, of 2015, there were a total of 328 Title
23 VII Orders in place, 265 dumping, and 63 countervailing
24 duty.

25 The next significant change in antidumping and

1 countervailing duty investigations came in 1995 when the
2 Uruguay Rounds Agreement Act required reviews of all orders
3 currently in place, and all new orders five years after they
4 were issued.

5 Since then, the Commission has voted to not
6 revoke the orders in 83 percent of the cases on which it
7 made the determination, and to revoke them in 17. There's a
8 significant number of those that are terminated or suspended
9 by Commerce that affects those numbers.

10 The Commission always uses a team to conduct
11 investigations, although the makeup of that has changed some
12 over time. Caseload expanded sharply after Title VII was
13 passed in 1980, and investigators were added to work on each
14 case. There were more structured report outlines, notices,
15 standardized questionnaires developed that made it easier on
16 us and, hopefully, easier on practitioners to understand
17 what was coming up.

18 The Commission also delegated responsibility for
19 conducting but not making determinations in dumping and
20 subsidy cases to the staff up to the point of the
21 preliminary determination. We also had staff conferences
22 rather than full Commission hearings.

23 I'd be happy to answer any questions after the
24 other panelists, but, Jim?

25 (Applause.)

1 MR. LYONS: Let me start off by just saying how
2 honored I am to join in this tribute to the Commission's
3 hundredth anniversary. During my career I wore hats at a
4 lot of different places, and had the opportunity to work
5 with many people at the Commission. And the one thing that
6 I appreciate, much like I know many of you do as well, is
7 just how talented and dedicated the civil servants are at
8 the Commission. They are a joy to work with, and I miss the
9 camaraderie very deeply.

10 But that's not what I'm here to talk about today.
11 Today I'm here to talk about how did we get here, in terms
12 of the litigation workload and the composition of the
13 workload before the Commission on the litigation side of the
14 equation.

15 And from my perspective, there was a dramatic
16 change that accompanied the Tokyo Round Agreements Act, and
17 then the Uruguay Round Agreements Act, as Lynn said, in 1979
18 and 1995 respectively.

19 Those two Acts implementing the Agreements made a
20 far and wide reaching change to the processes that the
21 different trade agencies undertook in their various
22 investigations.

23 For the very first time, there were time limits
24 at a whole sequence of different stages. There were
25 different factors to consider. There were different

1 processes, and there were important aspects of transparency
2 which had not existed before.

3 Before the 1979 Act, for example, there was no
4 access to confidential information by private parties
5 participating in investigations. Afterwards, through the
6 administrative protective order process that type of
7 confidential information became available. There was far
8 more detailed opportunities for disclosure.

9 And those things, combined with some of the
10 changes that I think also accompanied in accord, at the same
11 time led to just a snowballing in terms of the amount of
12 litigation in which the Commission was involved.

13 Almost simultaneous with the statutory changes
14 that affected the Commission, there were also changes that
15 were made in the nature of judicial review. The 1980
16 Customs Court Act established the Court of International
17 Trade. It gave it powers and clarified the disputes over
18 proper jurisdiction which had existed prior to that.

19 Prior to that, many litigants found themselves
20 very uncertain. Where do I bring my action? Do I bring it
21 before the Customs Court? Do I bring it to a local federal
22 district court? The Customs Court Act clarified that,
23 making it clear that the Court of International Trade was
24 the place to bring your action if you were challenging a
25 Commission or Commerce determination.

1 Not long after that, there was a major change
2 creating the Federal Circuit Court of Appeals. Roughly
3 speaking, I think it was 1985-1986, that court came into
4 being creating new responsibilities for that court, and
5 additional oversight with regard to review of Commission
6 determinations.

7 So if we look at the timeframe, roughly spanning
8 from the 1979 Trade Agreements Act through the Uruguay Round
9 Agreements Act of 1995, that 15-year period probably saw
10 almost the quadrupling of the caseload coming to the
11 Commission involving challenges before the respective
12 courts.

13 So what has that meant? There have been a lot of
14 questions as to has this resulted in an improvement in the
15 processes of the Commission? Or not? I'm not going to try
16 to answer that question today. It certainly has made for, I
17 think more thorough investigations. When you have a
18 spotlight shone on you like we have here, you're going to be
19 pretty liable to take additional steps in terms of what are
20 you looking at?

21 There are additional factors to be considered
22 that the statute expressed for the very first time that had
23 to be pursued in an investigation.

24 So the complexity, there's no question of the
25 complexity of investigations included after those milestones

1 in the statutory changes. That also led to a significant
2 increase in the administrative actions of investigations, as
3 the number of petitions multiplied several fold.

4 I don't have the statistics, but I think Lynn
5 referred to a number of them in terms of the significant
6 growth in the number of investigations. And you have the
7 commensurate increase in the challenges that are brought to
8 the respective courts, that also being a function of the
9 sums of money involved in these cases. As you all know,
10 cases like the software and lumber case, the steel cases,
11 and many others, involved very significant monetary
12 interests for parties. And it seems like when there are
13 large sums of money at stake, there's a way to try to
14 protect that.

15 And particularly at the Commission where you have
16 binary decisions, there's a loser and there's a winner.
17 There's not somebody that half wins in a case or half loses
18 in the case. So that from my perspective also increases the
19 motivation for people to try to challenge to find that
20 error, that overlooked piece of data to try to bring it
21 before a court and have a court review it.

22 Having said that, I think the Commission has had
23 a remarkable record in terms of its ability to sustain a
24 determination, which I think comes back to the time spent by
25 Commissioners and the staff doing these cases.

1 Obviously every result doesn't please everybody,
2 otherwise you wouldn't be in litigation. But I think the
3 fact that so many of the decisions of the Commission have
4 been sustained over time is a credit to it, and also as
5 other litigants on the other side of the table would say:
6 It's the standard of review. And the standard of review in
7 these cases does give the Commission a head start. It is
8 somewhat preferential. The courts reviewing these decisions
9 are not going to put themselves in place of the Commission.
10 They are going to take a look and see whether the Commission
11 acted in accordance with the law, whether the determination
12 is supported by substantial evidence, but they're not acting
13 as a seventh commissioner.

14 So I think my time is up, so let me stop there.
15 Thank you.

16 (Applause.)

17 COMMISSIONER PINKERT: Thank you, Jim, and Lynn.
18 Now we're going to turn to safeguards, and Professor Kara
19 Reynolds will be talking to us about that. She's a
20 Professor of Economics at American University. Her research
21 focuses on the intersection of politics and international
22 trade policy, as well as the economic consequences of trade
23 protection. She has published research in leading academic
24 journals such as *The Journal of International Economics*, *The*
25 *Canadian Journal of Economics*, and *Contemporary Economic*

1 Policy.

2 Professor Reynolds?

3 PROFESSOR REYNOLDS: Thank you. One aspect of my
4 bio that wasn't mentioned is that I also spent two summers
5 as an intern at the Commission. So I would like to put in a
6 plug for what a wonderful training ground the Commission is
7 for economists.

8 So safeguard investigations are the other form of
9 import injury investigations undertaken by the Commission.
10 And given that it has been nearly 15 years since the
11 Commission has undertaken a global safeguards investigation,
12 I wanted to highlight some of the distances between
13 safeguards and antidumping.

14 While some of that is the same, there are some
15 very important differences.

16 Safeguards are the only remedies that can be
17 applied to fairly traded imports. So they are essentially
18 serving as a safety net for U.S. industries who are
19 struggling in the face of increased import competition.

20 As the name implies, they're typically imposed on
21 a near-global basis. And while the injury determinations
22 undertaken by the Commission are similar, the threshold for
23 making that injury determination is actually stronger in the
24 safeguard investigation.

25 So under a safeguard investigation, increased

1 imports have to be a substantial factor causing or
2 threatening to cause serious injury. And so this is in
3 contrast to the material injury standard of antidumping
4 investigations. And both in the legislative history and
5 legally, meeting that serious injury threshold is supposed
6 to be harder than meeting the material injury threshold.

7 Now when the Commission makes an affirmative
8 determination, they also propose to the President what forms
9 of protection, whether it be tariffs, quotas, or tariff rate
10 quotas, can help remedy the injury. But it's ultimately up
11 to the President as to whether that safeguard protection
12 should be imposed. And there's plenty of cases in history
13 where the President has opted not to undertake the
14 Commission's recommendation because the President did not
15 feel it was in the public interest, and may recommend other
16 forms of remedy.

17 To give a little bit of historical context of how
18 we got to today, the first safeguard, or sometimes they're
19 called "escape clause" provision appeared in the 1942
20 U.S.-Mexico Trade Agreement. And just three years later in
21 the 1945, President Truman signed an Executive Order
22 requiring that all U.S. trade agreements include an escape
23 clause provision. And so it was under this Executive Order
24 that the U.S. pressured the first GATT Agreement to also
25 include a safeguard provision.

1 The first formal legislation in the United States
2 that really documented how an industry would go about giving
3 safeguard protection, it gave the Commission the ability to
4 undertake these investigations, was the Trade Agreement
5 Extension Act of 1951.

6 Under this initial law, safeguards could only be
7 awarded to products that had been awarded a tariff
8 concession in a recent trade agreement. So that differs
9 from today. I was surprised because I knew how little
10 safeguard actions had been taken recently, that when you
11 look at the early history there were actually quite a few
12 petitions filed under the safeguard law. So between 1951
13 and 1962 under this first legislation, there was
14 approximately 10 petitions filed each year.

15 Now a lot of those didn't go forward to a full
16 investigation. The Commission decided to dismiss them
17 because there wasn't a good and sufficient reason to launch
18 a full-scale investigation.

19 So out of the 135 petitions that were filed
20 during this first 11-year time period, the Commission
21 recommended action in 33 cases. And then the President
22 imposed protection 15 times.

23 In the early 1960s, there was a feeling amongst
24 some policymakers that it was almost unseemly for the United
25 States to be promoting escape clauses or safeguard

1 protection; that we would be encouraging our trading
2 partners to renege on some of their own agreements with the
3 United States.

4 And so the Trade Expansion Act of 1962, in terms
5 of the safeguard protection, was really designed to limit
6 the ability of U.S. industries to be awarded safeguard
7 protection. So it tightened some of those restrictions.

8 The two most prominent changes that they made is
9 that the Commission had to show a direct correlation between
10 the tariff concession made and the increase in imports.
11 Also, the substantial cause, which today is understood to be
12 no less important than any other cause, was changed to a
13 major factor. So it considered a higher threshold to meet
14 that injury determination.

15 Not surprisingly, perhaps, under the 12 years of
16 this piece of legislation there were actually only 30
17 petitions filed. So industries understood, perhaps, that it
18 would be highly unlikely for them to be awarded protection
19 under the current safeguard legislation. Only five of those
20 petitions during that time period actually resulted in some
21 form of safeguard protection.

22 So then you get to the early 1970s and there's
23 really a feeling that we swung too hard in the other way.
24 Legislation, the legislative history when you look at the
25 Trade Act of 1974, you read through Congressional

1 statements, it said the 1962 law has proven to be an
2 inadequate mechanism for providing relief to domestic
3 industries. So there was a specific effort to loosen those
4 restrictions and make it easier for industries to get
5 safeguard protection.

6 They returned to the "substantial threshold" that
7 was in the original legislation, and perhaps most
8 importantly you no longer had to tie the increase in imports
9 to specific tariff concessions. So now it was enough to
10 just say there's been this surge in imports that have caused
11 this serious injury.

12 And this is essentially the same legislation,
13 with some minor changes, that still governs safeguard
14 legislation today.

15 So after the passage of this law, you did see a
16 spike in the number of petitions between 1974 and 1977, but
17 actually very few of those petitions actually resulted in
18 protection. And so you saw the number of petitions filed
19 actually drop off. So since 1974, the Commission has
20 conducted just 73 global safeguard investigations through
21 2015, and the last safeguard, full-scale safeguard
22 investigation was in 2002, and that was with the steel
23 safeguards. There was a petition that was filed last year
24 in aluminum that was withdrawn, that didn't proceed to a
25 full investigation.

1 So one of the questions to ask is: Why are there
2 so few safeguard investigations compared to other forms of
3 trade remedies like antidumping and countervailing duty?
4 It's likely partly due to the higher standards: the serious
5 injury versus the material injury clause.

6 There's limited periods of protection under
7 safeguard, so right now you can get safeguard protection for
8 four years, and possibly extend it for another four years,
9 but especially historically the antidumping and
10 countervailing duty actions would be in place for much
11 longer.

12 And then there is this uncertainty of
13 Presidential action. It's an inherently more political
14 process because of the way the safeguard actions are
15 imposed.

16 I think it is important to note that it is also
17 relatively rare amongst our WTO trading partners. So since
18 the Uruguay Round, the WTO members have imposed safeguard
19 protection 155 times. The U.S. accounted for about 3
20 percent of those, but that's compared to more than, as Lynn
21 was mentioning, more than 3,000 antidumping actions being
22 taken under the WTO.

23 So to conclude my time, I just wanted to mention
24 how U.S. safeguard kind of fits in with WTO law. The United
25 States urged for there to be an escape clause in the

1 original GATT language, and so the original GATT language
2 very much mirrored U.S. legislation and really wasn't
3 changed until the 1995 Uruguay Round, at which time the
4 United States also made some modifications to their
5 safeguard legislation to match what was passed in the
6 Uruguay Round.

7 Since the Uruguay Round, the United States has
8 imposed safeguard protections six times. And each of those
9 have been challenged at the WTO Dispute Settlement Body.
10 And the Dispute Settlement Body has found that we violated
11 the WTO Agreement in each of those cases.

12 So each case has differed somewhat, but one
13 violation that commonly comes up in these WTO disputes is
14 this concept of, words that I find very difficult to say,
15 parallelism, where the idea is that you have an option when
16 you're undertaking a safeguard investigation looking at the
17 imports. You can look at all imports and what impact it
18 has, or you can look at a subset of imports, so potentially
19 excluding your free trade agreement partners, for example.

20 But what early dispute settlement cases, the
21 appellate bodies have said, and this was in particular a
22 case, an Argentinian case, their safeguard action, is that
23 there has to be some parallel. So that if you look at all
24 imports in your injury investigation and the safeguard
25 action has to be imposed on all imports. And oftentimes

1 when Presidential action has been taken, our Free Trade
2 Agreement partners have been excluded from that safeguard
3 action. And that is what the WTO has taken action with.

4 The Appellate Body has seemed to give some wiggle
5 room saying that there can be a gap between the imports
6 considered in the investigation and those covered by the
7 measure if the WTO member can establish that only the
8 imports of the countries covered by the measure caused or
9 threatened to cause serious injury. But it doesn't appear
10 that countries have found out a way to prove that to the
11 Appellate Body.

12 Thank you.

13 (Applause.)

14 COMMISSIONER PINKERT: This next chapter that
15 we're going to talk about is probably my personal favorite.
16 It's the reflections of members of the Trade Bar. I urge
17 everybody to dig into that and learn about how litigants
18 used to roam the halls of the ITC and chat up whomever they
19 could. I found it very interesting.

20 The two authors of the chapter are Professor
21 Eckes, whom you've already met, and Mr. Terry Stewart,
22 Terence Stewart, who is the managing partner of the Law
23 Offices of Stewart & Stewart.

24 Mr. Stewart has a B.A. from the College of The
25 Holy Cross, an MBA from Harvard University, and an LLM from

1 Georgetown University Law School. He was an Adjunct
2 Professor at Georgetown Law from 1995 to 2012, teaching
3 courses on the GATT and the WTO. His practice focuses on
4 international trade, notably trade remedies, where he's a
5 frequent visitor to the ITC, although I don't see him
6 roaming the halls very much, including antidumping,
7 countervailing duty, and safeguard escape clause cases, as
8 well as WTO and FTA negotiations and dispute settlement.

9 So, Professor Eckes and Mr. Stewart.

10 PROFESSOR ECKES: Thank you, Commissioner. I will
11 be brief and introduce my colleague, but I want to provide a
12 background for this chapter. Back in September of 1995, the
13 late Bruce Clubb, a former Commissioner and lawyer at Baker
14 & McKenzie, suggested establishing a USITC Historical
15 Society modeled after the Supreme Court Historical Society.

16 The purpose was to encourage study of the
17 Commission and its predecessor agency, and to heighten
18 awareness of the history of the Nation's trade policies,
19 laws, and administration.

20 In several of our meetings, the Board agreed to
21 pursue a program of collecting oral histories, and initially
22 it invited Noel Hemmendinger, Eugene Stewart, both
23 practitioners, and Charles Irvin of the Commission staff, to
24 share their comments and perceptions.

25 The results were to be deposited in the ITC

1 library and made available to other facilities and scholars.
2 Bruce Clubb did the initial interview with Noel
3 Hemmendinger, a lawyer who represented Japanese clients
4 since the early 1950s. I interviewed Eugene Stewart, who
5 represented domestic industries over the same period.

6 As we sought to update that project for this
7 volume, Terry Stewart agreed to conduct several additional
8 interviews with Joseph Dorn and Richard Cunningham, and from
9 that record we have then about the perceptions of about six
10 practitioners offering reflections from the Trade Bar over
11 an extended period of time that begins in the 1950s.

12 Several themes emerged. One was the openness and
13 informality of the Commission in its early years. Eugene
14 Stewart, for example, noted that practice before the
15 Commission in its early years was more satisfying from the
16 point of view of petitioners, witnesses, and counsel than in
17 later years.

18 In the earlier years he said Commissioners gave
19 abundant time to counsel and witnesses in presenting their
20 cases. He added that one could simply call at a
21 Commissioner's office with or without an appointment, be
22 ushered into the office and invited to sit down and talk
23 about the case. He said there was nothing untoward about
24 such discussions because all counsel had the same
25 opportunity, should they select it.

1 Noel Hemmendinger, who represented importers,
2 also praised the relative openness and informality of the
3 proceedings and the opportunity of counsel to cross-examine
4 witnesses at length.

5 He recalled at Christmas time he would take a box
6 of candy to the Secretary's office and go around to the
7 Commissioners' offices and extend his holiday greetings. I
8 don't know what happened to the candy. Maybe Ken Mason ate
9 it
10 all ---

11 (Laughter.)

12 PROFESSOR ECKES: -- or possibly Bill Allberger
13 and Bill Leonard, who served on the Commission before rules
14 changed.

15 Our interviews also turned up much praise for the
16 Commission's staff, including those in the Secretary's
17 office, the General Counsel's office, and especially the
18 Office of Investigations. We include many names in the
19 chapter that will be in the final published volume.

20 I now want to invite Terry Stewart to offer some
21 comments about recent practice before the Commission.
22 Incidentally, Terry and his father, Eugene, have the
23 distinction of having practiced before the Commission in
24 nearly two-thirds of its first 100 years. If there is an
25 institutional memory on the outside, it's Terry Stewart.

1 (Applause.)

2 MR. STEWART: Thanks, Al.

3 I'm going to take a second, because I've had the
4 privilege in my career to be both involved in both Bar
5 Associations at the cases before the Commission get appealed
6 to, and had the privilege of serving of president of each of
7 those associations, to offer a spontaneous congratulations
8 from both Bar Associations to the Commission on its 100
9 years.

10 Obviously for practitioners, the agencies we
11 appear before are critical. And we thank the great patience
12 that the Commission and its staff takes with all of us who
13 appear in cases, as has been said, that are important.

14 The project that Professor Eckes and I had the
15 opportunity to do is really a reflection on the evolution of
16 practice at the Commission. He's mentioned a couple of the
17 issues. The informality of the process versus the much more
18 formal process, which also dealt with time limits and,
19 interestingly, Joe Dorn in his comments reflected on the
20 fact that the Commission used to do a lot more field
21 hearings, which gives you an opportunity in fragmented cases
22 in particular to get out and get a broader audience.

23 Now 2,000 steel cases, the 201 case there, did in
24 fact have field hearings out in Indiana so that workers
25 would have an opportunity to be heard by the Commission, and

1 that was helpful.

2 I took away from the chapter that Al and I did an
3 interesting concept that for most of the practitioners who
4 were interviewed practicing international trade law had not
5 been what they had started out to do, and that in fact they
6 basically fell into it. I know from my Dad, my Dad I think
7 had wanted to be a criminal defense lawyer when he was
8 college, but ended up parking at what was the predecessor
9 court to the U.S. Court of Appeals for the Federal Circuit,
10 Court of Customs and Patent Appeals, which dealt with both
11 customs and patents, and he ended up doing customs and trade
12 work for the bulk of his career.

13 But the same was true of Dick Cunningham, who had
14 no intention to be an international trade lawyer, but ended
15 up getting the opportunity to do a major antidumping case at
16 Steptoe, and then Joe Dorn got a call from a partner in
17 Atlanta about whether there was any trade remedies
18 available. He had never taken a course, but found out that
19 there was a law called The Trade Act of 1974, and there was
20 a provision called "The Safeguard."

21 For my Dad and for Noel Hemmendinger and for Joe
22 Dorn, their initial cases that they did in this area were
23 all safeguards. I doubt you could find a practitioner in
24 the last 20 years for whom that would be a true statement
25 today.

1 Al mentioned the very high regard for both
2 Commissioners and the Commission staff. That was reflected
3 by all of the interviews, and I think for those of us who
4 practice today there's still an extraordinarily high regard
5 for the Commission staff.

6 I think the difference in level of access to
7 staff today versus when I started back in the late '70s is
8 noticeable. It doesn't detract from the quality of the
9 staff, but it does I think affect the relationship between
10 the practitioners and the Commission staff in terms of both
11 the understanding. If you read our chapter, you will see
12 that Joe got an enormous amount of help from Ken Mason and I
13 think from Lynn and from others from when he started his
14 practice.

15 The opportunity to kind of get into the field
16 really has a lot to do with your access to the people who
17 are the decision makers, or who are the fact finders at the
18 agency. So that it is I think both a tribute to the
19 Commission and its staff that the high quality has been
20 maintained over the 100 years and perhaps a bit of wistful
21 thinking on the part of practitioners that the same level of
22 access isn't true today.

23 The '79 Act and the move to a formal
24 administrative record, APR access, judicial review, dealing
25 with two levels of court review and also potential WTO cases

1 obviously has changed the nature of the practice, and has
2 changed I think the quality of the information.

3 The practitioners would say it has also changed
4 who appears before you. You went from a relatively small
5 group of boutique firms, not in all cases but in many cases,
6 to much larger firm involvement, use of economic consults to
7 a much greater degree, and obviously much greater depth in
8 the decisions that are made by the Commission, the records
9 that are presented by the parties, et cetera.

10 Finally, the chapter looks at a couple of cases
11 on which parties had, practitioners had comments, the first
12 of which was the 1980 Auto Case. What was interesting about
13 that was that you had views both from my Dad who represented
14 the UAW in that case, and from Noel Hemmendinger who had
15 been representing some of the Japanese in the case, that the
16 decision had gone the wrong way and that it had
17 repercussions.

18 And what comes out of both those cases that are
19 identified, the '80 case and the '82 steel trade remedy
20 cases and the '84 steel 201 case, was that in those days the
21 U.S. had flexibility. There wasn't yet the Safeguard
22 Agreements in the WTO which bans the VERs and VRAs, and
23 hence governments could reach political solutions that were
24 important to the economic development and the economic
25 progress of the country under the trade rules.

1 That is no longer possible. And it was
2 interesting that the reflections of parties on both sides
3 viewed that as a significant loss.

4 So with that, I'll stop. Thank you.

5 (Applause.)

6 COMMISSIONER PINKERT: We have two reviewers,
7 Professor Chad Brown and Ken Mason. You've already met Ken.
8 Professor Chad Brown is a Senior Fellow with the Peterson
9 Institute for International Economics in Washington, D.C.,
10 and a Research Fellow at CEPR in London. He is formerly a
11 tenured Professor of Economics at Brandeis University, and
12 served as Senior Economist for International Trade and
13 Investment in the White House on the President's Council of
14 Economic Advisers.

15 He spent a year in residence as a visiting
16 scholar in economic research at the WTO Secretariat in
17 Geneva, and most recently he was a lead economist at the
18 World Bank conducting research and advising governments in
19 developing countries on international trade policy.

20 So let's start with Professor Brown.

21 (Applause.)

22 PROFESSOR BROWN: So like everybody else, I want
23 to offer my congratulations to the Commission, and for the
24 tremendous honor to be here.

25 So my name is Chad Brown and I'm at Peterson, but

1 basically think of me as just kind of an academic. I've
2 never worked at the ITC, as much as I might have liked to.
3 I testified before the ITC once about 12 years ago.

4 I did get the opportunity to work very closely
5 with ITC staff when I was at the White House, at CEA, and I
6 found that a very valuable experience with the tremendously
7 important analytical work that gets done.

8 But today I want to talk about trade remedies.
9 And if there's one thing that, if any of you would have
10 heard of me and how I've built a career in academic
11 research, it's my studying of what it is that you guys
12 actually do here.

13 So what have I done? Well, the main thing that I
14 have spent the last 10 years or so doing, before I came to
15 Peterson this summer, was to build something that was called
16 at the time initially the Global Antidumping Database, if
17 you've heard of it.

18 So back in the early 2000s there had been a lot
19 of research on the U.S. and use of antidumping and what the
20 ITC was doing, and what Commerce was doing, done by some of
21 my wonderful colleagues out there in the crowd, Professor
22 Irwin, Professor Moore, Professor Prusa, Professor Reynolds,
23 but what we noticed was, hey, there were all these
24 developing countries especially that were starting to use
25 antidumping, and nobody was studying it yet.

1 And part of that, we thought, was because of
2 data. And so I went to the World Bank and brought this to
3 their attention and said, you know, you guys at the World
4 Bank should start collecting data on this. I was still an
5 academic at the time in Boston. And my wonderful friends at
6 the Bank said that sounds like a great idea, why don't you
7 do it?

8 So they gave me a little bit of money to go out
9 and hire research assistants, and then I got sucked into
10 that endeavor for the next 10, 11, 12 years of my life. And
11 it's turned out I think to be important because, you know,
12 the major users of trade remedies now. So we no longer call
13 it just the Antidumping Database anymore, out of recognition
14 that also CBDs are important, and safeguards are important,
15 but we couldn't call it The Trade Remedies Database of
16 course because our friends in Europe don't call this stuff
17 "trade remedies," they call it "trade defense instruments,"
18 so we had to come up with a different name.

19 And then we thought, well, you know, there's this
20 sunset review process, as well, so maybe we should call this
21 the temporary trade barriers database. Now some people
22 forget about the sunset review process, but I guess that's
23 another story.

24 So Temporary Trade Barriers Database. But it's
25 from that perspective that I wanted to give my two cents

1 about the ITCl And the perspective that bring here is, the
2 determination of public policy is increasingly reliant on
3 economic evidence.

4 In order to create economic evidence, we need
5 data. The model that you have established here at the ITC
6 is incredibly impressive, and I say this from the
7 perspective of a data collector. When I went out and
8 started to collect data on what other countries were doing
9 in terms of their antidumping, CBD use, safeguard use, it
10 was shocking. It was easy to see what it is that we do here
11 in the United States, but pushing this model that we have in
12 the United States on transparency out there in the world has
13 been a slog.

14 And so I remember when we first tried to collect
15 data, for example, on India's use of antidumping, they had a
16 seven-page injury report or something like this. It was
17 just shocking. And you guys' is very lengthy. So you can
18 just imagine how much detail that they actually undertake.

19 The motivation for why this is important of
20 course is the policymakers and politicians like to run
21 around and tell you statistics like exports are important.
22 Why? Because 95 percent of the world's consumers live
23 outside of the United States, right? Well, we're
24 increasingly seeing that with trade remedies, as well. An
25 increasing majority of trade remedy use is happening outside

1 of the United States and it is increasingly affecting U.S.
2 exporters, and so it's sort of pushing the model that you
3 have developed here in terms of rigor and transparency.

4 It is increasingly important to understand and to
5 be able to convince policymakers as analysts that there are
6 potentially benefits but also costs to some of the policies
7 that they undertake. They can be distributional effects, as
8 well.

9 But in order to do that analysis, we need
10 reliable data. And so being able to take the model of
11 transparency that you have here and bring it to other
12 countries as well is I think a testament to the way you run
13 your shop here.

14 So to conclude, I know that transparency gets you
15 into hot water at times because it's really easy to nitpick
16 what it is that you do because you are so transparent, but
17 it is important. And I remember this also from working in
18 government. In the TPST Committee meetings especially, it
19 is frequently a desire to worry about our defensive
20 interests. You know, in particular saying, well, let's not
21 raise that at the WTO, or let's not bring this potential
22 action to the WTO because we do a little bit of the same
23 stuff here. But what I'm seeing out there in the data is
24 what other countries are doing is so less transparent and is
25 so much worse that we can give a little bit in terms of our

1 defensive interests because we have a whole lot of offensive
2 interesting stuff out there as well.

3 That's a small nitpick. My main point is to just
4 say congratulations, and thank you for being the beacon of
5 light. And it's not only the domestic context that we've
6 talked about that's been the focus of both this morning and
7 much of the panel so far here, but from the outside world as
8 well. The job that you all do and the transparency with
9 which you do the job is an important model for the rest of
10 the world to follow. So please keep it up.

11 Thank you.

12 (Applause.)

13 MR. MASON: My remarks in this area are going to
14 be quite different from my distinguished colleagues. I am
15 not a lawyer, never been a lawyer, never went to law school,
16 but I got into a job that put me in constant contact with
17 lawyers. I've gained a lot of respect, and it was a blast
18 for 22 years to watch them do their thing.

19 Much has been--oh, by the way, we did not eat all
20 the candy.

21 (Laughter.)

22 MR. MASON: We had help from a certain Vice
23 Chairman who you can probably figure out who it was.

24 (Laughter.)

25 MR. MASON: When I became Secretary in 1960,

1 transparency was a--never used it as a word. The staff in a
2 dumping case would write up a staff report, send it to the
3 Commissioners. The Commissioners would meet in closed
4 session, decide the case. We had it locked up in my office
5 until day of release. What was published was a very thin
6 little publication. It was just the opinions. There was no
7 background, no staff report; it was so small that when we
8 sent our records to archives you could put in one box four,
9 maybe five dumping cases.

10 Then came the Trade Act of '74, making all of our
11 proceedings on the record. After that, we put four boxes
12 for one case.

13 (Laughter.)

14 MR. MASON: The record obviously is an important
15 tool of the participants, so we have a confidential version.
16 The APO has been mentioned. And there's a public version.
17 I don't know about the investigative staff or the
18 Commissioners. This has caused a drastic increase in the
19 number of pages of paper in my office, but I think it served
20 a purpose.

21 We also had an Act called The Government in the
22 Sunshine Act. Under that, what used to be a private meeting
23 of the Commissioners and myself and, on invitation, members
24 of the staff. Some cases, the Commissioners felt no need to
25 call in the staff, but if they had questions they called

1 them in.

2 Under The Government in the Sunshine Act, we had
3 to do things like announce the agenda a week in advance. It
4 was always an open meeting, unless certain criteria were
5 met. You couldn't add something to the agenda just before
6 the meeting, which was frequently done before.

7 And for many things you had to have the sign-off
8 of the General Counsel that we were doing something legal,
9 which involved at times people running around looking for
10 Lynn Schlitt, the General Counsel, so she could certify that
11 we were all legal.

12 From my perspective sitting in the meetings in
13 the public version after The Government in the Sunshine Act,
14 I noticed something that has been on my mind for all these
15 years. In the closed meetings the Commissioners had a free
16 exchange of information and opinions, things like that,
17 before and during the meetings.

18 This is all limited under the Sunshine Act. If
19 two Commissioners or three Commissioners want to sit down
20 together, they better not talk about the cases.

21 The collegial atmosphere still is there, but I
22 think the Commissioners, in my time anyway, were much more
23 guarded in their comments to each other and their
24 questioning. And I'm not sure that was a good thing.

25 (Applause.)

1 COMMISSIONER PINKERT: I'd just like to thank the
2 panel. We are going to forego the questioning for this one
3 so that we can get back on track on our schedule, but thanks
4 again for a terrific presentation.

5 (Applause.)

6 MR. BARDOS: Thank you to the panel, and we're now
7 moving to the next panel on Intellectual Property, and it
8 will be moderated by Commissioner Kieff.

9 (Pause.)

10 COMMISSIONER KIEFF: Alright, thank you all very
11 much. We are now going to move into the next panel on
12 Intellectual Property Proceedings. I am Scott Kieff. I am
13 a Commissioner at the ITC and I have greatly enjoyed working
14 in both trade and IP fields, as well as antitrust for my
15 entire career. So for me it's a fun opportunity to be at
16 the Commission to mix these different topics.

17 And it is a special treat to be here for the
18 hundredth anniversary, and to be with each of you, this
19 great community of professionals, of colleagues, and to be
20 in this great building. I think the murals themselves tell
21 a great story for the Commission, evocative of trade, of
22 farming, of manufacturing.

23 I grew up on the South Side of Chicago in Hyde
24 Park, right on the University of Chicago campus, and there
25 are a number of murals like this that adorn the underpasses

1 of the, in those days, Illinois Central Railroad that went
2 along the lakefront. And I always thought a lot about these
3 murals, because of course as a kid you pay a lot of
4 attention to the things you see. And these murals I think
5 give us a chance to think about how innovation, how the
6 economy, and how the government interact with each other in
7 these areas.

8 Chairman, now Chairman Williamson, then Chairman
9 Williamson and I had worked together to prepare a video for
10 our workforce at the ITC on diversity and inclusion. And I
11 think that these murals for me as a kid growing up, and for
12 me as a professional looking at them again, see in them that
13 diversity and inclusion, a diverse mix of people from
14 different ethnic backgrounds, different genders, different
15 ages, working together.

16 And of course that opportunity to bring people
17 together to exchange and to cooperate is the essence of
18 trade. I don't need to trade very much with you if we have
19 the same stuff, if we like the same things. But if we have
20 different stuff and we like different things, we can get to
21 know each other and benefit from each other through trade.

22 Whether we ultimately consummate a deal or not,
23 we can communicate with each other a great deal, and in so
24 doing become socialized with each other and learn a lot
25 about each other.

1 And just on the last panel, the discussions about
2 transparency, it is a feature not a flaw in my perspective
3 as a former academic to write a detailed opinion and be told
4 I'm wrong. I think that's great. That helps me figure out
5 how to write a better one next time, and it helps I think
6 each of us better understand what about a particular case, a
7 particular docket, a particular statute, matters to
8 particular groups of people.

9 So the dialogue between an agency and its
10 reviewing courts, courts plural, among the courts, between
11 the different branches of government, that exchange is
12 itself an opportunity to improve the Commission for its next
13 hundred years, I hope, to improve the system for its next
14 100 years.

15 I think that as we dive into the Intellectual
16 Property Panel, we had a great introduction already from
17 Commissioner Johanson as he wrapped up his remarks and
18 talked about foxes, and of course Commissioner Johanson is
19 not the only Johanson to spend a lot of time talking about
20 foxes. His Dad is a famous professor who focuses on trusts
21 and estate law and property law, and of course we all, those
22 of us who have done property law in law school, start almost
23 every semester with Pearson vs. Post, a case about property
24 rights and foxes.

25 And that notion of getting property rights in

1 something that exists out there in nature is what
2 intellectual property is all about. Because of course
3 ideas, the state of the world, that exists before we find it
4 out. We're not making something new. What's making
5 something new is the act of bringing it to our new use. And
6 that opportunity for societies like ours to give property
7 rights in this intellectual set of assets is what this panel
8 is all about.

9

10 So the wonderful biographies that barely begin to
11 scratch the surface of the incredible talent we have on this
12 panel, are available for you. So I won't elaborate them,
13 but I will just briefly introduce our panelists.

14 We have a paper, a chapter for the book,
15 presented by a team from the Adduci Mastriani & Schaumberg
16 firm. The authors include Ms. Sarah Hamblin, Jim Adduci,
17 and Deanna Okun, who of course is not only a lawyer who
18 practices before the Commission, but a former member and
19 chair of the Commission.

20 We then have two comments to be presented, one by
21 Mr. Yaworski, who is a former Assistant General Counsel, and
22 Ms. Roberts, a practitioner, a lawyer at the Steptoe &
23 Johnson firm.

24 So without further ado, let me turn it over to
25 the paper presenters, the chapter authors, as a team.

1 Please.

2 MS. HAMBLIN: As someone said earlier, none of us
3 have any watches anymore, so I have my phone out here to
4 keep time.

5 So my name is Sarah Hamblin. I work at the law
6 firm of Adduci, Mastriani & Schaumberg, and I have the
7 privilege today for our group of giving you a bit of an
8 overview of the chapter that we wrote. It is going to be a
9 bit of a speed course, so bear with me.

10 The chapter became longer and longer as we went
11 along, so we're going to address some of the structure, and
12 then a couple of the highlights.

13 So basically the chapter is on the intellectual
14 property investigations or, more broadly, unfair import
15 investigations under Section 337. It is divided into four
16 sections, starting, as you would expect, with the statute,
17 covering the legislative history from the beginning through
18 the '94 revisions.

19 The next major section is the Commission's
20 implementation of the statute, which is divided into two
21 areas. As you would expect, it is broken at 1974, so it's
22 everything from 1922 to 1974, and then '74 and beyond.

23 As we all deal as lawyers with rules every day,
24 there's a section on the rules. That was a fairly
25 interesting section to write. We went a little bit down the

1 rabbit hole looking for Federal Register Notices, and some
2 of them predate the Federal Register.

3 And then the last section is looking a little bit
4 more at the substance of litigation under Section 337, the
5 core elements. You know, even though there's been changes
6 over the years, the core elements have remained the same.

7 So starting with the first section, Section 337,
8 you know, we're not 100 years yet, or so it seems when you
9 start thinking about it. But when you take a higher view,
10 you know, the prehistory of Section 337 was percolating
11 along, you know, right around the time of the Tariff
12 commission.

13 So the Federal Trade Commission, you know, came
14 about in 1914. And people were talking already about unfair
15 competition at that time. The Revenue Act of 1916 brought
16 in antidumping, which was at least one form of unfair
17 competition, and there is some, you know, some history there
18 that's relevant to us, if for not other reason than it
19 wasn't addressing all forms of unfair competition in
20 general, or it wasn't addressing it in import trade.

21 The Commission, as one of its early investigative
22 duties, had a request from Ways and Means for a report
23 that's now referred to just as the 1919 report, but it was
24 an investigation of dumping in various areas. And it also
25 recognized in that report the lack of coverage of unfair

1 competition in import trade other than dumping, as well as
2 some difficulties with injury and dumping as well.

3 That report had some influence in crafting the
4 first section, 316, that came about in 1922. It is
5 referenced in the legislative history, actually. Section
6 316 is the precursor to Section 337. It was brought about
7 by a Senate amendment, and we all heard about Senator Smoot
8 earlier. There's some very colorful legislative history
9 involved there.

10 That report is routinely referenced when we talk
11 about Section 316. So the section that we work under,
12 Section 316, existed through the '20s. And then in 1929,
13 Congress came about and took a large-scale revision. So
14 that's the Trade Act of 1930 that we're most familiar with
15 today.

16 In the '40s, not a lot was going on. A lot of
17 time was taken up by the War. Through the '50s and '60s,
18 Section 337 investigations continued, not at a high level;
19 there's only a few every year, but they continued.

20 It's really in the '70s that the trade gap and
21 lobbying sort of reinvigorated people's thoughts about
22 Section 337. And then Section 337 was significantly
23 overhauled in 1974, as we all know.

24 I'll just give you a couple of highlights. The
25 major shift in the '74 comes from being a statute in which

1 the President is responsible for implementing the violation,
2 and the Commission gives advice, to flipping basically over
3 so that the Commission would institute a remedy and the
4 President would have the opportunity to review.

5 I really am going to flip through quickly because
6 I'm already over my time. In terms of the rules, they start
7 at 1922 with the statute. My colleagues are going to talk a
8 little bit more about the domestic industry and some of the
9 changes after the '74 Act.

10 And with that, I am going to stop with my time
11 and look forward to the rest of the panel.

12 (Applause.)

13 MR. ADDUCI: Well thank you, Commissioner.

14 As Yogi Berra said about baseball, I can say
15 about the statute, Section 337 has been very, very good to
16 me.

17 (Laughter.)

18 MR. ADDUCI: And that's why it's a particular
19 pleasure and honor to be here today to celebrate the
20 Centennial of this agency. It's the agency where I began my
21 career, and where I made so many dear friends, many of whom
22 are here today.

23 Now in 1976--I'm going to talk a little bit about
24 the evolution of the Office of Unfair Import Investigations--
25 --in 1976, which is the year I arrived at the Commission as

1 an attorney advisor to one of the Commissioners, the
2 Commission decided to undertake an across-the-board
3 reorganization of all the Commission offices, including the
4 Office of the General Counsel.

5 My Commissioner, Al Ablondi, was given lead
6 responsibility for recognizing the legal offices, or
7 reorganizing, rather, the legal offices, including the
8 General Counsel's office. And I, as his 26-year-old
9 assistant, was tasked with representing him in that effort.

10 During the reorganization of 1976, questions
11 arose about the role of the General Counsel's office and
12 Section 337 investigations. Now there's a political back
13 story to all this in terms of the creation of OUII and what
14 happened with the General Counsel's Office, and perhaps we
15 can get into that at a later time under the confidential
16 business, or under the protective order--

17 (Laughter.)

18 MR. ADDUCI: --but anyway, the issue was whether
19 the General Counsel should maintain the dual functions as
20 both the legal advisor to the Commission and as an
21 investigative and evocative role at the Commission,
22 interacting with the private parties as he did, they did,
23 before the '74 Trade Act.

24 This concern of the Commission found support in
25 the APA, which prohibited the decision makers--that is, the

1 Commissioners--and its legal advisors from having ex parte
2 communications with the private parties who, following the
3 1974 Trade Act, as you know, had a much larger role in
4 Section 337 investigations.

5 As a result, in 1976 the Commission created the
6 Office of Legal Services, the so-called OLS, which handled
7 the investigative role in Section 337 investigations, and
8 they recruited--they had party status, as you know--and they
9 recruited many of the attorneys to the Office of Legal
10 Services from the General Counsel's Office.

11 A gentleman named Harold Brandt, who was
12 recruited from the Federal Trade Commission, became the
13 first director of OLS and served from 1977 to 1978. The OLS
14 was placed under the new Office of Operations, also created
15 by the reorganization, named the Unfair Import Investigation
16 Division. And in 1985, it was elevated to becoming a
17 separate office, becoming what is to this day known as the
18 Office of Unfair Import Investigations.

19 Today, OUII serves three primary functions.

20 First, it offers complainants an opportunity to
21 sit down and review the draft complaint, the so-called
22 pre-filing review. This advice is neither binding on the
23 complainant, nor is it required, but certainly from a
24 practitioner's point of view it is very much to be
25 encouraged and done.

1 Second, the OUII examines complaints for legal
2 sufficiency and compliance with the T-10 rules, and makes
3 recommendations to the Commission on whether or not to
4 institute an investigation.

5 Third, following institution it becomes a party
6 to the case, participating fully in discovery, taking
7 positions on all the legal issues, and participating in
8 prehearing, hearing, and post-hearing briefing stages of the
9 investigation. And again, another practitioners note:
10 Because ex parte communications with the OUII attorney
11 assigned to the case are permissible, and because there
12 tends to be a very high correlation between the positions
13 taken by the staff attorney, the OUII attorney, and that of
14 the ALJ's, as a private party it is highly advisable to
15 communicate early and often with the OUII attorney during
16 the course of the investigation.

17 I look forward to answering any questions later
18 on. Thank you.

19 (Applause.)

20 MS. TANNER OKUN: So my watch is my phone, right?
21 So, you know, you can use that as well as anything else
22 these days, and all the wearable technology that the
23 Commission will probably see some more cases on in the
24 coming years.

25 Good afternoon. It's a great honor to be here to

1 help the Commission celebrate its 100th birthday. I was on
2 the Commission long enough to celebrate a couple of
3 significant birthdays, not as significant as the Centennial
4 Celebration, but certainly I have fond memories of being at
5 the Commission and sharing those times. And I certainly
6 think that this is a terrific opportunity to recognize the
7 important role the Commission has played, and I really want
8 to join all of those who have been here today to say thank
9 you both to the tremendously hard-working staff. The
10 Commission has many people who have served, and celebrate
11 many more birthdays at the Commission than I did, and that
12 continue to play such an important role, and then to
13 incorporate new staff as the mission of the Commission
14 continues to evolve. And then also just again to say thank
15 you to all my former colleagues and to the current
16 Commissioners for the work they do as public servants in an
17 important role.

18 So while we might not have President Obama
19 bringing you down to the White House to see who the next
20 Commissioner is, as one of the earlier panelists talked
21 about the role of Commissioners near the formation, I think
22 that if you listen to the debates going on today we know
23 that there's an important role for facts and economic data
24 to play a more important role in our dialogue.

25 So I hope as we look forward to what the

1 Commission can do in the next hundred years, that that is an
2 area where both Congress and the President will look for
3 ways to have the objective data that the Commission,
4 objective works of the Commission, play a larger role in the
5 dialogue.

6 So turning to the chapter on Intellectual
7 Property, and more broadly Unfair Acts, I really appreciated
8 Commissioner Broadbent's comments this morning to the
9 earlier panel when she asked them who should be--who would
10 you make the founding father of the Commission, or founding
11 fathers. Perhaps because I just returned from seeing
12 Hamilton for the first time and have been listening to the
13 soundtrack all day, but it did strike me in listening to
14 that question that when the Commission decided to celebrate
15 the Centennial by having a book written by others, they
16 might have been listening to the soundtrack for Hamilton of
17 "Who Writes Your Story?" Right?

18 But what do you say about the people who write
19 the story about the Commission will be how it is remembered.
20 So this is an important endeavor and I hope that our chapter
21 contributes to that dialogue, and that you'll have an
22 opportunity to read it. I learned things as we went through
23 the history, and I think it's going to be, and probably
24 because I guess the Commissioners and others have had a
25 chance to see all the chapters together, that will be a nice

1 way to put them together. Because you have this political
2 undertone to everything, and yet for our chapter we tried
3 very much to focus on, you know, what did the statutes say?
4 What did they get changed to? And there is some discussion
5 about the politics in some of these other chapters, but it
6 is very much what happens in the Commission at many levels
7 where you have the Congress and the politics, and that's
8 important.

9 But then that gets put into a statute that you
10 then have Commissioners who are appointed through a
11 political process, but brought to the commission to be
12 nonpartisan in interpreting that.

13 So we will talk about that a little bit later in
14 the Chairman's chapter, but I think that it is an important
15 perspective to read the book with that in mind and to read
16 our chapter with that in particular.

17 I am just going to spend a couple of minutes
18 talking about the domestic industry section, or the domestic
19 industry part of the statute. And I appreciated Jason
20 Kearns this morning talking about when Congress has over the
21 last several years thought about whether there should be
22 additional legislation to change the statute, and that
23 dialogue continues.

24 His remarks were, he said that Congress has been
25 reluctant to legislate on 337, and know that the creative

1 thinking of the Commission in taking the statute as the
2 Congress wrote the statute, but undertaking what it could do
3 with the statute to address what were some of the
4 criticisms.

5 So I'll focus on that somewhat briefly, because
6 if you listen to all the panels talking about why was the
7 Commission created, you heard again and again this emphasis
8 on manufacturing. How could they protect the domestic
9 manufacturing, the domestic industry? And that clearly is
10 the focus. It is a trade statute at heart, and I think for
11 those of us who have done both antidumping and trade work
12 and been on the Commission, and then to do Section 337 work,
13 there is sometimes a little bit of a disconnect because
14 there's so many patent cases, and every company just wants
15 to bring a case and win on its patent, and win on
16 intellectual property.

17 And I find one of the things I'm doing most often
18 is saying, you know, this is a trade statute. And remember,
19 you have to meet these threshold provisions, including
20 domestic industry.

21 So it wasn't litigated that much in its early
22 history. So in some ways this isn't a historical issue in
23 the sense that there was a statute, you had to have a
24 domestic industry, you proved it through your investments in
25 capital and labor, and then as so many of us know because we

1 talk about it so much, the 1988 Act is what changes it to
2 recognize that manufacturing is no longer the only thing
3 that's important to the U.S. economy. And if you're
4 protecting the U.S. economy you're also protecting
5 intellectual property.

6 So Congress amends the statute at that time to
7 allow for intellectual-based domestic industry be proved
8 through research and development, engineering, and
9 licensing, or licensing as we all know.

10 That continues to be litigated today. As
11 different business models have evolved, the Commission has
12 struggled, and it struggled when I was on the Commission. I
13 think there were, as practitioners know, several important
14 cases in 2011. We all like to refer to the numbers in
15 Section 337, which was a little bit different than Title
16 VII, but the 650 investigations, the 694 investigations are
17 really important steps by the Commission to address the
18 domestic industry statute and how it should be applied to
19 these different business models.

20 And that continues to happen. The Commission, in
21 being creative as Jason also said, has also used its
22 administrative rulemaking to address these issues. The
23 Committee instituted a 100-day pilot program where a case
24 could be referred to deal with dispositive issues, including
25 domestic industry. And the Commission has had the

1 opportunity to do that once.

2 So I just touched on it briefly. There's more in
3 the chapter itself, so be sure to read the chapter on all
4 these different issues. But I think it is indicative of how
5 the Commission has evolved under a statute that started in
6 1916 and has evolved, and the Commission has evolved with it
7 in terms of its legislative--interpreting the legislation
8 and its own administrative rulemaking. And I will look
9 forward to questions on that and any other issue.

10 (Applause.)

11 COMMISSIONER KIEFF: Thank you.

12 Ms. Roberts, Stephanie Roberts, from Steptoe.

13 MS. ROBERTS: So I'd like to thank everybody for
14 being here, and I appreciate the honor of speaking today.

15 So I'm not going to focus on any specific aspects
16 of the chapter. I reviewed it. I just wanted to focus on
17 things that I found interesting in the chapter.

18 I don't have the same I guess amount of
19 experience as some of my other colleagues in this area.
20 I've only been doing Section 337 for the last seven years.
21 My first litigation case ever was an ITC case, and loved it,
22 and thank you, Barbara, and your team, for teaching me what
23 domestic industry was.

24 So overall, the chapter I thought was really
25 good, it gave you a good view of the history of the ITC, the

1 evolution of the rules, things that you don't realize just
2 coming into the practice a few years ago.

3 So it was very interesting I thought to see how
4 the rules evolved from the '20s. Specifically, the chapter
5 went into the Presidential involvement. And so in the early
6 days you argued your case in front of the Commission and the
7 President--or the President's representative. And now
8 there's just a Presidential review period. So it was
9 interesting just to see the difference in that.

10 I thought the chapter did a good job of going
11 into some of the important aspects of ITC actions. So there
12 was a lot of discussion on importation, and talking about
13 specific cases that have shaped, you know, the importation
14 requirement, and then the articles that are being imported.

15 You know, Deanna touched on the domestic
16 industry, and I thought the chapter did a really good job
17 going in depth with all of the cases that have really
18 defined what the domestic industry requirement, or the
19 economic prong of the domestic industry requirement is
20 focused on at this point.

21 There were also--there was an in-depth
22 discussion, or a discussion of the injury requirement, and I
23 thought it was interesting that it really hasn't changed for
24 non-federally registered IP rights. And it's largely
25 remained the same. So I thought that was interesting.

1 The chapter did a really good job as well of
2 going into the creation and the rule that OUII has played in
3 all of the investigations and their importance in the
4 Commission.

5 Another thing that I thought was really
6 interesting was a discussion of the nonpatent-related
7 investigations. I know most of the investigations are
8 patent-related at the ITC, but it seems that the nonpatent
9 investigations have been making a comeback. And so the
10 detail that went into it in talking, you know, specifically
11 about the trade secrets and how the law has evolved in the
12 ITC around that.

13 That's it.

14 (Applause.)

15 COMMISSIONER KIEFF: And our last reviewer is Mr.
16 Timor Yaworski, formerly of the Office of General Counsel,
17 who I believe prefers Tim.

18 MR. YAWORSKI: Very good. Thank you.

19 Well Section 337 is, as of this year, 94 years
20 old, which is just a few years younger than the Commission
21 itself. So what do you say in five minutes about 94 years
22 of history? You can't really do it.

23 I do commend to you the chapter in the
24 forthcoming book which is well written, and it is very
25 thorough. But I think if one does step back and attempt to

1 look at the sweep of the 94-year sweep of the statute, the
2 salient feature is of course the Trade Act of '74.

3 Now there are significant amendments after that,
4 but I think the '74 Trade Act really was the -- the
5 amendments that have been made to 337 put the statute on the
6 map.

7 For one thing, it made Section 337 subject to the
8 quasi-judicial provisions of the Administrative Procedures
9 Act, hence the need to create an Office of Legal Services,
10 as Jim Adduci mentioned, and the need to establish an Office
11 of Administrative Law Judges, with initially a single ALJ,
12 Myron Rennick. I discovered, much to my surprise, that his
13 law clerk way back when was Robin Javanick, and he is here
14 today. In fact, I think he works for -- there he is -- I
15 think he works for the Commission.

16 But I started in D.C. in '76--again, same as Jim
17 Adduci. The General Counsel at that time was Russell
18 Schumacher, who was mentioned this morning as the principal
19 drafter of the TSUS, which is the Tariff System that the
20 United States used I guess from '63 to '89, prior to the
21 Harmonized System.

22 Russ was a brilliant man, but his background was
23 in Customs. He came from the Customs Bureau, and his
24 interest was really in Tariff affairs. So when the statute
25 was amended, one of the things it did was it allowed the--it

1 permitted the Commission to represent itself in court,
2 rather than having to go through the Department of Justice.

3 Now this was simply an area where Russ Schumacher
4 wasn't comfortable, so we brought in, or the Commission
5 brought in the late Mike Stein from the Justice Department
6 to handle litigation. And he eventually succeeded Russ
7 Schumacher as General Counsel.

8 About the same time, we brought in Jeff Lang from
9 private practice, and Jeff of course went on to a very
10 illustrious career at the USTR.

11 So the statute really got a jump start in '75. I
12 think the effective date was 1/1/75, and it's sort of been
13 onward and upward ever since. The 337 caseload was quite
14 heavy, I thought, when I retired in '04, and I'm told it's
15 worse today, although there was I guess a couple of years
16 where the caseload declined slightly. But the general trend
17 is upward.

18 And one can only wonder what the statute will
19 look like in 100 years. Will it still exist? Will the
20 Commission still exist in 100 years? I guess our great
21 grandchildren will live to see it.

22 Finally, I just have a brief personal aside,
23 which doesn't have anything to do with 337. My father, who
24 was an economist by trade, worked at the Commission from
25 1947 until 1969. He was a chief of one of the commodities

1 divisions back when the commodity industry analysts played a
2 much more centric role in the Commission than they do today.

3 Anyway, as a small boy in the late--and you can
4 see what I look like, so I'm a long way from being a small
5 boy--in the late '40s and early '50s, I used to come and
6 visit him. And I remember, this is when we were in the 7th
7 and E Street building that Al Eckes mentioned. I remember
8 you could walk up the stairs, in the front door, and just go
9 anywhere you wanted, to see your father, or whatever.

10 And I have to--I can't help but comparing that,
11 contrasting that to the last time I tried to get into the
12 Commission building. I think it's easier to get into Fort
13 Knox than it is to get into the Commission.

14 Thank you, very much.

15 (Laughter and applause.)

16 COMMISSIONER KIEFF: Thank you, each, very much.
17 Let me ask us, as we turn to an opportunity for some dynamic
18 exchange and dialogue with this panel, let me also ask for
19 the record if you will for the first panel about the history
20 of the Commission a question that maybe someone can answer
21 in the book. But that question is:

22 It is impossible for me, and I think anyone else,
23 to work at the Commission without coming away with a sense
24 that the staff is just incredibly bright, and collegial, and
25 cooperative, and straight down the middle of the strike

1 zone. And that's great. Okay. But I just think it's
2 possible that people in other government agencies also are,
3 and yet it turns out as people they may be the same, but as
4 groups they act differently.

5 The ITC as a group maintains that neutral
6 collaborative, analytical favor in a way that is distinct
7 inside Washington. And so the question is whether it is the
8 structure of the Commission, which is not common to the
9 other three-letter commissions that share the 100-year
10 history, does that structure help explain that
11 collaborative, analytical, neutral approach?

12 And if so, who gets the Nobel Prize for coming up
13 with that structure? My understanding was: Taussig. But I
14 may be wrong. And my understanding was, roughly in the
15 writings in the post-Civil War era there was some explicit
16 discussion about how to implement that collaborative,
17 neutral, analytical approach.

18 So that's the question I would love the answer to
19 ponder, because I think it's been a key to the success of
20 the Commission. For this panel, if we could start with the
21 question, why do private parties pick the ITC as a place to
22 bring their unfair competition and intellectual property
23 cases?

24 MR. ADDUCI: My experience--is this on?--is it's
25 quite straightforward. The Commission offers at least three

1 things that are not found elsewhere.

2 It's the speed. It's the automatic injunction,
3 if you win, which post-eBay is no longer the case in
4 District Court. And it is the expertise of the judges. We
5 have six individuals who do patent cases nonstop, so they
6 are, as we say, patent savvy supported by very knowledgeable
7 and experienced staff. That same expertise extends to the
8 General Counsel's office, and to OUII. And, I might say, to
9 most of the Commissioners as well.

10 So particularly for companies, complainants, that
11 have products with a relatively short shelf life like cell
12 phones, the ITC is the place to come. You get relief in 16,
13 17 months, and you get a fair and predictable shake from the
14 judges and the Commission. So that's why people are coming
15 to the ITC, and I hope they continue to do so.

16 COMMISSIONER KIEFF: Any other thoughts on that
17 question?

18 (No response.)

19 COMMISSIONER KIEFF: So how about another question
20 related to that. Which is, then, this--you hinted at it in
21 your answer--but there is of course in the 337 side of the
22 shop at the ITC really a two-stage process.

23 There's the process before the administrative law
24 judge, and then there's the process before the Commission
25 whether to and how to review the administrative law judge's

1 initial determination.

2 It is often discussed at Bar Association events
3 that that second phase operates to the Bar as something akin
4 to a black box. It's a set of 200-page documents go in,
5 usually petitioners brief, respondents brief, an ALJ
6 opinion, sometimes some input from OUII, and then a few
7 months later after silence comes a 200-page Commission
8 decision that of course because we are a six-member
9 Commission with each member having two hands, at least 12
10 views in this 200-page document on the one hand. On the
11 other hand, times six.

12 So the Bar has often expressed a degree of
13 concern about that black-box period, and that black-box
14 process. There's been already discussion about the
15 Government in the Sunshine Act, and the Administrative
16 Procedures Act, and about various constraints on how
17 Commissioners can interact with each other, and how the Bar
18 can no longer walk the halls and provide boxes of candy.

19 Aren't there other opportunities for a way to
20 bring Sunshine into the black box to allow for dynamic
21 exchange among Commissioners, allow for dynamic exchange
22 between Commissioners and the Bar, in a way that would, dare
23 I say, comply with all of those legal rules?

24 So it seems to me a hearing akin to an oral
25 argument could accomplish that outcome. Do any of you have

1 views about the pluses and minuses of some type of open,
2 collaborative, on-the-record conversation that would be akin
3 to an oral argument, hopefully not terribly long, hopefully
4 easy for the parties to prepare for so that it doesn't add
5 to the cost, hopefully easy for the Commission so it doesn't
6 add delay. Certainly for me as a decision maker I can tell
7 you I can make a much easier decision about what matters to
8 you as a lawyer if I can look at you and talk to you, rather
9 than just read your 200 pages. And I suspect you can get a
10 lot from the questions I might ask if you were looking at
11 me, too.

12 Is it so bad that we talk together? Is that
13 possible?

14 MS. TANNER OKUN: I'll start. Obviously others on
15 the panel have a lot of expertise that they can add to that,
16 but having left the Commission and not been out for that
17 long, I do get that question a lot from our clients about
18 what actually goes on once we turn in all this material, as
19 Commissioner Kieff said, and what should we expect?

20 When I was on the Commission, I think that I was
21 interested in whether the Commission should have more oral
22 arguments. As many of you who do 337 know, there was a big
23 hearing in the 543 versus Qualcomm, and, you know, that may
24 not be the best way to move forward if one were to have oral
25 arguments on a regular basis. So I think there is an

1 opportunity that an oral argument could present for the type
2 of dialogue that you've talked about.

3 I think one thing that I'm interested in now,
4 having left the Commission, is right now the dialogue in
5 some ways are the Commission questions. So you petition for
6 review, and Commission questions come out. Not that there
7 haven't -- not while I was there, there were oftentimes when
8 the Commission was asked a lot of questions, but there are a
9 lot of questions being asked now. And so I guess for some
10 on the outside the question is: What does that mean? Does
11 it mean more individual Commissioners are asking questions?
12 And what does that mean for us in briefing? And should we
13 be thinking about that in terms of who might be asking these
14 questions, and what does that mean? And what is the role of
15 the General Counsel's Office?

16 So there is some uncertainty even with questions
17 being asked that you're answering.

18 On the other hand, because the Commission writes
19 such a thorough opinion, I think for many clients there is
20 certainty that you are getting a review. You know what it
21 is. It's briefed. And at the other side you'll have an
22 informed opinion come up which you would be able to appeal.
23 And therefore if you introduce oral argument, do you
24 increase or decrease your chances?

25 So I think that is an open question when it's not

1 clear how, if the Commission were to regularize oral
2 arguments what they would look like, how the questions would
3 be posed. Would you be answering the same questions you
4 would have anyway in a written form?

5 And so I think that is part of the question. I
6 also think it ties in--you mentioned The Sunshine Act, and
7 that was mentioned earlier this morning. And when I was on
8 the Commission I know some of my former colleagues are here.
9 We, you know, chafed a little bit, some of us, under The
10 Sunshine Act, thinking that in a quasi-judicial sense you
11 would have better opinions come out if Commissioners were
12 able to circulate something akin to a bench memo before a
13 vote so that the differing opinions could be resolved
14 earlier.

15 But I'm happy to hear from others. But those are
16 my views on it could be helpful, but clients do have
17 questions. And just one final thing. On cost, it does
18 matter. I mean, you know, some clients, if they come to the
19 ITC they're there because, you know, this is an important
20 case and they're willing to commit the resources. And if
21 you tell them a hearing is going to help them, they're going
22 to go through a hearing. There are others, you know, in
23 particular of course respondents who don't want to be there,
24 where an oral argument could add--you know, you'd have to
25 think about how to structure that. And I think the

1 Commission has done a lot of good things on the
2 administrative side to try to cut down the cost on
3 discovery.

4 There's always more that can be done for some of
5 these cases, but I think all that the Commission should take
6 into account if it's going to change what has been its
7 practice to rarely have an oral argument.

8 COMMISSIONER KIEFF: Other thoughts?

9 MR. YAWORSKI: Two possible issues. One is will
10 oral argument cause a delay in the issuance of the final
11 decision? If it's just being grafted onto the present
12 proceeding, I would think that would be inevitable. If
13 there's some way to tweak the whole process so that you're
14 not losing time, that's a different kettle of fish. But the
15 statutory deadlines have been eliminated, but I think the
16 legislative history indicates that Congress still wants
17 these cases done expeditiously.

18 Plus, if you're a complainant and you hold a
19 patent and the clock is ticking on that patent, you want the
20 exclusion order sooner rather than later.

21 The other issue is, how shall I say, Commission
22 amenability to preparing for these hearings. To do a good
23 job of prepping for an oral argument requires time and
24 effort. And when I was at the Commission it was my
25 experience that most Commissioners decided that they could

1 spend their time better in other ways, and they're not
2 really enthusiastic about the idea of oral argument.

3 COMMISSIONER KIEFF: One other?

4 MR. ADDUCI: For me, it's easy. I would welcome
5 that development. I think you can build it into the
6 procedural schedule and not extend the proceedings. I know
7 personally I feel that I learn a lot more, and that I can
8 influence people more easily eye to eye than through a raft
9 of papers.

10 It also gives the private parties the opportunity
11 to identify the critical pivotal issues. Judge Luckern
12 would say, the jugular issues in the case. And get the
13 Commission and the Commissioners focused on those issues.

14 So I would welcome it.

15 COMMISSIONER KIEFF: Well certainly if the Bar
16 wants to ever explore that, it sounds like there's an
17 opportunity for dialogue perhaps through the Bar on that
18 one.

19 How about the part of the 337 docket that is not
20 just about patents? What would not--there's of course trade
21 secrets, and the new Federal Trade Secrets Act. There are
22 trade market cases. There are of course antitrust
23 availability at the ITC. What do you think?

24 MS. ROBERTS: Well I mean I think it's definitely
25 been used a lot more. Obviously we're all familiar with the

1 Steel case. So, you know, I -- and I think that's, the
2 Steel case is bringing up a lot of issues that really
3 haven't been addressed at the ITC lately. You know, I think
4 it's good to have the non-, you know, patent-related
5 investigations as well. And, you know, just to do something
6 different and also protect other rights that are also
7 important. Not everything is about patents, so...

8 MS. TANNER OKUN: And again, I think one of the
9 things that this going through the history of the ITC helped
10 one think about is just, you know, because at its root it is
11 a trade statute that was designed to protect domestic
12 industries. And these unfair acts were written--it was
13 written very broadly. And so, you know, it's kind of you
14 read it and the statute has just evolved. I mean, it became
15 a patent statute for some oddities, and there are many other
16 ways where it might be a really good forum in terms of the
17 things that Jim had mentioned why a client might want to
18 come there. You have an expert agency. It's expeditious.
19 And there's certainty at least what the remedy will or won't
20 be. That can be very attractive, where District Courts are
21 clogged up with all kinds of other stuff, and judges who may
22 or may not want to see this type of case.

23 So I think that, you know, maybe practitioners,
24 we haven't been creative enough on the outside to think
25 about other places where our clients might think about using

1 337 versus some other statute.

2 MS. HAMBLIN: You know, I was just going to--I
3 mentioned earlier in the introduction about some of the
4 colorful legislative history. And one of the things that
5 Senator Smoot said, and I don't have the exact words in
6 front of me, but what Section is broad enough to address any
7 form of unfair competition and beyond antidumping. And I'll
8 refer you to the chapter for the exact words.

9 And just to give you some examples, even though
10 patent predominates, you know, the Commission has seen
11 common law trademarks, passing off, falling off, unfair
12 advertising, you know, a wide range. I think any generally
13 recognized form of unfair competition would be fair game for
14 Section 337.

15 COMMISSIONER KIEFF: Let's pivot off that, then,
16 and ask for free advice--always worth the price you pay for
17 it, but why not ask for it--in the 337 patent docket as of
18 late, in the last decade, some of the cases that have
19 attracted so much popular attention, all the way up to the
20 Presidential review, have been cases in which our sister
21 agencies in the government, including for example the
22 Federal Trade Commission, have welcomed the opportunity to
23 provide their input to us about how to think about the
24 unfair competition--their view about unfair competition with
25 respect to patents.

1 The Federal Trade Commission and the Department
2 of Justice have recently announced that they intend to
3 promulgate new guidelines about the interface between IT and
4 antitrust. Should we return the favor? Is it part of our
5 obligation to provide input on that topic when asked, as we
6 as members of the--

7 MS. TANNER OKUN: I'm holding the mike so I'll
8 start, but others please join in. Again, I think that the
9 Commission should never forget that it is an expert agency
10 and it does have a view on these things.

11 I say that. However, when I was on the
12 Commission I didn't much like when the FTC sent in their
13 advice, because they made it sound like they were the
14 experts and we weren't, so I'd have to listen to them, but
15 the statute actually tells you you're supposed to listen to
16 all these folks.

17 So I don't know. I actually haven't looked at
18 whether other agencies have the same statutory outreach to
19 us that we have to them, and Congress set it up that way,
20 but maybe we should--maybe the Commission might want to tell
21 Congress that, you know, if you want us to give input, if
22 you want the Commission to give input, you could add that to
23 the FTC regulatory language.

24 No one wants to touch that.

25 (Laughter.)

1 COMMISSIONER KIEFF: Other questions from the
2 audience for the panel about 337? What do you see--sorry,
3 do we have--Yes, please. Please, we have a microphone.

4 MR. BUSEY: Alright, we're on? Hi. Brian Busey,
5 Morrison & Forester. Thanks for the interesting panel
6 discussion. One trend that I comment from on
7 the panel is just we in the private Bar see a lot of change
8 between the relationship between the ITC and the Federal
9 Circuit. And obviously there have been many decisions in
10 the last several years that raise the question about whether
11 the Federal Circuit, at least in some parts of the Federal
12 Circuit, developed kind of an adversary relationship with
13 the Commission, and with respect to deference to its
14 expertise and so forth.

15 So I'd just like any comments that you might have
16 on that.

17 MR. ADDUCI: Well I think, Brian, you and I can
18 both think of at least a couple of cases in the last year
19 where there should have been a lot more deference given to
20 the ITC.

21 Yes, I think the Federal Circuit has been more
22 critical of the Commission than it has in the past. The
23 Commission has always enjoyed about an 85 percent affirmance
24 rate. I don't know what the numbers are now, but it has
25 changed.

1 So, yes, I think greater deference is in order.

2 COMMISSIONER KIEFF: Other questions for the
3 panel?

4 (No response.)

5 COMMISSIONER KIEFF: What do you think, if you
6 have questions, get my attention, and in the meantime we
7 will keep the dialogue going.

8 What do you think are going to be the next 10
9 years? Let's be modest. Let's take a tenth of the history
10 looking backwards and map it forwards. What do you think
11 the next 10 years are going to be like in the 337 docket?

12 MR. ADDUCI: I can tell you what I hope it will
13 be.

14 (Laughter.)

15 MR. ADDUCI: And that will be a great deal more
16 nonpatent based investigations. I don't want to see any
17 diminution in the use of the statute for IP violations and
18 allegations of violations, but the statute is very
19 under-utilized. The breadth of the statute extends to far
20 more than just patent, trademark, copyright. I mean, you
21 can think of a plethora of other unfair acts that the
22 Commission could take jurisdiction of: fishing rights,
23 violation of child labor laws. The last goes on. I know it
24 sounds silly, but it can work.

25 And so I hope the next 10 years will see a lot

1 more nonpatent, or different kinds of cases other than just
2 patent.

3 MS. TANNER OKUN: Just to add one thing. I
4 certainly think the role of international intellectual
5 property has grown, and we see that in cross-border trade,
6 and we see it in all these companies. So it seems like the
7 Commission's mission grows with that and it will be a place
8 for companies to continue to look to the ITC as one form of
9 relief.

10 I think that is only true if the Commission holds
11 to what Congress has, previously at least, said about having
12 an expeditious time table. Because if it gets bogged down
13 like every place else, I think it will be much harder for
14 companies to want to commit the resources necessary to see
15 the ITC as being effective, particularly for technologies,
16 wearable technologies, any of these technologies that have a
17 short shelf life. So I think those are important things to
18 keep in mind in terms of the mission.

19 And then of course Congress makes the ITC.
20 Congress can break the ITC. I think, you know, if there are
21 changes to the statute, some that have been contemplated,
22 not speaking on behalf of any of our clients because they're
23 on many sides of it, but for me personally I think that
24 Congress could change what the Commission is doing. And
25 then the Commission just has to do that. I mean, that is

1 their right. It is a body created by statute, but I do
2 think that companies, practitioners, and others need to
3 think about that as they look ahead.

4 MR. YAWORSKI: In other words, don't get too
5 creative.

6 (Laughter.)

7 COMMISSIONER KIEFF: Well please join me in
8 thanking this great panel. Thank you all, very much.

9 (Applause.)

10 MR. BARDOS: Thank you. And we're now ready for
11 the next panel, which is on Industry and Economic Analysis,
12 moderated by Commissioner Schmidtlein.

13 (Pause.)

14 COMMISSIONER SCHMIDTLEIN: Alright, well I guess
15 we should get started so we can stay on schedule.

16 So, good afternoon. If everyone could take their
17 seats--and the light, I guess the prior panelists all know
18 this, but the light is blinding up here. I cannot see
19 anything.

20 So my name is Rhonda Schmidtlein, for those of
21 you who don't know me, and I have been a Commissioner now
22 for two-and-a-half years. And I have to say that all of
23 this talk about 100 years has brought to my mind this
24 country song, and I will admit that I am a country music
25 fan. I grew up in a small town in rural Missouri. And so

1 we always listen to country music, and there's a song by
2 Kenny Chesney that, the name of it is "What's The Secret to
3 Life?" And his main refrain in that song is "Don't blink.
4 A hundred years goes faster than you think."

5 And so I certainly feel that way about my time
6 here at the Commission. It's hard to believe that it's
7 already been two-and-a-half years. So I should feel like a
8 veteran, but I still sort of feel like a newbie.

9 In any event, I'm very pleased to be moderating
10 the panel this afternoon on the current and historical
11 activities of the Commission related to its economic and
12 industry analysis. I'm guessing all of you would agree with
13 me when I say that the expertise, objectivity, and
14 commitment of the ITC's economists and industry experts have
15 garnered widespread respect throughout the trade community.

16 I have been told that we have more economists and
17 industry experts than any, including more Ph.D. economists
18 focused on trade than any other U.S. agency. And I suspect
19 that if we were to check, we would find that that is true of
20 any organization anywhere in the world. I can't think of
21 another organization that has as many economists and
22 industry analysts looking specifically at the effects of
23 trade as the USITC.

24 I know I speak for all of my colleagues when I
25 say we are very proud of the ITC's long history of providing

1 objective and innovative reports, and the role that the
2 agency plays both here at home and globally in helping to
3 develop the tools that allow us and others to improve
4 economic research methods.

5 Today we are honored to be joined by the folks
6 who authored four different chapters of our Centennial Book
7 related to this topic, and I'm going to go ahead and
8 introduce them now. And then they are going to get up, one
9 by one, as the prior panelists have done.

10 Here to my immediate right we have Thelma Askey.
11 She is a former Commissioner who has spent her long and
12 distinguished career analyzing economic and trade issues
13 both in terms of the U.S. economy and foreign markets, with
14 a special expertise in developing countries.

15 To her right we have Catherine Field, who started
16 her career here at the ITC and then, as Ambassador Froman
17 commented on this morning often happens, was stolen by USTR
18 and remained there as a revered and I dare say feared
19 negotiator and lawyer. And I worked with her, so I can
20 attest to that.

21 To her right is Neena Shenai, who is currently--
22 and I apologize if I get this wrong--Principal Globe Trade
23 Counsel at Medtronics, and she prior to that worked for Ways
24 and Means and Senate Banking. She is a reviewer of the
25 chapters.

1 To her right is Dr. Michael Ferrantino. Dr.
2 Ferrantino, who is now at the World Bank, spent almost 20
3 years with the Commission as the Lead International
4 Economist, and was a key person in developing many of the
5 ITC's economic models that we still apply today.

6 To his right we have Dr. Moore, I believe
7 Professor Moore--around the corner there. Professor Michael
8 Moore is at GW's Elliott School of International Affairs.
9 He has published extensively on international trade policy
10 issues with a particular focus on WTO commitments.

11 And to his right is Doctor--or Professor Thomas
12 Prusa, who is a Professor of Economics at Rutgers
13 University. And his research has focused primarily on ITC
14 decision making, and I know he has appeared many times
15 before the Commission.

16 So we are going to begin with Commissioner Askey.
17 And then at the end of all the presentations, I will ask a
18 few questions and then we'll open it up to any questions
19 from the audience.

20 MS. ASKEY: Hello everyone. The light is a little
21 bit strange, but I think I can see my notes. But anyway,
22 it's a pleasure to be here. It's an exciting opportunity,
23 and it's certainly an effort well worth the time I think for
24 all of us to contribute to this important book.

25 Oh, about 100 years ago when I first was dragged

1 into the trade field, as a very junior Ways and Means
2 staffer, I was sent to Geneva. And of course that was a big
3 plus. But the reason I was sent to Geneva was to sit and
4 listen to the conversation, along with my ITC counterparts
5 and the U.S. Customs Service counterparts, hearing the
6 international discussion on why this item should be
7 classified as in the Harmonized System as a chemise, rather
8 than a blouse, or a vest.

9 (Laughter.)

10 MS. ASKEY: So that was my introduction to the
11 trade field, was to kind of listen to this long conversation
12 about the transfer from various tariff schedules to a
13 Harmonized System, which of course was very important in its
14 outcome but it was certainly a challenge when it was going
15 on.

16 But of course my part of the chapter is on the
17 Congressional relationship with the ITC. And of course it
18 is a crucial relationship. And it has developed over time,
19 but it does--it leads to important things, more than that
20 probably, but two big categories of things.

21 One is to allow Members of Congress to have a
22 fundamental basis in data and information collection that
23 allows them to make a solid, intelligent decision about what
24 t codify in the statute and how the legislation should
25 proceed, and how to support USTR and other agencies involved

1 in trade, but particularly USTR in implementing trade
2 negotiations.

3 And then of course the complement to that is that
4 it gives them a political underpinning for supporting these
5 trade agreements, and for implementing trade legislation at
6 a time, which has always been the case in my career, where
7 it's not always easy to convince the public that free trade
8 and logical trade rules are the way to go, and are
9 fundamentally important for the U.S. economy. So it has
10 both the political and a data rich role.

11 The role of the Congress of course has been what
12 drives the relation--what has driven the relationship
13 between the Congress and the ITC on information-gathering.
14 And I think we've talked about this today a little bit in
15 earlier meetings, but the role of the Administration and the
16 Congress in the trade negotiations as they proceeded had a
17 lot to do with the demands by the Congress on the ITC for
18 solid information, and that kind of informational exchange.

19 It really, although there were trade agreements--
20 Trade Acts prior to '74, it really took its root in the '74
21 Act when we had this broad discussion of just how Congress
22 was going to assert its role. And Harold Dumas of the Ways
23 and Means Committee, along with Charlie Vanik, and Barber
24 Conable, were very interested in asserting the role of
25 Congress in this process so that the Administration would

1 not be in a position of negotiating trade agreements,
2 particularly agreements that included elements beyond
3 tariffs, without a very strong role of Congress. And of
4 course the House had a particular interest because revenue
5 measures, under the Constitution, have to originate in the
6 House.

7 But the Senate was asserting its role as well,
8 because although they do advice and consent of any treaties,
9 if that were the route to go, they would be giving up quite
10 a bit with respect to procedural aspects of trade
11 agreements. And all of this took its current form, really,
12 in the '74 Act.

13 So you have the--but the evolution of the
14 importance of trade agreements informed those decisions
15 also. You know, in '47 when the GATT very fundamentally
16 came into being, you had only 23 nations talking about,
17 about \$10 billion worth of trade effects with respect to the
18 General Agreement on Tariff and Trade.

19 You moved to the Kennedy Round in '62 and, you
20 know, Kennedy took an initiative and wanted to further cut
21 tariffs by 50 percent, and asked for authority to do that.
22 And that was the Trade Expansion Act of '62.

23 But when the Kennedy Round was approved in '67,
24 you had 66 nations covering about 80 percent of world trade,
25 \$40 billion in tariff effects, and the expansion of trade

1 agreements into other fields like antidumping, special and
2 preferential treatment for developing countries and--excuse
3 me, in the '62 Round you first had Trade Adjustment
4 Assistance introduced.

5 So you can see already the expansion of trade
6 agreements and their importance to world trade in these
7 multilateral trade negotiations. And I'm focusing here only
8 on the multilateral ones, but remember for the U.S. and
9 others there were many bilateral negotiations going on, and
10 of course key among them were U.S.-Canada, U.S.-Mexico, and
11 eventually the NAFTA Round.

12 But the U.S. pursued bilateral negotiations,
13 unlike many other countries I think, with the multilateral
14 negotiations in mind. They were precursors to multilateral
15 negotiations.

16 Then we moved to the Tokyo Round, '73-'79. You
17 now have the 102 countries, \$300 billion in tariff
18 concession effects, and more non-tariff measures included,
19 dumping, subsidies, framework agreements, et cetera.

20 Then when the Uruguay Round was signed in
21 Marrakesh in 1994, you had 111 countries, and you had an
22 extreme expansion of trade agreements into services, Ag
23 subsidies, intellectual property rights, dispute settlement,
24 and the WTO was born as a--following GATT, cut tariffs 40
25 percent and continued special and preferential treatment for

1 LDCs.

2 Senator Brock, who was USTR at the time, thought,
3 okay, let's keep point. You know, we have all these
4 procedures in place, let's have a continuous round of
5 negotiations going on, because we achieved so much in the
6 Uruguay Round with respect to procedural aspects.

7 He was not quite successful in that effort, but
8 eventually we did begin the Doha Round, and 159 countries
9 are participating, and it has of course a very ambitious
10 agenda: labor, environment, trade facilitation, competition,
11 investment, transparency, patents, et cetera. I think a
12 question does come into play at some point of are they
13 sinking of their own weight? Perhaps we need to get back to
14 narrower trade agreements.

15 But in any case, we still have a broad effort.
16 But it makes it all the more important for Congress to
17 insert its role with respect to USTR, the negotiators, and
18 with respect to the Commission, its supplier of information.

19 And Congress also required the USTR to rely
20 heavily on the ITC with respect to information, so that we
21 were proceeding on some basis that reflected a solid factual
22 basis. But the '74 Act is really where this effort and this
23 delineation of roles in the negotiation, with Congress
24 asserting a very, very strong element into that process, and
25 relying quite heavily on the ITC for information.

1 Obviously it's not been a totally clear and easy
2 path. There's conflicts that emerged in efforts to achieve
3 outcomes. Everybody looks to the legislation, of course,
4 and tries to write in as much detail as they can to get
5 particular outcomes, including legislative history.

6 Then of course we look to the ITC and try to kind
7 of construct their investigation into their particular way.
8 They have particular outcomes, I think, too. In some
9 respects, do we ask the ITC to investigate in depth? Or
10 even at all? If you're looking at particular elements of
11 the trade law, then you're thinking about particular
12 outcomes that you might want to achieve.

13 Do you ask the ITC to evaluate everything in
14 depth? And I think it's a real compliment to the ITC in the
15 face of different objectives by different Members of
16 Congress, different Commissioners, different elements in the
17 public sector. The ITC has really shone through, I think,
18 with respect to its analysis and the relationship between
19 the ITC and the Congress on this exchange of information.
20 Because they are respected, both nationally and
21 internationally. They have created modeling that's been
22 top-of-the-charts. And they have consistently provided
23 information that is unbiased, down-to-earth,
24 straightforward, here's the facts, just the facts, ma'am.
25 And Congress has responded, as much as the conflicts of

1 particular policy objectives occur all around us. I think
2 the respect that Congress has for the ITC, the respect that
3 USTR has for the ITC, has always restrained Congress in
4 trying to manipulate the ITC--and "manipulate" may be too
5 strong a word--but push and pull about data.

6 Sam Givens was quoted earlier. You know,
7 everybody's entitled to their own data. But the ITC has
8 made sure that the data it provides Congress, and Congress
9 has made sure I think, too, that the data it expects from
10 the ITC is the unvarnished and objective data that we can--
11 that they can rely on, Members of Congress can rely on, when
12 it makes very, very tough decisions to implement trade
13 agreements, or even to proceed with them, and how to proceed
14 with them. It is very well informed by the data that the
15 ITC collects and presents.

16 (Applause.)

17 COMMISSIONER SCHMIDTLEIN: Thank you, very much.
18 Next we'll move to Ms. Field, who will discuss the ITC's
19 assistance to the Executive Branch.

20 (Applause.)

21 MS. FIELD: Okay, alright, let me join others in
22 doing two things: thanking you for inviting me. It's good
23 to be back to see old friends and colleagues. And second,
24 to endorse the ITC as a great place to start your career in
25 international trade. I have lots of fond memories here.

1 To try and condense the chapter into a few
2 minutes is a difficult effort, but I am going to try here.
3 I will say that the Commission provides the Executive Branch
4 with information and analysis and its effect on specific
5 industries and the U.S. economy as a whole under a number of
6 authorities.

7 Some of the Commission's reports have a special
8 status under trade law. Commissioner Askey touched on that
9 a bit. Congress has made receipt of Commission reports and
10 analysis a precondition for the President to proclaim
11 changes to tariffs, to implement bilateral and multilateral
12 trade agreements, to implement U.S. tariff preference
13 programs, and to make other changes in U.S. tariff schedule.
14 And the Commission's reports are also part of trade
15 promotion authority procedures.

16 Much of the statutory foundation for the
17 Commission's mandates were set out in the Revenue Act of
18 1916. And although those authorities, and in particular
19 their use, have evolved over time, the core has remained
20 responsibly--remarkably, I'm sorry, constant.

21 The three authorities in the 1916 Act require the
22 Commission to investigate the effects of Customs laws and
23 tariff-related issues on U.S. industry and labor, to
24 investigate tariff relations with other countries such as
25 the volume of imports compared to domestic production and

1 consumption, and the cause and effects of foreign
2 competition on U.S. industries. And, to put at the disposal
3 of the President, the Ways and Means Committee, and the
4 Senate Finance Committee all information at its command and
5 make such investigations and reports as requested by the
6 President, either of these committees, or either Chamber of
7 Congress.

8 Sound familiar? It should. All are from the
9 1916 Act, and all have some progeny in more recent tariff
10 laws. The 1916 Act also required the Commission to make an
11 annual report to Congress consisting of a statement of the
12 Commission's methodology, its expenses, and a summary of
13 each report that it issued each year, during the year.

14 The reports are a tremendous resource, both then
15 and now. To go back to touch on some of the history, the
16 focus of trade tariff policy at the time the Commission was
17 created was on enhancing the U.S. industries' ability to
18 compete with imports on the domestic market.

19 In the Tariff Act of 1922, Congress authorized
20 the President to implement a so-called "Flexible Tariff"
21 based on the idea of using the tariff to equalize the cost
22 of production of domestic goods with that of imports from
23 the principal competing country.

24 The Commission needed to complete an
25 investigation of the differing cost of production before the

1 President could change the tariff. The President was also
2 authorized to increase or proclaim new tariffs if he
3 determined that a foreign country was engaged in
4 discrimination against U.S. commerce.

5 Again, the Commission was tasked with
6 investigating and providing a factual basis for this action.
7 The authorities provided in the 1922 Act were used
8 frequently. In its 1929 Annual Report, the Commission
9 stated that since 1922 it had completed 183 reports and
10 special surveys under the authorities of the 1922 Act.

11 The next significant revision of U.S. tariff law
12 was the Tariff Act of 1930 which included section 332. The
13 language in section 332 is very similar to that that I read
14 out from the 1916 Act, and section 332(g) remains the basis
15 for today's requests for the Commission to investigate
16 various matters, requests from the Senate Finance Committee,
17 the Ways and Means Committee, and the USTR.

18 Initially, the committees in Congress were the
19 source of requests for Section 332 investigations. The
20 Executive Branch did not make its first formal request for
21 an investigation under section 332 until 1940. And it was
22 not until 1965 that the Executive Branch began to request
23 the Commission to conduct investigations on a regular basis.

24 Starting in 1934, however, interaction between
25 the Executive Branch and the Commission began taking place

1 in a very different context. Enactment of the Reciprocal
2 Trade Agreements Act marked a historic change in the
3 Executive Branch's authority with regard to tariffs. In the
4 RTAA, Congress authorized the President to enter into trade
5 agreements with foreign governments, cut tariffs up to 50
6 percent, and to proclaim those cuts without further
7 Congressional action. This was a major change.

8 Section 4 of the RTAA required the President to
9 provide the public with reasonable notice of the intention
10 to negotiate an agreement, and an opportunity for interested
11 persons to provide views to the President.

12 Before concluding an agreement, the President was
13 required to seek information and advice with respect to the
14 proposed agreement from the Commission, the Departments of
15 State, Agriculture, and Commerce, and other sources as
16 appropriate.

17 The authority granted under the RTAA was
18 time-limited, three years. However, Congress repeatedly
19 extended that authority up until 1962. Negotiations were
20 typically bilateral with the principal supplier of a
21 particular good, and any tariff cuts were then--that were
22 agreed, were applied on an MFN basis.

23 Under the RTAA and its extensions, the Executive
24 Branch concluded and implemented trade agreements with 29
25 countries between 1934 and 1946. Then in November, 1946,

1 the Secretary of State announced the President's intent to
2 enter into negotiations with, quote, "various countries."
3 Unquote.

4 These negotiations resulted in the General
5 Agreement on Tariffs and Trade, the GATT. Between 1948 and
6 1994, the United States engaged in several rounds of
7 negotiations under the aegis of the GATT.

8 The result of these negotiations were implemented
9 through special procedures. Starting with the Trade Act of
10 1974, the requirements of the Executive Branch had to meet
11 to obtain application of these special rules for
12 consideration and approval of trade agreements change and
13 became far more complex than those that applied to the early
14 GATT negotiations.

15 This was in part because of a change in the focus
16 of the negotiations to include non-tariff measures.
17 Congress acted to ensure that it was consulted and informed
18 on the proposed agreement before, during, and after its
19 negotiation.

20 As of last year, the requirements to use what is
21 now known as "Trade Promotion Authority Procedures" are set
22 forth in the Congressional Priorities and Accountability Act
23 of 2015, TPA.

24 TPA procedures require compliance with Section
25 131 of the 1974 Act under which the President must seek

1 advice from the Commission on the probable economic effect
2 of reduction or elimination of tariffs on industries
3 producing like or competitive articles, and on consumers.

4 The Commission was required to provide its advice
5 within six months after receipt of a request, and receipt of
6 the commission's advice, or expiration of that time period,
7 is a prerequisite to making a formal tariff offer in
8 negotiations.

9 Section 105 of TPA requires the President to
10 request advice from the Commission on the probable economic
11 effects of a tariff reduction on import-sensitive
12 agricultural products before initiating tariff negotiations
13 on those products.

14 While the President is required to seek the
15 Commission's advice regarding tariff modification, seeking
16 advice on non-tariff matters is discretionary. The
17 Executive Branch, however, had sought such advice for
18 example in connection with the multilateral negotiations on
19 trade and services, TSA.

20 Under TPA, the President is also required to seek
21 advice from the Commission near the end of the negotiations.
22 Not later than 90 days before the President signs the trade
23 agreement, he must provide the terms of the agreement as
24 they exist at that time, and ask the Commission to prepare
25 and submit an assessment of the agreement to the President

1 and Congress.

2 In May of this year, the Commission submitted its
3 assessment of the Trans Pacific Partnership Agreement.
4 Needless to say, the Commission's analysis of the effect of
5 this agreement on particular industries and the U.S. economy
6 is far more complex and focused more on non-tariff measures,
7 such as intellectual property rights, services, technical
8 barriers to trade, investment, and other non-tariff matters,
9 than its reports on early free trade agreements.

10 Although trade negotiations and Section 332
11 investigations are often the focus of public attention, the
12 Commission's economic analysis and recommendations to the
13 Executive Branch play an important role in other contexts.
14 These include implementation of U.S. tariff preference
15 programs, especially the Generalized System of Preferences,
16 and the African Growth and Opportunity Act, AGOA, on issues
17 such as the eligibility of products for treatment under the
18 particular program, and requests for waivers and competitive
19 need limitations.

20 The Commission also has a significant role in the
21 implementation on the convention on the Harmonized Commodity
22 Description and Coding System. We talked about that a
23 little this morning. And provides recommendations to the
24 President under Section 205 of the Omnibus Trade and
25 Competitiveness Act of 1988.

1 The Commission also has an important role in
2 connection with the President's use of the consultation and
3 layover provisions that you find in the Uruguay Round
4 Agreements Act, and the legislation implementing each of our
5 free trade agreements.

6 The authority is used, for example, to implement
7 the WTO Sectoral Agreements such as the Pharmaceutical
8 Tariff Agreement. It is also used to implement agreements
9 to change rules of origin in our FTAs, or to accelerate
10 tariff cuts under those agreements.

11 The President must receive advice from the
12 Commission on the proposed action, and submit that advice to
13 the Ways and Means and Senate Finance Committees as part of
14 the package that is the basis for consultations with
15 Congress.

16 In summary, although the Commission's
17 responsibilities and procedures have evolved over the last
18 100 years, the core principles of objectivity, transparency,
19 and responsiveness to the requests for its analysis have
20 remained constant.

21 The Executive Branch considers the Commission to
22 be an invaluable resource to the President, USTR, and other
23 agencies that make and implement U.S. trade policy.

24 Thank you.

25 (Applause.)

1 COMMISSIONER SCHMIDTLEIN: Alright, thank you very
2 much. Next we will hear from Dr. Ferrantino, who will
3 discuss the chapter that he co-authored with Bob Koopman.

4 MR. FERRANTINO: So I am going to be using my
5 phone as a timer. And despite what has been said earlier--
6 well, if I can figure out how to do it--okay, there we go.
7 Never mind. I'm just going to try to be on time. And, by
8 the way, a phone is not a phone in the SICT 3. This is a
9 radio transceiver.

10 (Laughter.)

11 MR. FERRANTINO: And you'd be surprised how many
12 countries trade in them. It is very humbling and a great
13 thing to be here to join in the celebration for this
14 institution, and I say this not only on behalf of me but on
15 behalf of my co-author, Bob Koopman, who did the heavy
16 lifting and the drafting of this chapter. Most of you here
17 will remember Bob as the long-time Director of Economics and
18 Director of Operations, now the Chief Economist at the World
19 Trade Organization. And he sends his greetings.

20 So I think a lot more people do economic analysis
21 in the Commission than think of themselves as that. And it
22 goes far beyond the, you know, people who have the job title
23 of "economist."

24 And so if you ask yourself, what are the
25 circumstances under which you really need an expert? I

1 would identify the circumstance in which somebody thinks
2 they're an expert and has no idea what's going on.

3 (Laughter.)

4 MR. FERRANTINO: And I've had this experience
5 myself. One of the most frustrating experiences in my life
6 was having a months' long conversation with the Internal
7 Revenue Service, which was fine to the extent that I got a
8 lot of money, but at the end I found myself shouting at the
9 telephone: Excuse me? I have a Ph.D. in economics from Yale
10 University. Why is it that I cannot understand from reading
11 all your instructions what number to put in this box?

12 (Laughter.)

13 MR. FERRANTINO: And was given no coherent answer
14 to that question. Now I think that Frank Taussig was having
15 a day like this ---

16 (Laughter.)

17 MR. FERRANTINO: -- in 1910. As has been
18 mentioned, he was not only a graduate from Harvard, he was a
19 Professor of Economics at Harvard, and was supposed to be
20 the world's leading expert on the tariff.

21 And the experience he was having was that when he
22 read the results of Congress's most recent action on the
23 tariff, he couldn't actually tell which tariffs had gone up
24 and which ones had gone down. And as a result of that, he
25 ended up displaying a lot of the traits which I think are

1 now briefed strong in the Office of Industries, and the
2 Office of Investigations, all over the Commission. And he
3 wrote a piece on this which appeared in Volume One, number
4 one, of the American Economic Review in 1911, and it was
5 called "How Tariffs Should Not Be Made."

6 (Laughter.)

7 MR. FERRANTINO: And at the end of this piece, he
8 comes out in favor of establishing a permanent body, which
9 happened five years later, in order to systematically do the
10 things that he's just done with great frustration. He picks
11 out four products that seemed to him particularly puzzling.

12 And by the end of it, he has done the equivalent
13 of a competitive assessment of an industry in which it
14 expected to do a miscellaneous tariff bill, and even a value
15 chain analysis. And he's done this in this sort of spirit
16 of muck-raking journalism, which is what you actually used
17 to have in the American Economic Review in those days. Not
18 a single equation. Not a single regression table.

19 So he's very curious about the tariff on
20 manufactured steel, okay? And he wants to know what's
21 happened to it. And he notices that the duty that's been
22 written in the schedule for structural steel hasn't changed
23 much, but they've added some language that the tariff line
24 is for beams, girders, joists, angles, blah, blah, blah, and
25 what Congress has put in there is the phrase "not assembled

1 or manufactured or advised beyond hammering, rolling, or
2 casting." That is the action of Congress.

3 And he thinks to himself, you know, I wonder what
4 happened to the tariff in those items that were assembled or
5 manufactured or cast, all those fabricated steel? And he
6 scratches his head, and he thinks, and he says: You know
7 what? This must kick them into this category "manufacturers
8 of iron and steel not otherwise provided for."

9 And the duty there is 45 percent. And so he
10 finds that when the whole debate in the House and all the
11 testimony has been to leave the tariff the same or cut it,
12 in fact for this huge category of goods it's been raised.

13 So he calls the Treasury and says: Are you really
14 charging 45 percent? Yeah, yeah we are. And then on his
15 own motion, he starts to call people in the private sector,
16 as I would imagine one of our industry analysts would do,
17 and said: So could there be any supply from Europe?

18 Well, no, there couldn't because they don't even
19 understand the blueprints and designs for American steel
20 forms there. Oh, really? And he contacts four or five
21 other people and comes up with an assessment. And then he
22 does this several times to show you that the tariff is not
23 transparent and at every point is not only doing all this
24 economic analysis, but calling out all these special
25 interests.

1 Look how strange the tariff on cotton gloves is.
2 And at just that price point it cuts. And it cuts for the
3 type of white gloves which are worn by the U.S. Marines, and
4 by police on dress occasions, which the government is buying
5 a million of.

6 And this guy, who happens to be a friend of this
7 Congressman in New Hampshire, is making a lot of these. And
8 I really would think it would be great if every new analyst
9 read *How Tariffs Are Not Being Made*.

10 But, so now that I've sort of emphasized that
11 everybody here is doing economics work, you expect me to say
12 something about the geek stuff. That's why I'm here. And
13 this being the 100th anniversary of the Commission and the
14 50th anniversary of Star Trek, this day, but not this year,
15 is the 25th anniversary of the Office of Economics Working
16 Paper Series, which started in 1991. And I think this is a
17 good place to look at this history.

18 Because what we had was a bunch of people in
19 economics which were very sort of ivory tower oriented. It
20 was Joe Francois and David Rosenholtz, and Carmen Reinhart,
21 and they developed a set of tools, *The Partial Equilibrium*
22 *Analysis*, *The Compass Model*, which for quite a while was
23 actually used in Commission Title VII investigations.

24 And then the U.S. model, the first General
25 Equilibrium Model. And then not long after that, we had the

1 global models. And it turns out that these tools were
2 introduced not too much for NAFTA and the Uruguay Round. A
3 lot of people were using those, and in our commissions we
4 were--our studies, we were reporting on other academics'
5 results.

6 There was maybe one NAFTA model in a working
7 paper, but we were called on to use the General Equilibrium
8 Models for the first time in a context which was guaranteed
9 to make a lot of people unhappy. And this was due to 2.332
10 letters that came from USTR Carla Hills toward the end of
11 the Bush 41 Administration.

12 The first one was the one that established the
13 Import Restraint Study which essentially said imagine that
14 the United States unilaterally disarms from all of its
15 statutory duties. What would be the effect of that?

16 And so you end up coming up with a broad number.
17 Well, if we adopted unilateral free trade it would increase
18 welfare by about \$18 billion. It would be in those days
19 when the tariffs were higher. And it would displace about
20 200,000 workers from one industry to another. But it showed
21 where, what Bob Koopman would say, "the big dead animals,"
22 here in textiles, here in apparel, here in sugar, here in
23 dairy, and so we got a lot of comment from industry on, oh,
24 this can't possibly be the correct data. We have a
25 narrative about ourselves which is not like the one being

1 presented in this study.

2 But as this was repeated every two years, which
3 is what the request was, people began to understand what
4 we'd be doing. Then there was the other request from Carla
5 Hills, the one-time one, look at the economic effects of
6 antidumping countervailing duty orders and suspension
7 agreements.

8 In other words, what is the economic effect of
9 the operation of Title VII? And this was the model we had.
10 It made sense to us as economists, and what do we think?
11 When you cut duties, yeah, there's some redistribution from
12 producers to consumers, and an increase in overall welfare.

13 And so the economists ended up reporting the
14 result that the operation of Title VII was doing \$2 billion
15 worth of economic damage a year. And since the Commission
16 itself only had a budget of \$40 million at that time, that
17 was factually quite impressive.

18 (Laughter.)

19 MR. FERRANTINO: And it was a very difficult study
20 to get out the door.

21 (Laughter.)

22 MR. FERRANTINO: I think it was a -- I think it
23 may have been coincidental that the modelers developed those
24 studies--Bruce Blonigen, Joe Flynn, Michael Galloway, they
25 all shortly afterwards decamped to other institutions. They

1 got better data, and reported: No, the ITC actually does \$4
2 billion worth of economic damage a year.

3 (Laughter.)

4 MR. FERRANTINO: And they got a lead article in
5 the Journal of International Economics and lived happily
6 ever after.

7 I think one of the things which has made the ITC
8 a thought leader and a methodological leader in the things
9 that we do is just the way that Section 332 works. Our
10 three customers can ask us any question about international
11 trade, and they don't have to ask us whether we have a
12 method to answer it. They can wake up one day and say, hey,
13 if China adopted intellectual property standards the same as
14 the United States, what would be the effect on us?

15 Hey, what about, like is Europe out-competing us
16 in terms of small and medium sized enterprises? You know,
17 on technical assistance. We could be asked can you analyze
18 a climate change agreement. And many times the question
19 will say, huh? Okay. But then we come up with an answer to
20 this in 12 months. It's a technology-forcing event. It's
21 like, you know, President Kennedy saying: Get a man on the
22 Moon by the end of the decade. And then you have a lot of
23 surprises in the answers that you have to come up with along
24 the way because they're obvious at the start.

25 And I think what has now happened in--under the

1 Trade Act of 2002 and its successor, and the set of analysis
2 that has led to the TPP, is that now we have a ratcheting
3 effect. We have a Congressional mandate to analyze
4 everything that's done in these ever more complex trade
5 agreements that have state-owned enterprises, and SPS
6 measures, and everything else in them. And at the same
7 time, then we have to constantly improve our game, right?

8 And so you end up getting people who are really
9 good at what they do. And you did such a good job on the
10 Trans Pacific Partnership, and brooked so many new pathways,
11 that people noticed the project leader on that study, Jose
12 Signoret, and my institution stole him as soon as we could.
13 And we're looking forward to having him.

14 Thanks, very much.

15 (Applause.)

16 COMMISSIONER SCHMIDTLEIN: Okay, thank you very
17 much, Dr. Ferrantino. And now we'll have Professor Moore.

18 PROFESSOR MOORE: Thanks very much. Well, it's a
19 pleasure to be here. I'm going to be brief, because I don't
20 have much time. And I never know whether people invite me,
21 with a name like "Michael Moore" to talk about trade --

22 (Laughter.)

23 PROFESSOR MOORE: -- because it's about my new
24 film, which I've got nothing to report. I'm actually
25 interested in trade issues from a more academic standpoint.

1 If you Google Michael Moore and trade, you'll get
2 the Director. If you Google Michael Moore and GWU in trade,
3 you get Michael Moore the Director. If you Google Michael
4 Moore GWU Trade and Antidumping, I show up.

5 (Laughter.)

6 PROFESSOR MOORE: So I'm proud of that. So I've
7 got just a few minutes here, but I want to just talk about
8 some broad patterns in these fact-finding investigations by
9 the Commission since especially 1930 when I started looking
10 at the 332 investigations.

11 So just very briefly -- I should say before that,
12 that I knew absolutely nothing about the process in general.
13 I was aware of individual investigations that I found very
14 interesting, important for my own work, but I hadn't looked
15 at the investigations more broadly.

16 And I think there are some very interesting
17 patterns, if you go back to 1930 and look at who asked for
18 the investigations, what questions that they answered, and
19 the techniques that were used.

20 And my contention is that you can see the broad
21 changes in the U.S. economy, the broad changes in the U.S.
22 trade policy process, and also the expanding economics
23 profession's tool kit. And I think that's pretty cool.
24 Just by looking, in my home in Santa Fe, New Mexico, at
25 stuff online, look at all these reports from the comfort of

1 my home in Santa Fe, New Mexico, one thing that's very
2 interesting about this process is that, unlike the
3 antidumping and 337 investigations and safeguards,
4 countervailing duty, which are generated by the industry,
5 these cases, or these investigations, are requested by
6 either the House, the Senate, the President, or sometimes by
7 the ITC itself.

8 And so you see a kind of revealed preference
9 about what these different organizations think is important.
10 In the early days, it was very much in the first couple of
11 decades, it was about defensive interests, import-competing
12 industries. Especially agriculture, from 1930 to 1950, 17
13 332s about agriculture, only 4 about manufacturing.

14 The way this process was being used was a
15 particular Congressman or Senator is concerned about
16 agricultural products. If you go forward to in recent
17 years, it's about digital trade, the broad economic effects
18 of a massively complicated agreement like TPP on the U.S.
19 economy. Not just on import-competing interests, but about
20 export interests, about U.S. foreign direct investors, about
21 services, an incredibly interesting set of topics that would
22 have been unimaginable in the first decades of the 332's
23 use.

24 Also, the requests are quite different. From
25 1930 to 1970, Congress--either the House or the Senate --

1 had 26 requests. There were 26 requests for the first 40
2 years. Office of the President, 8, Congressional driven.
3 2002 to 2015, Congress asked for 40; the President asked for
4 119; and mandated, now as part of the TPA, 81.

5 So what you have is a kind of revealed preference
6 about who really cares about trade. And now the President
7 is pushing the process, but with Congress mandating certain
8 types of requests, which have actually already been
9 mentioned here.

10 Very briefly on the techniques that are used. In
11 the early days it was a counting exercise. It was the
12 comparison of U.S. costs versus foreign costs. Frankly, I
13 have no idea how they got foreign costs in order to make
14 this request. I know that facts available in investigations
15 of the Department of Commerce are rife with problems. But
16 anyway, that's what they used to do at the Commission.

17 It evolves in the 1980s in a dramatic way. The
18 late 1980s, you start to use input/output tables. You start
19 to use simulations, computable partial equilibrium models.
20 Now computable generatable computer models. On methods that
21 were completely unavailable in the early decades of the
22 Commission, weren't available to the economics profession.
23 So as Michael was saying, you've seen this increasingly
24 complex methodological toolkit that's developed in the
25 Commission, in the profession, to answer the increasingly

1 complex issues that face the U.S. economy.

2 And I would say, broadly speaking, this reflects
3 the changing role of the U.S. economy and the global
4 economy. We don't just talk about import competing
5 industries. We talk about offensive interests--"offensive"
6 in the mercantile industry; ways in which our small and
7 medium enterprises can operate in a global economy, where
8 services industries can operate in a global economy.

9 That is a much more interesting process. But I
10 really appreciate Paul asking me to do the study because I
11 really learned a lot about the way the U.S. economy has
12 changed. And here are concrete examples in these reports.

13 So thank you very much.

14 (Applause.)

15 COMMISSIONER SCHMIDTLEIN: Alright. We've also
16 asked if the reviewers would like to make some comments, and
17 so I believe, Neena, you would like to, and Professor --
18 okay, so, Neena.

19 MS. SHENAI: Well good afternoon. Mindful of the
20 time, I will be really brief. It's just a great opportunity
21 to be a part of this accomplished panel. I just feel
22 privileged to have had the opportunity to review a number of
23 the chapters already discussed, and just be a part of this
24 100th birthday celebration.

25 I left the Ways and Means Committee now just

1 about a year ago, and I have to say that working with the
2 ITC during my tenure on Capitol Hill was just such a
3 pleasure. The agency has some of the hardest working, most
4 experienced, and nicest staff that I've ever met.

5 And I had the privilege of having the ITC
6 portfolio at Ways and Means, so I worked with the ITC on
7 everything from trade negotiation, to trade remedy, to ITC
8 337, to the India Study, the 332 study, as well as critical
9 technical support on legislation and the MTB.

10 A few comments on the general subject on the
11 relationship between Congress and the ITC, one of the
12 chapters that I did review. There is a great deal on trade
13 negotiations supporting the ITC provided to Congress in that
14 chapter, and it touches on a number of different things.

15 And Congress's ability to get information is I
16 think different from the vast resources of the Executive
17 Branch. Congress has the Library of Congress, and the
18 Congressional Research Service, but we really do rely a lot
19 in the trade world on the ITC providing this impartial,
20 nonpartisan information to Congressional staff and Members
21 to really make the best decisions to conduct oversight on
22 trade activities, as well as just broader policy activities
23 in the global trade space.

24 So let me touch quickly on trade negotiations and
25 the MTB. I think the most critical report that the ITC does

1 produce, and one that's already been discussed, is in the
2 context of TPA. And with respect to the assessment of the
3 potential effects of the new trade agreement.

4 And I think it would be even more high profile if
5 the ITC, for example, went negative on that report and said
6 it would be actually harmful to the U.S. economy. In fact,
7 even the TPP report that was recently issued forecasts
8 modest gains for the U.S. economy, but was really spun in
9 all sorts of different ways both positive and negative.

10 On the MTB, I worked many long hours with
11 dedicated ITC staff on the miscellaneous Tariff Bill. And
12 for those of you who are not familiar with the process,
13 prior to the changes that were recently enacted to the
14 process, Members of Congress introduced specific bills which
15 either suspended or reduced tariffs for a period of three
16 years on products not made in the U.S.

17 Now the ITC's role in the process has
18 traditionally been to produce reports on each and every
19 bill. And this last time around I think there were
20 something like 2,000 bills. And the ITC did a report for
21 every single bill, identifying domestic producers, looking
22 at the content of the provision, looking at the revenue
23 loss. And the ITC's reports really formed the basis of
24 determining which provisions Congress would ultimately
25 decide to put in the bill, as well as the Congressional

1 Budget Office's revenue loss estimates.

2 But there's just a lot more to it. The ITC also
3 provides invaluable technical support for actually writing
4 the bills and making sure that they are administrable, along
5 with the Department of Commerce and Customs.

6 But given the difficulties over the MTB being
7 considered earmarks, and Chairman Brady discussed it this
8 morning, Congress recently enacted a new process which puts
9 the ITC front and center in the miscellaneous tariff bill
10 process.

11 Now so instead of starting the process were
12 Members actually introduce bills, the ITC had to develop a
13 portal and a process for accepting these submissions
14 directly. And it's actually slated to start next month.
15 And then the ITC has to play a critical role in determining
16 which of the products make the final cut in order that
17 Congress stays in compliance with the earmark rules.

18 So this new additional reliance on the ITC is a
19 real testament to its independence and expertise; that it
20 would be entrusted with the responsibilities once held by
21 Members of Congress.

22 So let me stop there. I could talk for much
23 longer on the critical role the ITC plays, but look forward
24 to the conversation. Thanks.

25 (Applause.)

1 COMMISSIONER SCHMIDTLEIN: Alright. And,
2 Professor Prusa.

3 PROFESSOR PRUSA: Thank you. Today's conference
4 has been really interesting. I really enjoyed hearing some
5 of the older stories from long-time ITC people, the
6 nostalgia about the way things used to work. And that's
7 particularly relevant I think in light of my comments here
8 on this session. And that is, reading these industry papers
9 makes me really nostalgic for the good old 1960s and '70s
10 when we had really high tariffs, and we economists could
11 really focus in these trade negotiations on the trade
12 effects of tariff reductions.

13 That's our sweet spot. Bring on NTB, right?
14 It's going to be small effects if you go from 2 percent to 1
15 percent, or one-half percent to zero percent. In the good
16 old days we'd go from 30 percent to 5 percent, and as
17 economists we'd give you a big bang for your buck.

18 And that's really a challenge right now. I
19 think, looking back for what the last 100 years, the
20 industry reports, as Mike Moore documented, and Koopman and
21 Farrentino talked about in theirs, this evolution of how
22 economics was used. It's really interesting to see how the
23 Commission and the profession developed together, and the
24 Commission embraced as economics with learning how to model
25 price effects--that is, these tariff effects--pretty

1 accurately. We can argue about elasticity, but we were
2 developing a really good framework, and the ITC embraced it.

3 The problem is, that's not where trade
4 negotiations are right now. Most of the heavy lifting on
5 tariff reductions has been done. These trade agreements now
6 are on areas that aren't just simple price effects. So
7 we're going to have trade agreements where we're going to
8 have child labor rules--super important. I think we all
9 agree these are important things that we can engage in trade
10 agreements.

11 We can't tell you truly the GDP effect on the
12 United States of this provision of TPP. We struggle on a
13 lot of these new areas. So going forward over the next 10,
14 20, 30, 100 years, the economics profession has to develop
15 more and new methods to try to quantify economic effects of
16 these new parts of these trade agreements.

17 I don't think we're going to go back to trade
18 agreements where they're just about tariffs. And that's
19 going to mean I think unfortunately for the Commission you
20 will produce reports where the simple price effect is going
21 to give you a .2, .2 percent GDP effect. And then we're
22 going to wonder why are we doing TPP when the ITC, the
23 definitive economic study, is, you know, this is the same as
24 a small strike of an automaker in Detroit. These are very
25 small effects for the whole national economy.

1 And that's because we are struggling with these
2 ideas of measuring these new topics. So in my comments I
3 want to say that I think when we all get together in 100
4 years, we will see that economists and the nature of these
5 reports are going to continue to evolve in a way that allows
6 us to try to discuss these really important aspects of trade
7 negotiations that don't fall under simple price effects that
8 we as economists, and I think the ITC therefore, struggle
9 with giving you good, accurate assessments that you can
10 bring to Congress.

11 (Applause.)

12 COMMISSIONER SCHMIDTLEIN: Alright. Well, we're
13 out of time, but I do want to pose at least one question.
14 And I'll open it up to any of the panelists. I thought it
15 would be just very interesting to hear, given the breadth of
16 the experience and expertise that we have sitting on the
17 stage, what areas do you think the ITC should be studying?
18 What areas should Congress or the Executive Branch be asking
19 the ITC to study? And you can answer either from the
20 perspective of this is important for U.S. trade policy; this
21 is important because it's something I see going on in the
22 economy right now; or I just think this would be a really
23 interesting question to have asked.

24 And then the second part of that would be -- and
25 this is a little bit of a geeky question -- is: Does the

1 ITC, or do economists currently have the tools that would be
2 necessary to give a robust answer to the question that you
3 think ought to be asked?

4 So I will open that up. Anybody? Okay, Ms.
5 Shenai?

6 MS. SHENAI: I would say duty inversion are an
7 area that the ITC may want to take a look at. Those are
8 situations actually that were mentioned in a prior panel,
9 and I think it was an issue that was discussed 50 years ago,
10 but it's one where there may be higher duties on inputs from
11 manufactured products, as opposed to the final manufactured
12 product. And we have lots of examples of those in the
13 Tariff Code. Like golf clubs. It's actually more expensive
14 for a producer to import in components of a golf club and
15 manufacture it in the United States than it is for them to
16 actually import the golf club. It's a lower duty.

17 So there are disadvantages for actually
18 manufacturing in the United States that are built into the
19 Tariff Code. And I'm not an economist, but I would say that
20 that's probably a really sweet spot for the ITC to be able
21 to determine what the type of competitive effects are.

22 COMMISSIONER SCHMIDTLEIN: Professor Prusa? Pass
23 that mike down, would you?

24 PROFESSOR PRUSA: So one thing that's evolving and
25 is really going to continue to grow in importance is global

1 supplier chains. So what industries are really affected by
2 this? How these global supply chains are set up. To what
3 extent are we setting tax and trade policy as a way to allow
4 the U.S. companies and the economy to benefit from global
5 supply chains.

6 And so one level, I don't know the measurement,
7 but I think still we need to get a better handle on just
8 measuring these methods, and then second would be trying to
9 quantify it. But that's I think going forward some of the
10 frustration that we hear from people about being left behind
11 on trade involve this phenomenon. And we don't really have
12 an exact handle on it.

13 COMMISSIONER SCHMIDTLEIN: Yes?

14 PROFESSOR MOORE: I would add a related issue. In
15 the academic literature there's a lot more emphasis on firm
16 level activities. One firm is not like another is not like
17 another. And I know, by necessity you're looking at big
18 economy-wide models and you tend to group things into
19 industry sectors, but a lot of the things happen at
20 individual firm level, at individual worker level. And
21 looking at that level of disaggregation is daunting, but
22 more and more economists are doing it. And it's where a lot
23 of the action is.

24 And one firm decides to outsource certain
25 products, and the other one doesn't. They have different

1 effects. But getting to that granular level of economic
2 effects I think is going to be more compelling for a lot of
3 people than just looking at broad sectoral analysis. That's
4 easy for me to say, but if you ask for what you could do
5 that might be one thing.

6 COMMISSIONER SCHMIDTLEIN: Michael?

7 MR. FERRANTINO: Yes. So I think all these things
8 are related. And we do have some capabilities that we could
9 have more. So if we look at duty inversion and supply
10 chains, yeah, your example of the golf clubs is a supply
11 chain issue. You know, which parts of the production
12 process do you have here? And the question of firm level
13 data enters into it because how do you see golf clubs?

14 Now actually the Commission has done a fair
15 amount of work on global supply chains. This was the
16 special topic in import restraints a couple of issues back,
17 and the economists at the Commission have contributed a lot,
18 I would say, seminally to these methods using global
19 input/output tables. But the limits of those are that we
20 can see things on the level of chemicals and electronics,
21 and so you could answer questions about the duty inversion
22 on that level but not on the level of golf clubs where I
23 think you would need to have different skill sets. You'd
24 need to have industry analysts. You might need to have firm
25 level data.

1 I think one of the ambitious things that the
2 Commission tried to do, and I don't know what became of
3 this, is to attempt to work with the U.S. Census to access
4 some of the confidential data that some academics like Mr.
5 Jenson at Georgetown has done, and have some Commission
6 employees become sworn Census agents.

7 Now that model works very awkwardly with the time
8 limits of, you know, doing something like a 332
9 investigation. So there may be some more creative ideas
10 that somebody would have about how to access firm-level
11 data. And I think that would be well worth pursuing.

12 MS. ASKEY: I just wanted to--most of the
13 responses, except for the last one, I think was more
14 reflective of traditional trade agreements, except in a more
15 sophisticated way I would add transaction costs to supply
16 chain, which would be really the same thing.

17 But what I wanted to say is it's a bit of a
18 cautionary tale as well about what we are going to ask the
19 ITC to do, and what we're going to have trade agreements
20 cover. I think TPP is a perfect example, of course, even if
21 you separate out the political electioneering aspects of it,
22 creating kind of tailored models to try to answer questions
23 that really perhaps are--I mean they certainly are
24 important, but at some point are you going to undermine the
25 value of the ITC's analytical output by asking it to contort

1 itself so much, and ask trade agreements to contort
2 themselves so much, that you really are carrying a lot of
3 weight?

4 There's an incentive to do it because you can get
5 it approved and passed, although TPP is another cautionary
6 tale. Can you get it approved at that under a simplified
7 system of TPA? But, really, I even have some problems with
8 the ITC doing miscellaneous tariff bills because why should
9 that not evolve from the legislative process as opposed to
10 advocating that?

11 In my view, the Members got a lot of political
12 points for introducing these bills that eventually got
13 approved, even though the discipline of it had to be paid
14 for and had to have some ITC backing with respect to
15 analytics. But I just think there's a cautionary tale there
16 as to whether we're going to be able to keep the value of
17 the ITC and the value of trade agreements in the new world
18 of piling everything into that basket.

19 COMMISSIONER SCHMIDTLEIN: Would anyone like to --
20 sure, yes?

21 PROFESSOR MOORE: We talk a lot about trade
22 agreements. I mean it's conceivable that big trade
23 agreements may not be the future. It may be trade and
24 investment, you know, ongoing relationships that is really
25 the focus.

1 I mean, I've been out of Washington these days,
2 but from outside TPP looks in trouble. You know, this crowd
3 would know much more than me. I don't think DOLA is going
4 anywhere. You know, maybe there's a lot more optimism
5 around, but even if you don't have new agreements,
6 globalization continues.

7 And so building up the ability to understand some
8 of these nontraditional models, or issues, is still going to
9 be useful, with or without new trade agreements. So I
10 wouldn't let how it fits into trade agreements stop you from
11 moving forward with some issues.

12 COMMISSIONER SCHMIDTLEIN: Um-hmm? Mike?

13 MR. FERRANTINO: Yes, I would agree with that.
14 Because as far as we can tell, the largest share of what
15 people would call "globalization" isn't actually due to
16 things that are negotiated, but due to big forces in the
17 world economy. And people would want to understand that.

18 COMMISSIONER SCHMIDTLEIN: So what kind of forces?
19 What are you talking about? Can you be more specific?

20 MR. FERRANTINO: I'm talking about economic growth
21 in general, about the general reduction in transaction
22 costs, whether it be things like container shipping, or the
23 internet, or whatnot. And so the fact that we saw trade grow
24 more rapidly than income for almost the whole World War II
25 period, and then somehow seeming to stop after 2009, is--in

1 some sense those things are a bigger deal than everything
2 than anybody's ever negotiated. And I would think would be
3 curious as to what the impact was on the U.S. economy.

4 COMMISSIONER SCHMIDTLEIN: Alright. Anybody else?

5 (No response.)

6 COMMISSIONER SCHMIDTLEIN: Alright, well I'm
7 conscious of the time so thank you for indulging me. Please
8 join me in thanking this panel. It's been very interesting.

9 (Applause.)

10 MR. BARDOS: Okay, so we'd like to take just a
11 five-minute break. So if you would, come back at 4:35.
12 Thanks.

13 (Whereupon, a brief break is taken.)

14 MR. BARDOS: Please take your seats. We're going
15 to move on to the next, the final panel, which is on the
16 Institutional Evolution of the Commission. And it will be
17 moderated by Chairman Williamson.

18 (Pause.)

19 CHAIRMAN WILLIAMSON: Okay, well welcome to the
20 final panel of today's program. This is kind of like, shall
21 we say, a wrap-up panel because this panel will be
22 discussing the institutional evolution of the Commission.
23 The panel will focus on two major chapters of the Centennial
24 Book, and a third chapter.

25 The first chapter is Chapter 4, The Substantive

1 and Institutional Evolution of the ITC. This chapter was
2 written by Will Leonard and Dave Foster. While their bios
3 are already in your program materials, I would note that
4 Will was a Commissioner at the ITC from 1968 to 1977, and
5 Chairman from 1975 to 1976, and he is now with the firm of
6 Adduci & Mastriani.

7 Dave Foster was at the ITC as an attorney from
8 '73 to '76. He was involved in the ITC's implementation of
9 the '74 Trade Act, and in the transformation of Section 337
10 following the '74 Act. He is a partner with the firm of
11 Foster, Murphy, Altman and Nichols, and has been an active
12 337 litigant.

13 The second Chapter of this book we will be
14 discussing is Chapter 5: Evolution of the Chairmanship.
15 This chapter was written by three former Chairs of the
16 Commission, Chair Aranoff, who was Commissioner from 2005 to
17 2014, and Chair from 2008 to 2010. She is now with
18 Covington & Burling. Deanna Okun, who was Chair--
19 Commissioner from 2000 to 2012, and Chair from 2002 to 2014,
20 and from 2010 to 2012. And she is now at Adduci &
21 Mastriani. We've heard from her today already. And Daniel
22 Pearson, who was a Commissioner from 2003 to 2012, and was
23 Chair from 2006 to 2008. And he is now at the Cato
24 Institute.

25 And Paul Bardos has written a chapter on the

1 Offices of the Commission, and he will have a few words
2 regarding OPAL--we've seen him a lot today, but he is going
3 to talk a little bit about that chapter.

4 As reviewers from the two chapters we have Lynn
5 Bragg, who was a Commissioner from 1994 to 2003, and Chair
6 from 1998 to 2000. And she is now President of the Glass
7 Packaging Institute.

8 Our second reviewer is Dan Leahy, who was with
9 the Commission from 1974 to 2004, in a number of capacities
10 including as the first Director for External Relations. And
11 then we also have as a reviewer Kenneth R. Mason, who as you
12 know was Secretary for the Commission from '69 to 1992.

13 I would now ask Dave to discuss the institutional
14 evolution of the Commission. Unfortunately, Will Leonard
15 cannot be with us today, but Dave, Will and I had a very
16 good conversation on Tuesday and had some very interesting
17 points, and he has licensed Dave to make the points for him.
18 In short, anything that Dave feels is controversial he will
19 attribute to Will.

20 (Laughter.)

21 MR. FOSTER: Thank you, Mr. Chairman. Yes, I
22 wanted to make that clear from the start. Anything
23 controversial, Will said it, not me.

24 The substantive evolution of the Commission has
25 been very interesting. It started out, as everybody knows,

1 to provide advice and counsel and develop an expertise on
2 the tariff to help the Congress set the tariff.

3 This changed really in 1922 when they established
4 the Flexible Tariff Provision, the so-called "scientific
5 tariff," but the Commission still basically provided
6 information at that point to the President who could then
7 adjust the tariff.

8 So you had a movement from Congress setting it,
9 to the President establishing it through the Section 315
10 procedure which became Section 338 of the Tariff Act of
11 1930.

12 And they also developed extreme expertise in
13 tariff and trade matters, and that was their duty, to become
14 the expert body within the U.S. Government on international
15 trade matters, to advise both the President and, more
16 importantly, and perhaps principally, Congress in
17 establishing the trade policy of the United States.

18 As was already mentioned by an earlier speaker,
19 in 1934 were the Reciprocal Trade Agreements Act, the HALT
20 Tariff Act. This focus changed yet again because now
21 Congress basically gave the authority to the President to
22 establish the tariffs of the United States through
23 reciprocal trade agreements programs, and the Commission's
24 function moved to continuing to advise the Congress on
25 international trade matters and tariffs. But now also to

1 work even more closely with the President in terms of giving
2 what we now call "probable economic advice" as to what would
3 be the impact of tariff changes that were proposed in the
4 Reciprocal Trade Agreements.

5 This continued largely to be the work of the
6 Commission until the Trade Act of 1974. And the Trade Act
7 of 1974 really was the seminal Act for what I would call the
8 modern day Commission. Because what it did is move the
9 Commission more and more into the trade administration
10 aspects, if you will, of international trade. And this was
11 done purposely by Congress.

12 They took authority away from the President with
13 respect to Section 337 and gave it to the Commission. They
14 got the Commission much more involved in antidumping areas,
15 and approved the antidumping--approved the antidumping
16 decisions of the Commission that had been made up at that
17 time. And they did this basically to create the Commission
18 as part of an apparatus within the Government that would be
19 a type of safety valve for the Trade Agreements Program, and
20 to build support for the Trade Agreements Program.

21 And here the phrase, "all the time, free but fair
22 trade." And that's basically how the Trade Agreements
23 Program has been sold in the United States: We're going to
24 liberalize trade, but don't worry, we're going to make sure
25 it's fair trade. And furthermore, with our Trade Adjustment

1 Assistance Program we're going to take care of the people
2 that are displaced and harmed by trade.

3 And so the Commission became a part of this
4 regime more and more. And now, to the point now where about
5 fifty percent of the resources of the Commission are spent
6 on the trade regulation, if you will, or the trade
7 administration, principally antidumping, countervailing duty
8 and Section 337. And about fifty percent of the
9 Commission's resources still go to developing expertise,
10 providing advice to Congress and the President, and
11 preparing reports, that type of thing.

12 So that's been sort of the substantive evolution
13 of the Commission.

14 There's also been an institutional evolution of
15 the Commission, although really from the foundation of the
16 Commission it was meant to be independent, nonpartisan,
17 objective, and expert. Those were the objectives in
18 setting up the Commission. And institutionally, the
19 principal way they did that was to provide that no more than
20 three Commissioners could be from one party. Also, to
21 provide for extended terms of appointments so that the
22 President, whoever appointed them, would have less control,
23 if any control, over their reappointment.

24 And this was the principal method for achieving
25 objectivity and nonpartisanship up until 1974. And again

1 you saw the '74 Act, a further extension of this idea of
2 let's make the Commission truly independent.

3 And it was a realization, of course, by that
4 time, as there had always been a realization in Congress
5 that control of the budget, control of the ability to go
6 into court, those were key aspects of being able to be
7 independent. And so in the '74 Act the Congress provided
8 that the Commission could set its own budget, and it would
9 be included in the budget of the President without change.

10 It also provided that they could go into court
11 and represent themselves in matters of their jurisdiction,
12 and with respect to cases that they had decided.

13 Both these changes were vociferously opposed by
14 the Nixon Administration. There were some nasty letters
15 exchanged, some of which are public, about how this was
16 going to destroy the ability of the Administration, of the
17 Executive to control what went to the courts and what didn't
18 go to the court, or to control the budget.

19 And of course that's turned out to be way
20 overblown. In fact, the Commission has come into
21 accommodation with the Administrations that followed both
22 with respect to how its budget is set, and the Commission
23 has never been one to over-reach on budget matters.

24 And it also has established a method of operation
25 with the Executive in terms of how it would represent itself

1 in court. And so that's been, again, an evolution of
2 initially independent, even more so now. And so that's
3 basically been both the substantive and the institutional
4 evolution of the Commission, and that's basically what Will
5 and I try to describe in our chapter.

6 Thank you.

7 (Applause.)

8 MS. TANNER OKUN: Well hello again. I'm back up
9 here on the last panel of the day, the last panel between
10 you and your reception, so I'm wondering if, for those of
11 you who are still here, whether Chairman Williamson sent out
12 an email saying that we had written--that Sarah and I had
13 written a tell-all about all the Chairmen and ranked all 35
14 individuals who have served one or more terms as Chairman of
15 the ITC in the last 100 years at the time we wrote the book,
16 though we ranked them in order.

17 (Laughter.)

18 MS. TANNER OKUN: But we did not. So, sorry about
19 that. But you should still read the chapter.

20 Instead, what we tried to look at is, keeping in
21 mind the things you've heard this morning and this
22 afternoon, Democrats versus--the tensions, Democrats versus
23 Republicans, free-traders versus protectionists, and of
24 course we all know that doesn't necessarily translate into
25 Republicans versus Democrats. Strong Chairman versus a weak

1 Chairman. Independence form the Executive Branch.

2 Independence from the Congressional Branch.

3 How did those tensions translate into the
4 Chairmanship and the changes that we've seen over time?

5 So I'm going to just briefly give an overview of
6 what we focused on, and then turn it over to have a
7 conversation about it. And of course the Chairmanship and
8 the Vice Chairmanship have existed since 1916.

9 What you see, and again related to things about
10 tension, you heard a reference earlier this morning that,
11 while the -- Frank Taussig, who might be our founding father
12 than Len Miranda makes a play about, right, we can figure
13 out who was the most important ITC Chairman or Commissioner,
14 but there was a period during the '20s when there were many
15 issues about the Commissioners, and integrity, and
16 unhappiness. And so that's when you had several changes
17 made to the Chairmanship, and we cover that in our chapter.

18 And then you have a period of time where the
19 statute has some tweaks in it that relate to the
20 Chairmanship, but the next time you see some changes, what
21 we refer to as the "modern Chairmanship," really are in
22 1977.

23 And what you had then, and an interesting read,
24 is the Ways and Means, the Congress really becoming
25 concerned that this division between what Commissioners and

1 what the Chairman did on the administrative side versus the
2 substantive side, whether the independence had become such
3 that they were spending too much time arguing with each
4 other over particular issues, including administrative
5 matters, that you needed to make a stronger chairman in some
6 ways to handle administrative matters.

7 So there is an interesting report that was
8 prepared by the House Ways and Means Committee that talks
9 about some of the issues that they saw there. One thing
10 they said was they wanted, the legislation in 1977 was
11 intended to enable the Commission to devote all its energies
12 to substantive matters within the jurisdiction of the
13 Commission, leaving responsibility for administration of the
14 Commission to the Chairman and his delegates.

15 And that translated into what we refer to as the
16 modern Chairmanship, where the Chairman makes administrative
17 decisions, subject to disapproval of a majority of the
18 Commission. And that under that rubric there has been I
19 think, we view a way forward where the Commission really
20 does have a way to deal with administrative matters, but
21 letting the Chairman do a lot of the details. And for those
22 of us who served as Chairman, we know that there are lots of
23 details that you deal with.

24 So that's really, again, I want to leave this
25 brief so that we have time for the questions that we want to

1 talk about and how this rubric that was set up over time for
2 the modern Chairmanship relates to what's happening today in
3 the increased responsibilities and missions of the
4 Chairmanship.

5 (Applause.)

6 MR. BARDOS: So I wrote a short chapter on the
7 headquarters and field offices of the Commission. I found
8 this a very interesting topic, remembering the grand old
9 building we used to be in until 1988. And I just remember
10 the grand staircases, and the cupolas, and you can see it
11 now. It's the Hotel Monaco, but in those days it was our
12 digs. And it was grand, but unfortunately it was also
13 falling apart. I think Professor Eckes mentioned some of
14 the problems. Metro construction was undermining the
15 foundations, and vast cracks had shown up.

16 This was followed by a rodent infestations,
17 leading to a Washington Times article quoting an ITC
18 employee saying the squeamish cannot survive long here.

19 (Laughter.)

20 MR. BARDOS: So our current building, although
21 perhaps less historic, has been I think a lot more
22 comfortable. And then I wanted to mention there were a
23 number of other offices. For many years we were in New
24 York, as well. We briefly were in Richmond, Virginia.

25 But the interesting thing for me was the European

1 offices. Back in the '20s we started having a European
2 headquarters in Berlin, and that moved to Brussels for a
3 good many years. We briefly also had an office in Paris.
4 And I was amused to find an odd way of finding information
5 was that the Government Accountability Office had done a
6 report on the per diem paid to an accountant who had gone to
7 visit Brussels and determined that that person needed to pay
8 some money back. And it gave the address of the Brussels
9 office, which I enjoyed. But we got rid of all our European
10 offices long ago.

11 And the last thing I'll say is that, sort of in a
12 similar vein but not quite, many years ago we received a
13 Freedom of Information Act request that also went to other
14 agencies, and I was asking for information about our Hawaii
15 office.

16 (Laughter.)

17 MR. BARDOS: So I went to the Chairman and I said,
18 I didn't know we had one. And are there any employment
19 opportunities? I think it was Steve Copeland that was
20 Chairman at the time, and he laughed.

21 But, anyway, that's what I wanted to say about
22 our buildings. Thank you.

23 (Applause.)

24 CHAIRMAN WILLIAMSON: Thank you, Paul. And, no,
25 there are no European or Hawaiian offices in the budget.

1 (Laughter.)

2 CHAIRMAN WILLIAMSON: Okay, let's turn right to
3 the questions. This is the last panel, so it gives us a
4 chance to sort of wrap things up.

5 I want to start off with this question. A key
6 theme in the Centennial Book, as of course there's been a
7 lot of talk today, is the mandate for the Commission to be
8 independent and nonpartisan and objective. And I want to
9 ask this question:

10 Is this mandate still as relevant in 2016 as it
11 was in 1916? And will it continue to be relevant going
12 forward? And if you think yes, why? So I throw that open
13 to the panelists.

14 MR. FOSTER: Yes, I think it is still relevant,
15 and it will continue to be relevant. Again, I think part of
16 the reason of--well, originally the Commission was set up to
17 take politics out of the tariff. That was the phrase that
18 as used. And of course it was not successful in doing that,
19 but what it did establish is an agency that developed some
20 extreme expertise in international trade, and became the
21 go-to agency in many ways for both the Congress and now the
22 President in terms of trying to get objective, nonpartisan,
23 exceptionally expert advice that really lays the foundation
24 for the support for the entire Trade Agreements Program.

25 And you will not get that support if the agency

1 becomes perceived as being not objective, or partisan. And
2 so I can't stress, in my own view the Commission is central
3 to the entire Trade Agreements Program, because it is the
4 agency that becomes the safety valve for many of the issues.
5 And Congress and the President can say, well, we gave that
6 question to the Commission and here's what they say.

7 And it's the same way that the tax committees in
8 Congress uses the Joint Tax Committee, and other agencies--
9 other committees of the sort. It is an agency that people
10 can trust and can cite, and it won't be possible if they're
11 not perceived as objective and nonpartisan.

12 CHAIRMAN WILLIAMSON: Dan?

13 MR. LEAHY: Mr. Chairman, I would just say that I
14 think being seen as objective and independent is really
15 helpful when talking to appropriators. I mean they get
16 suspicious if they think you're leaning too much one way or
17 the other. So I found it helpful to go into those sessions
18 being able to say, quite honestly, yes, we do some work for
19 USTR. The statute says we ought to. We're doing a lot more
20 work right now for Finance and Ways and Means, da-da-da-da,
21 and you're emphasizing the balance in our approach between
22 the Hill and the Administration I think is helpful to the
23 Commission's long-term survival.

24 CHAIRMAN WILLIAMSON: Lynn?

25 MS. BRAGG: I really feel that it's more important

1 than ever before, given the hard swings in partisanship that
2 we're seeing on Capitol Hill. And I think that's very--
3 you've seen the results of that, basically. And I look at
4 it now from a manufacturing and a business perspective.
5 Nothing gets done.

6 And I think more and more both the business
7 communities and manufacturing communities are looking for
8 objective information, and information on which they can
9 make very key business decisions.

10 And the International Trade Commission remains
11 one of those agencies. So I do have to say I'm somewhat
12 concerned over the role that the Commission now has with the
13 miscellaneous tariff bills that I think may put the
14 Commission, while it will elevate it into a leadership role,
15 you also are elevated to be the head of the nail, as well.

16 So you basically have a de facto decision-making
17 role, which I think will be subject to some political
18 pressure.

19 CHAIRMAN WILLIAMSON: The head of the nail?
20 That's very good, Dan?

21 MR. LEAHY: In 1996 I became Director of the
22 Office of Executive International Liaison. Shortly
23 thereafter, I managed to get that office switched into the
24 Office of External Relations, which brought in the
25 Congressional side of the House as well as the Public

1 Affairs. It also brought with me a lot of input from those
2 parties.

3 One of the things that I noted from Dr.
4 Ferrantino's remarks was that I can now date the beginning
5 of my hair loss to the 25 years ago when the Office of
6 Economics put out their first working papers.

7 (Laughter.)

8 MR. LEAHY: It certainly brought a lot of
9 attention. But in a good way. But as I sat here today
10 listening to all the presentations, which truly I thought
11 were excellent, two things struck me.

12 One, I wish I had known a lot of the history
13 before I took on the positions I took on. It would have
14 made my life easier. But secondly, that everyone that
15 spoke, starting with the keynote speakers this morning, they
16 had the same message. And the message is that 100 years ago
17 a group of people thought they could put together an agency
18 that would give them expert, objective, nonpartisan advice.
19 And 100 years later, both the Congressional and the
20 Executive Branches have continued to give us the control,
21 give away control, which in Washington is not something that
22 happens very often. But giving this agency control over
23 matters of great importance to them and to the country.

24 And, that the staff of this agency, the career
25 staff, the staff that work for the Commissioners, the

1 Commissioners themselves, over that 100 years have managed
2 to keep that trust. And I hope for the next 100 years they
3 continue to do that. Thank you.

4 CHAIRMAN WILLIAMSON: Thank you. I'm going to put
5 another spin on it. The points that most of you made are
6 really inside the Beltway, you know, interaction with
7 Congress, business people and tariffs, so--but if you think
8 about the view of trade in general among the general public,
9 if you look at some of the Pew studies and things like that,
10 I want you to think about that and sort of say, if yes,
11 these things of independence and nonpartisan and objective
12 are still important, how do we navigate in this time?

13 How does living in an age of instant
14 communication and all news all of the time affect the
15 Commission's role and ability to do the things that our
16 founders want us to do, and that we say are still important?

17 Dave, you had some thoughts about this on Monday?

18 (Laughter.)

19 MR. FOSTER: I should have been quiet. Well, you
20 know, I think it is a question of sticking to what we -- and
21 I still use the word "we" when I talk about the Commission
22 -- what the Commission has done well all along. And what it
23 has done well is maintain its independence but develop the
24 expertise that's needed to where, to a point now, and I
25 think this was made earlier, I don't think there's a

1 concentration of expertise in international trade anywhere
2 in the world that compares to what's at the International
3 Trade Commission now.

4 And I think people see this as a very valuable
5 resource. But you got there by sort of sticking to your
6 knitting, not being afraid to call things as they are,
7 developing the expertise and earning the respect,
8 maintaining the relationships. The Commission has always had
9 an extraordinarily strong relationship with the staffs of
10 the Ways and Means and Finance Committee, and I think this
11 has been critical in maintaining the relationship with the
12 Committees.

13 You've also had a very strong relationship with
14 the Administration, with USTR. Commission employees now are
15 spread out throughout the world in international trade
16 organizations and everywhere else.

17 And so I think, stick to your knitting and you'll
18 do find. And so basically the advice is, continue.

19 CHAIRMAN WILLIAMSON: Lynn?

20 MS. BRAGG: Well, I think outside of the Beltway
21 trade and trade negotiations and trade agreements are
22 completely misunderstood. And they have been spun, no
23 matter the benefits that the trade agreements bring to the
24 United States, and to businesses and manufacturing in the
25 United States. There's always a real, to me, a very

1 negative, a negative, negative spin. And I think that is
2 what has really stuck, that impression.

3 So I would say most people don't know. I mean,
4 most Members' constituents don't know, most consumers don't
5 know that this truly nonpartisan, independent agency exists.
6 And they oftentimes aren't aware of the fine, fine work that
7 is done here in terms of thought papers on the economic
8 analysis, and the really key research that is done to lay
9 the groundwork for trade agreements.

10 So the one piece of advice I guess that I might
11 impart is in the new world of instant communication try to
12 find a great niche for the ITC in a very respectful and
13 professional way to get the fine work that is being done in
14 this Commission out in the public when it's published.

15 CHAIRMAN WILLIAMSON: Shara?

16 MS. ARANOFF: I was thinking about this idea of
17 outside-the-Beltway and how the Commission can and can't be
18 relevant to people outside the Beltway.

19 And one of the things that the Commission has in
20 fact tried to do is get outside of Washington when it can
21 and show people on the factory floor, or through field
22 hearings, that this is your government working for you.

23 So one of, I thought, the best parts of being a
24 Commissioner was getting to go and tour plants around the
25 country that were making products that were subject to

1 various Commission investigations. And I thought that one
2 of the most important things about that was actually walking
3 around the floor of the plant so that all of the workers
4 there could see that you were there, and usually management
5 had told them why you were there so that they could see that
6 there was a government agency who cared about what was going
7 on in their facility, who was interested in how they did
8 their jobs, and who was working for them.

9 The same with field hearings, where I think the
10 Commission doesn't do it often, but when it's appropriate to
11 get out of Washington and make itself more accessible to the
12 viewpoints of people who are out in other parts of the
13 country. That's also been well received.

14 And I must say, though, when you think about it
15 from a government, Washington versus outside-of-Washington
16 standpoint, that the Commission always had to tread a very
17 fine line between wanting to be out there, and showing
18 people the relevance of what the Commission does versus
19 being accused of going on junkets.

20 Now I would suggest that a lot of the places that
21 we went to do plant tours were not the type of places that
22 you would go if you had a junket in mind, but that's a very
23 hard argument to make when, you know, official government
24 travel is being highly scrutinized.

25 But on balance I would say it's a good thing that

1 the Commission goes out there and tries to make itself
2 visible and make the Commission more visible to people
3 outside the Beltway.

4 CHAIRMAN WILLIAMSON: Paul?

5 MR. BARDOS: I just wanted to do a plug for the
6 Commission's website. I don't know that we'll ever be--
7 well, that people around the country will ever be aware of
8 us, but I think we've done a very good job of putting out
9 information on the Internet. The DataWeb, the HTS. So for
10 those people who do know us and can benefit, we do a lot for
11 them.

12 I remember when our website was basically just a
13 toy, and it has just become so much more. It's such a huge
14 fount of information.

15 CHAIRMAN WILLIAMSON: And it's going to become
16 even more of a fountain of information after today with
17 what's been learned today. Dan?

18 MR. PEARSON: Mr. Chairman, I actually think it's
19 difficult for the Commission to do much more to engage in
20 policy debates that are now so political. I think the
21 Commission, as it sticks to its knitting and does good
22 analysis, is providing information that can inform that
23 debate. Unfortunately, in recent months we haven't seen
24 much informing being done--not the Commission's fault, but
25 people aren't terribly interested in it.

1 But those of us who use some of the Commission's
2 work and are in a position to be actively engaged in the
3 public debate I think need to try to raise our voices
4 further. Although I've been trying to do that, and frankly
5 my team is losing rather badly. But that's another story.
6 But we have to divide the line I think between what the
7 Commission legitimately can do and what those people can do
8 who are more actively involved in public policy debate.

9 CHAIRMAN WILLIAMSON: Okay, can I summarize this
10 by saying--Yes, Lynn.

11 MS. BRAGG: I just have one more comment, and just
12 so you know, my industry is a heavy, heavy user of the Trade
13 Data Website. So thank you. Thank you, very much for that.

14 CHAIRMAN WILLIAMSON: Thank you. Okay, can I
15 summarize this by saying, keep on doing a good job in
16 getting the facts out there. Stick to our knitting. Don't
17 tweet, or at least be careful what you tweet.

18 (Laughter.)

19 CHAIRMAN WILLIAMSON: For the authors of the
20 Chairmanship chapter, in your chapter you say: While the
21 role of the Commission continues to evolve along with the
22 substantive and administrative challenges facing the agency,
23 the current structure of the Commission designed to strike a
24 balance with neither a strong nor a weak Chairman, has on
25 the whole proven effective.

1 And the question I have for you: Should anyone in
2 the general public care about this? Whether we have a
3 strong or a weak Chairman?

4 MS. ARANOFF: So the answer to that question I
5 think is yes and no. We've talked a lot today about how the
6 Commission is structured in a way that on the Commission's
7 substantive work on antidumping cases, on Section 337 cases,
8 on Section 332 studies, the Chairman's vote is not worth any
9 more than any other Commissioners' vote. And so in that way
10 the strength or weakness of the Chairman really doesn't
11 matter at all to the public that's interested in the broad
12 products that the Commission puts out.

13 The fact also that the Commission really doesn't
14 have any policy-making powers means that the strength or
15 lack thereof of the Chairman doesn't have nearly the impact
16 that it would have in an agency that does have policy-making
17 authority.

18 That said, it does matter. And it matters for
19 the reasons that were laid out in that Congressional Report
20 that Deanna quoted earlier when she was introducing our
21 chapter. There have been periods on and off in the
22 Commission's existence where in-fighting over administrative
23 matters have taken up so much of the Commission's time and
24 energy that it has distracted the Commission's ability to
25 focus on the substantive mission. And that harms everyone

1 out in the public that has an interest in the agency.

2 So this need to strike that balance, you want to
3 have a Chairman who has enough power to get day-to-day
4 things, just to keep them moving. There have been times in
5 the Commission's history where chairmen have not been able
6 to do that. I think all of you are familiar with the Action
7 Jacket. That's the written voting method that the
8 Commission uses on everything for which it doesn't hold a
9 public vote.

10 There are, at any given time, dozens of those
11 circulating. And there were times in the past where people
12 would hide them in their desk drawers in order to prevent
13 decisions from being made. So you want a Chairman who's got
14 enough power to keep those trains running, but not so much
15 that they can single-handedly take those small areas where
16 perhaps the agency could be politicized or moved off the
17 rails in things like budget, or hiring of staff, or setting
18 the research priorities. You don't want a Chairman who is
19 strong enough to wrest control over those things and move
20 the agency off of that sort of stick-to-the-knitting path
21 that we've talked about.

22 CHAIRMAN WILLIAMSON: Anyone else? Dan?

23 MR. PEARSON: The public may not care much about
24 the Chairmanship structure in the agency, but I do think
25 that the current arrangement does help to maintain the

1 independence of the Commission.

2 A Chairman, at least the ones I have dealt with,
3 tend not to take the approach that they own the office, but
4 rather they hold it in trust for two years, and then they're
5 going to pass it off to a member of the other party. And
6 most Chairmen don't want it to look like they've entirely
7 blown it during their tenure. And so, you know, there's a
8 collegiality that grows out of a relatively weak temporary
9 Chairmanship.

10 The value of when a challenging administrative
11 matter comes up, the value of walking down the hall and
12 visiting with the other Commissioners, and developing as
13 much of a consensus as possible, that really helps to keep
14 the place going.

15 MS. TANNER OKUN: If I could add a couple of brief
16 points. One which is that Dan's right about the ability to
17 walk down the hall and not be constrained by the Sunshine
18 Act on most of these conversations that you can have was a
19 way to maintain collegiality and get things done. And I
20 think, again we haven't spoken--as I think many in this room
21 know, I mean the Chairmanship is unique among the alphabet
22 agencies in terms of rotating from one party to the next and
23 only lasting two years, and therefore no one can really
24 consolidate power during that time, which goes to the weak
25 Chairmanship, and certainly it is weaker than the President

1 when he's elected get to, you know, put you in place and you
2 have substantive rulemaking power.

3 So it is much weaker in that sense. But I think
4 the allowing the Chairman to make decisions and then just
5 make sure that he has the support of his or her colleagues
6 has, or at least it did during our period, which is kind of
7 what our observations are on this chapter and not trying to
8 talk about other periods of history.

9 CHAIRMAN WILLIAMSON: Dan?

10 MR. LEAHY: Yes. Having worked also for a
11 Chairwoman for two years in a more or less administrative
12 capacity, there were certainly days when I would have loved
13 to have a very, very strong Chairman.

14 However, I think in terms of the general public,
15 I don't know that there'd be much of a difference. But I
16 think there would definitely be a difference in those
17 customers that we serve and their view of us and our
18 objectivity, and to lose that is essentially to lose the
19 agency.

20 MS. BRAGG: I would agree with everyone's comments
21 so far on this question. I would also just add that I think
22 the duality of the Chairmanship can have a very large impact
23 on Commission staff.

24 So I think when there isn't collegiality and
25 those jackets don't make their way down the hall like they

1 should, it really impacts the morale of the staff. And
2 having entered the Commission at a time when I think it's
3 fair to say morale was at a low, I just think it's key for
4 the Commissioners to engage in that kind of collegiality and
5 really work together in terms of making administrative
6 decisions together.

7 CHAIRMAN WILLIAMSON: Thank you. Ken?

8 MR. MASON: I would agree with the last. I was a
9 staff member at the time when a Chairman gave an almost
10 world-famous interview to the Christian Science Monitor.
11 The headline was something like "Chairman Doesn't Have
12 Enough To Do." He gave a quote that he only spent four
13 hours a day on work. He didn't know what the rest of the
14 Commission was doing.

15 This went over about like a pork chop would at a
16 Bar Mitzvah.

17 (Laughter.)

18 MR. MASON: The staff was horrified. The Congress
19 was horrified. The other Commissioners were united in
20 opposition.

21 CHAIRMAN WILLIAMSON: Thank you.

22 Drawing on the Commission's history, what do you
23 think are the most pressing, substantive institutional and
24 procedural issues facing the Commission? And do you think
25 the Commission is equipped to handle these issues? And one

1 thing I'd like you to comment on is Commissioner Kieff has
2 asked the question about the approach, the interdisciplinary
3 approach, and Gene Rosengarden had referred to it this
4 morning, too, about this interdisciplinary approach that the
5 Commission had.

6 So in thinking about that larger question, if you
7 want to touch on that, too. What do you think are the key
8 substantive and institutional issues facing the Commission
9 going forward?

10 (No response.)

11 CHAIRMAN WILLIAMSON: If you don't want to start
12 with that one, take the second one. Dave?

13 MR. FOSTER: Well, in terms of the substantive
14 issues, I think a number of people have discussed already
15 today the concept of tariffs becoming less and less
16 significant in trade, and other issues becoming more and
17 more prominent.

18 And so I think, as was mentioned by a panel I
19 think very effectively, the Commission is going to be asked
20 to assess the effect of nontariff barriers and other
21 activities, such as child labor and that sort of thing, more
22 and more. And that is an extraordinarily difficult task,
23 and one that I think the Commission is probably up to but
24 it's going to be a huge challenge to figure how to deal with
25 this in a way that provides advice and support for the Trade

1 Agreements Program.

2 In terms of sort of the institutional aspects of
3 it, I think if you read the annual reports of the Commission
4 going back to Report No. 1 issued in 1917, and from that
5 point on, the Commission was really sort of in the forefront
6 in establishing an interdisciplinary team approach to
7 addressing issues, bringing together the economists, the
8 commodity specialists, the analysts, the lawyers, the
9 professional investigators, to get the information together
10 and present it.

11 And this has been an approach that has really
12 resulted I think in the Commission being recognized for the
13 leader it is in terms of expertise international trade. And
14 I think it is just critically important that that continue,
15 and that you not let groups in the agency become siloed,
16 that they continue to work together as teams. Because it
17 has just resulted in enormous beneficial results in the
18 past. And it has been something that, again, the
19 compositions may have changed over time but the basic
20 approach has been consistent since the founding of the
21 agency. And I think it has worked very well.

22 CHAIRMAN WILLIAMSON: Dan?

23 MR. LEAHY: I'm not going forward with the
24 Commission. I haven't been going forward with the
25 Commission for a number of years now, actually, but I have

1 been paying attention. But since this is a historical
2 gathering, there is a little bit of history that I think is
3 pertinent here, and it goes to the point of objectivity and
4 perceived objectivity of the staff and the Commission.

5 I started out in the Office of Textiles back in
6 1974. In 1976, I was recruited into a newly established, or
7 maybe reformatted Office of Investigations, in the role of a
8 sole professional investigator with all responsibility for
9 that investigation.

10 It sounded very exciting to a young people that I
11 was. In very short order, I found out it wasn't exciting at
12 all; it was a tremendous burden, workload burden. We did
13 that for I'm not sure how long. Lynn Featherstone might
14 remember better than I, because we were both in that role,
15 but that was a real example of where once again I think it
16 may have been coming from the Hill, there was some
17 perception that something was amiss within the Commission
18 and within certain offices that caused them to start
19 doubting it.

20 And quickly we resolved the issue because we had
21 to in order to keep going forward. And we went back to that
22 interdisciplinary system where all the offices participated.
23 And it may have been a lesson learned in terms of the care
24 that needed to be taken, and I think it has been in the
25 remaining years a very successful way to approach the work

1 of the Commission. And I don't really see another way of
2 doing it.

3 CHAIRMAN WILLIAMSON: Thank you. Deanna?

4 MS. TANNER OKUN: One thing that I found difficult
5 when I was there, and I think it's an institutional
6 challenge, is the Commission in some ways is reactive to its
7 customers, and to the Trade Bar because you have to do the
8 cases that are before you, if it's under Title VII, or the
9 337 side. And for Title VII you have very strict deadlines,
10 and 337 you're moving under deadlines as well. And then in
11 332 you have Congress and USTR who get excited about
12 particular things at a particular moment, and sometimes it's
13 because they're passing the hot potato, and we can debate
14 whether that's MTBs or not, but -- and the Commission just
15 has to deal with that.

16 So I think the team approach has worked well. I
17 think, you know, the focus on trying to bring--have staff be
18 able to play many roles is helpful. Again, not being
19 siloed. But I think that will just continue to be a
20 challenge for the Commission, even in thinking about what
21 issues you should be thinking about.

22 I think the Commission and the staff have done a
23 great job in trying to talk to their customers, but we all
24 know, for anyone who sits down with Members of Congress and
25 their staff, they have so many things going on that asking

1 them to think about, you know, something futuristic is also
2 difficult. So they want you to come and say: What should we
3 be thinking of?

4 So I think really it can be a virtuous cycle, but
5 it's difficult because you're dealing with people who can't-
6 -aren't focusing long term, and the Commission is one its
7 resources. So you can't say we're going to become experts
8 in all these issues, you know, all at once.

9 CHAIRMAN WILLIAMSON: Thank you. Commissioner
10 Kieff?

11 COMMISSIONER KIEFF: Thanks. This may be too
12 arcane, but it's designed to follow up on the question that
13 our panel got on 337, intellectual property, about the
14 relationship to the Federal Circuit. And it might be Dave
15 Foster who could answer it, but others might as well, and it
16 follows up on your main initial theme of independence.

17 In complicated areas, arcane areas of law like
18 intellectual property, it can be hard, it can be difficult
19 to really understand the nuances. And fashion and politics
20 can blow in ways that can mask nuances. A truly independent
21 Commission would have the statutory power and contracting
22 ability to go out into the market and hire top Supreme Court
23 litigator talent to bring certiori when it feels that it's
24 being misunderstood. Do you think the Commission either has
25 that ability, or should have that abilities? And why, or

1 why not? If you really think it's an expert, independent
2 commission and reasonable minds can differ about all sorts
3 of stuff like that, but the opportunity to get the Supreme
4 Court to hear directly from the Commission doesn't seem to
5 exist at the moment. Do you think it should? Why? Why
6 not? How would you do it? Why didn't it go along with
7 independent litigation authority?

8 MR. FOSTER: Well, when the independent litigation
9 authority was added in '74, I don't know. I can't say that
10 Congress focused on how high this would go. Could we go to
11 the Supreme Court? Or should we just stay at the CIT, or at
12 that time the CCPA, now the Federal Circuit?

13 But the intent behind it was that the realization
14 that if the Administration in the form of the civil division
15 of the Justice Department, or the appellate division, had
16 the ability to decide whether a particular issue would be
17 taken to court, that this could compromise the independence
18 of the Commission and the ability of the Commission to
19 interpret the laws that Congress had passed in the way
20 Congress wanted.

21 So from that perspective, I would think the
22 answer is, yes, the authority should probably be interpreted
23 to mean taking an appeal to any available forum.

24 Having said that, of course the Commission has to
25 live within the government. And especially when you get to

1 the Supreme Court level, it may be that the last thing the
2 Commission would want would be for it to seek cert and then
3 have the Court ask the Solicitor General, well, what do you
4 think about this? And have the Solicitor General say, well,
5 I don't think it's a good issue to take up.

6 So there's a certain reality in terms of how far
7 you can take that authority. And so I think the Commission
8 has done a good job in trying to weave this process. But I
9 can see that it is frustrating. And it's frustrating for
10 me. I mean, I make no bones about it. I think the most
11 recent decision in Clear Correct was just an absolute
12 incorrect decision by the CISC, and I would have loved to
13 see it taken up. But on the other hand, I can understand
14 how that might not be possible.

15 CHAIRMAN WILLIAMSON: Yes?

16 MR. BROWN: So, Chad Brown, Peterson. On June
17 23rd, our friends across the Pond made a vote that they were
18 going to make a change. So the UK voted for Brexit. And
19 then what they quickly realized is they didn't have anybody
20 in-house that knew anything about trade. So they decided to
21 go out and hire--the latest numbers I heard were, 300 new
22 trade negotiators. So my question is a little bit
23 tongue-in-cheek in part. First is, has your senior staff
24 been pirated? Is the UK coming here?

25 (Laughter.)

1 MR. BROWN: To kind of steal them? And if not,
2 might you offer them a deal for the right price that they
3 could borrow some of the expertise for a while?

4 But the second is, have you thought a little
5 about your book marketing tour? Because this might be an
6 institution that they might want to sort of model themselves
7 after, as they really very much are starting themselves from
8 scratch.

9 So it's very much tongue-in-cheek, but I think
10 what I want to highlight is, trade is an issue even in the
11 absence of no new trade agreements. It doesn't go away. We
12 always need to have the expertise that you provide here, and
13 the independence that you provide here, and you never know
14 when it is that you're going to need it. So thank you.

15 CHAIRMAN WILLIAMSON: Thank you.

16 MR. ARANOFF: Well I was going to say, while I was
17 doing trade capacity building projects, I used to say every
18 country needs an ITC. But go ahead.

19 MS. TANNER OKUN: Well I was going to say, for one
20 thing you're suggesting is not new. In addition to what
21 Ambassador Froman said this morning about the Commission
22 providing many, many staffers at USTR as well as on the
23 Hill, when the WTO was created quite a few Commission
24 employees decamped to Geneva, and several have gone since
25 then as well. So I think the Commission as an institution

1 is respected as a great training ground for trade
2 professionals. And while that can be inconvenient when your
3 really good people leave right when you need them to do some
4 important project, it's also a great way of spreading the
5 expertise, spreading respect for the agency, and spreading
6 the respect for what the Commission stands for in terms of
7 objectivity, independence, and expertise into other
8 institutions. And I know when I was Chairman we would meet
9 with folks from sister agencies in other countries, and the
10 line that we often received was: Well, we kind of have the
11 same mission as the commission, or some of the same missions
12 as the Commission, but, boy, we wish we had your budgetary
13 independence.

14 (Laughter.)

15 MS. TANNER OKUN: I was actually thinking along
16 the same lines, which is I think the Commission has a lot of
17 expertise that other countries have called on in the past,
18 and we've been helpful. And I was thinking that we needed
19 Former Commissioner Hillman up here, although she right now
20 is teaching a class on Brexit and has someone there from I
21 think EU and Britain in kind of a seminar session where
22 they're going to be talking about some of the legal issues
23 and the trade agreements going forward. So maybe she'll be
24 doing some of that role as well in her capacity.

25 CHAIRMAN WILLIAMSON: Okay. Sure.

1 PROFESSOR MOORE: So, Mike Moore, George
2 Washington University. Thinking about the unthinkable,
3 since World War II we have had Presidents that seemed to be
4 fairly open to trade liberalization and the multilateral
5 system. One of the candidates--I've forgotten which--has a
6 distinctly different viewpoint. Is there anything that the
7 Commission should do or think about in just anticipating the
8 possibility of President Donald J. Trump?

9 MR. PEARSON: The Commission has prepared this
10 great history book of the 100 years of its existence.

11 (Laughter.)

12 CHAIRMAN WILLIAMSON: Good. And as Dave Foster
13 says, stick to your knitting. Anything else anyone want to
14 add?

15 (No response.)

16 CHAIRMAN WILLIAMSON: Okay. I think then it is
17 time to wrap it up. I want to thank the panelists for their
18 excellent contributions. I want to thank all of the
19 panelists today for their excellent contributions.

20 I think this last discussion about what other
21 countries need, we do have a good thing here and we want to
22 keep it going and export it around the world, too, but in
23 any case I think this has been a wonderful day, and a
24 wonderful celebration of our history. And we are going to
25 continue by having the reception at the Commission. And so

1 everybody who wants to go there. Paul, anything further?

2 MR. BARDOS: Just about the shuttle.

3 CHAIRMAN WILLIAMSON: There is a shuttle bus. If
4 you go out the C Street exit and walk to the end, there will
5 be a shuttle bus that will be doing a continuous loop taking
6 people to the Commission, or else you can walk over there.
7 But we will adjourn this session and look forward to seeing
8 you over at the ITC. Thank you.

9 (Applause.)

10 (Whereupon, at 5:38 p.m., Thursday, September 8,
11 2016, the meeting was adjourned.)

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CERTIFICATE OF REPORTER

TITLE: Centennial Conference

INVESTIGATION NOS.:

HEARING DATE: 9-8-2016

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 9-8-2016

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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

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