CENTENNIAL CONFERENCE

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UNITED STATES INTERNATIONAL TRADE COMMISSION

CENTENNIAL CONFERENCE

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.
ITC COMMISSIONERS

Vice-Chairman David S. Johanson (Moderator)
Commissioner Dean A. Pinkert (Moderator)
Commissioner Scott F. Kieff (Moderator)
Commissioner Rhonda K. Schmidtlein (Moderator)
Commissioner Meredith M. Broadbent (Moderator)

KEYNOTE SPEAKERS

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

Ambassador Michael Froman, U.S. Trade Representative

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

Everett Eissenstat, Chief International Trade Counsel, U.S. Senate Committee on Finance (Majority)
KEYNOTE SPEAKERS (CONTINUED)

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

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

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

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

PANEL PARTICIPANTS

Professor Andrew Reamer, The George Washington University

Professor W. Elliot Brownlee, University of California, Santa Barbara
PANEL PARTICIPANTS (CONTINUED)

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

Professor Alfred Eckes, Ohio University

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

Janice Summers, USITC

Arun Butcher, USITC

Lynn Featherstone, Former USITC Director of
Investigations

James Lyons, Former USITC General Counsel

Professor Kara Reynolds, American University

Terence P. Stewart, Partner at Stewart and
Stewart

Professor Chad Brown, Peterson Institute
PANEL PARTICIPANTS (CONTINUED)

Kenneth Mason, Former Secretary of the Commission

V. James Adduci, Adduci, Mastriani & Schaumberg

Sarah Hamblin, Adduci, Mastriani & Schaumberg

Deanna Tanner Okun, Adduci, Mastriani & Schaumberg

N. Timor Yaworski, Former USITC Assistant General Counsel

Stephanie Roberts, Steptoe and Johnson

Dr. Michael Ferrantino, World Bank

Professor Michael Moore, The George Washington University

Commissioner Thelma Askey, Rockardt Group

Catherine Field, Former USTR Deputy General Counsel
PANEL PARTICIPANTS (CONTINUED)

Professor Thomas Prusa, Rutgers University

Neena Shenai, Medtronic

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

Shara Aranoff, Covington and Burling

Daniel Pearson, Cato Institute

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

Lynn Bragg, Glass Packaging Institute

Daniel Leahy, Former USITC Director of the Office of External Relation
MR. BARDOS: I am Paul Bardos. I want to welcome you. I am the Editor-in-Chief of the Commission's Centennial Book, and I have a number of announcements.

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

Now our plans for what to do with the book:

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

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

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

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

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

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

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

And finally, please remember to join us for our fabulous reception starting at 6:15. So those are the
administrative announcements I have, and I want to then turn
it over to Chairman Irving Williamson.

(Applause.)

CHAIRMAN WILLIAMSON: Thank you, Paul.

I am extremely pleased to welcome you to this
Conference celebrating the 100th anniversary of the founding

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

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

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

As you will hear many times today, in 1916 the
creators of the Commission wanted an agency that was
independent, bipartisan, expert, and objective.
President Woodrow Wilson in his own quaint way emphasized that the evidence-focused role of the Commission should be as the following:

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

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

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

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

What is clear is that the Commission was created to be of service to the President, the Executive Branch, and the Congress. It is therefore appropriate that we start off today's conference with messages from those we serve, and
the first message is from President Barak Obama. It is in your program, but I would like to read it:

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

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

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

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

(Pause.)

Okay, I'm sorry. Excuse me. I just got some pages out of order. Here we go.
As you will read in Chapter 3 of the Centennial History, the House Ways and Means Committee under the leadership of Claude Kitchin of North Carolina played a key role in the creation of the Commission.

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

I present to you Chairman Brady.

(Applause.)

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

So throughout the hundred-year history of the Commission, you have served an invaluable role in providing Congress and the Administration with the tools needed to accomplish our trade policy goals.
So this morning I want to first start by offering my sincerest gratitude to the Commission and its staff, past and present, for your commitment to excellence, and to your outstanding work throughout the years. Trade is incredibly important. It is, in my view, our greatest economic freedom, the freedom to buy and sell and compete throughout the world with as low government interference as possible is really at the heart of our free enterprise system.

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

It is critically important today in a world where global trade has changed and impacted everyone's life. It is extremely important that America understand the freedom to trade isn't about China, it isn't about Mexico, it isn't about Europe, it's about America and our individual freedom to trade. The Commission plays an incredibly important role in the policies that we set as a Congress in this area.
Over the past century we've seen, as you know, dramatic changes to nearly every facet of global commerce. These changes have opened incredibly new doors of opportunity, but they've also posed significant challenges for policymakers. Specifically, in the face of an ever-shifting global economic landscape.

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

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

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

That is why we needed to created, for example, a miscellaneous tariff bill process that is transparent, objective, and through. And when we needed to, we turned to the ITC. And with the Commission's support, we will be able to deliver legislation that offers critical tariff relief to
American manufacturers, while also upholding the House's earmark ban.

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

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

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

And, Chairman, I would like to present this framed certificate. We just want to make sure the whole country knew the role of the ITC in so many of our lives. Congratulations.
(Presentation made.)

CHAIRMAN WILLIAMSON: Thank you, very much.

CONGRESSMAN BRADY: Thank you, Chairman.

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

CONGRESSMAN BRADY: My pleasure. Thank you.

(Applause.)

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

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

And so with that, I would like to ask Judge
Sharon Prost, who is Chief Judge for the Court of Appeals
for the Federal Circuit, and she has been a judge in the
Federal Circuit since 2001 and has been Chief Judge since
2014.
I am extremely proud that she is able to join us today. Judge Prost?

(Applause.)

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

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

Again, all I have to do here is, on behalf of my 17 colleagues on the Court of Appeals for the Federal Circuit, is to congratulate you and thank you for all that you do. Your cases are among the most challenging and interesting that we get at the Court of Appeals for the Federal Circuit, so we're always appreciative of your hard work. And I think you understand and appreciate and share with us the delight in doing the work that we do. Trade, intellectual property, you know, they always say the law by definition looks backwards, but we are fortunate enough to be in the challenging fields of trade law and intellectual
property law. So we as judges and you as members of the Executive Branch and otherwise are always chasing the science and technology, chasing changes in our global economy, and just trying to readjust the law so that it makes sense and we get it right.

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

Thank you.

(Applause.)

CHAIRMAN WILLIAMSON: Thank you, Judge Prost.

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

The ITC staff has sought to provide the committees with the information and analysis that the committees need to carry out their responsibilities. This collaboration continues today and is very much evidenced in the new Miscellaneous Tariff bill process that the Commission received in the petition--received and evaluated temporary duty suspensions and reductions. Congressman Brady talked about that, but that is another milestone that we are--another new role we're taking on.
In light of all this continuous collaboration, I am very pleased that the Majority and Minority staff directors from the Trades Committees can be with us today, and I would like each of them to come up and say a few words. And we'll start with Everett Eissenstat, Chief International Trade Counsel, Senate Finance Committee.

(Applause.)

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

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

As you know, Congress created the International Trade Commission and gave it some clear missions. The fulfillment of those missions are done on a daily basis.

The administration of the Trade Remedy laws, protection of Intellectual Property Rights, and of course one of the under-looked tasks that the Commission takes on is the economic analysis that they provide to the Administration and Congress.

And one of the things that I think is most important about the institution and its people, and Chairman
Hatch along with Ranking Member Wyden will be introducing a statement for the record today commemorating the International Trade Commission's Centennial.

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

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

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

We look forward to the continuation of that relationship, and I will look forward to hearing some more remarks, and also reading that exceptionally ambitious book.
I think it is going to be very interesting. And I commend
the Commissioners and the institution for bringing that
forward.

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

(Applause.)

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

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

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

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

It gives me great pleasure to present Ambassador
Michael Froman.

(Applause.)

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

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

Remember that before the ITC was created, it was Congress that not only was doing trade policymaking, but also having to sort through the factual basis of various requests for tariff actions. In the 1920s, there was an Institute for Government Research report that talked about before the ITC was created, or the Tariff Commission as it was then called, statements, and I quote, "Statements were made by members of Congress who participated in tariff legislation that they believed their lives had been shortened by the strain to which they were subjected as members of committees preparing tariff bills."
AMBASSADOR FROMAN: So when President Wilson created the precursor of the ITC, whether it was for the sake of good policymaking, or for the longevity of legislators, it served a very important purpose. Think about the last 100 years. You have seen everything from the move from Depression-era protectionism to the 21st Century local trading system, and hopefully not a return to protectionism; from the last of the sailing cargo vessels, the Model-T, and Boeing's first mail-carrying bi-plane, to the 19,000 TEU Container Ships, the driverless car, and over $400 billion worth of American air freight exports a year.

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

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

You have had formal hearings on topics ranging on everything from watch making, to services' trade. You've acted on over 2,500 anti-dumping and countervailing duty
cases. And you've produced a set of very valuable tools like the DataWeb, to Trade Remedy Spreadsheets that have helped the rest of the government and the industry as a whole do their job.

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

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

(Laughter.)

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

And sometimes from the Executive Branch some would love you to have a panacea to prescribe, but we very much respect the nonpartisan fact-based approach that you
take to all of your work.

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

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

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

And we are now at a similarly important point in history as we work with Congress to ratify TPP. As you all know, it is a complex agreement. It takes time to read. You've read it all. You may be some of the few people who have read it all. It eliminates 18,000 tariffs on U.S. goods. It encourages trade by small and medium sized
businesses. It promotes high labor and environmental
standards. It strengthens intellectual property rights, and
addresses new issues like the flows of digital data and the
growing phenomenon of state-owned enterprises.

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

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

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

Congratulations, and thanks again.

(Appause.)

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

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

(Appause.)

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

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

The analysis of the complexity of global trade
and the impact of trade agreements on the U.S. economy is vital to our understanding as to whether to pass new trade agreements and how to negotiate trade agreements in the future.

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

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

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

(Applause.)

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

(Applause.)

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

(Laughter.)

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

So in any event, I have to say that I personally
am very proud of the role of the Ways and Means Committee in helping to create the ITC, the Tariff Commission, its precursor entity. And as Ambassador Froman was mentioning the sleepless nights of the Members beforehand in trying to announce that, I guarantee you it wasn't the Members; it was the staff.

(Laughter.)

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

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

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

And I found in my office a book from the Tariff Commission. This is the report from 1936, and it's very old and dusty but beautifully bound, but it's amazing to me how
many of the issues that the Tariff Commission worked on then are very similar to what you all are working on now: Investigations about products like linseed oil, and plate glass, electric light bulbs—well, maybe not so much anymore—but even rayon filaments in yarn. And I didn't really—I didn't realize that that was around in 1936. I thought that was newer.

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

(Laughter and applause.)

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

(Applause.)

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

(Laughter.)

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

So in addition to the statements that Chairman
Brady and his counterparts in the Senate have entered into the record, my boss, Ranking Member Levin, has also done so, congratulating the ITC for its 100 years, and expressing great appreciation for the hard work that all of its staff has done.

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

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

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

And I think that is particularly important for the ITC. We have seen how the ITC has used this. We were approached a number of years ago about some concerns about the way the 3-3-7 process works, for example. And I think
many of us were hesitant to legislate in that area. But I think the ITC showed -- did a great job of seeing how it could work within the structure that Congress has provided to sort of efficiently and fairly continue to address 3-3-7 cases.

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

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

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

So as much as we look back, I think we also should look forward to the next 100 years. And in that, I think we look forward to working with the ITC to ensure that
it continues to achieve the mission that it has for the first 100 years.

So thank you very much.

(Applause.)

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

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

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

(Former Commissioners stand to applause.)

CHAIRMAN WILLIAMSON: Thank you. You will be
seeing the current Commissioners later today, so they can stand then. But I also would like, we've heard a lot of words about the importance of the staff and the work they've done over the years, and there are many former staff here today. So I would like them to stand, too. So all former staff of the ITC.

(Former ITC staff stand to applause.)

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

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

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

(Applause.)

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

I also want to thank Alex Hammer, the Commission's Deputy Chief of Staff. Alex has worked tirelessly over the past several months on the arrangements, the logistics, and all the other details that go into making an event such as this.
I also want to thank Vince Litt, Lisa Barton, Deb Bridges, Michael Straud, and Katie Heiner, and Carol Varadi for their work on the conference.

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

(Applause.)

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

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

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

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

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

(Pause.)

These really are klieg lights up here. Doug, do you want to come up? You can be up with us, too. That would be great.
My name is Meredith Broadbent. I'm a Commissioner here at the Commission, and I have the pleasure of moderating our first discussion here today. And I think the Commission, as we grope and consider carefully all different issues, we got together to discuss about a year ago how we would commemorate our 100-year anniversary. And we all looked at ourselves and said, well, we could write a book. And then we thought what that would entail.

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

(Laughter.)

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

And he will be followed with another 15-minute presentation by Andrew Reamer of George Washington University, who is a Professor of Economics at George
Washington, and an authority on the history of federal agencies. And he wrote of the period before the U.S. Tariff Commission was created.

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

(Laughter.)

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

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

(Applause.)

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

It's a great pleasure and honor to be here. For a scholar of the Federal Income Tax and Wartime Finance and Woodrow Wilson, these centennials are a great thing for me. Beginning in 1913 with the Income Tax, extending through the Centennial of American entry into World War I and the
financial measures, but this is a particularly important
centennial because of the contemporary importance of trade
issues and the fact that historians frankly have had
relatively little to say in depth about the history of this
Commission, and indeed tariff policy.

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

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

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

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

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

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

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

The national leadership of the Republican Party, especially President William Howard Taft, tried to use the Tariff Commission idea as a way of maintaining Party unity. But growing disagreements among the defending Republican groups, protectionists opposed to any Tariff Commission, tariff revisionists, and anti-monopoly reformers prevented the Party from developing coherent proposals.
During the Presidential election of 1912, that was the highly dramatic three-way election between Republicans, Democrats, and Progressives.

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

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

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

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

Wilson won the White House with what most
observers believe was a mandate for an across-the-board significant rollback in tariff rates. And in 1913, he engineered just that: passage of the Underwood Tariff would slash rates on the average by about one-third in one year.

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

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

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

With this argument, the traditional leaders of the Tariff Commission movement won new recruits to their cause among large corporations, the labor movement, and a
variety of civic leaders.

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

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

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

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

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

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

Wilson, however, remained rigid. Several of his Cabinet members led by Secretary of the Treasury McAdoo were especially enthusiastic about embracing a tax commission and continued to pressure Wilson.
McAdoo was the best-connected New York politician in the Cabinet, and he concluded a Tariff Commission might be a useful tool for the Treasury to begin to bargain for more favorable treatment of American exports.

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

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

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

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

Kitchin and Wilson also agreed that McAdoo and
his Treasury staff would draft a bill, and that
Representative Henry Rainey of Illinois, the second-ranking
Democrat on Ways and Means, rather than Kitchin, would
introduce it in the House.

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

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

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

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

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

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

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

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

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

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

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

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

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

If I had time today, I would relate how Wilson proceeded to appoint the first members of the Commission. It's a significant story reflecting how Wilson tried to
balance his desire to make the Commission nonpartisan with his continuing commitment to the low-tariff program of the Democratic Party and its hostilities to Republican protectionism. You will have to read the book for that story.

(Laughter.)

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

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

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

This was to Wilson more than economics. He declared, "What we ourselves are seeking is a basis that
will be fair to all and which will nowhere plant the seeds
development as would certainly breed fresh wars."

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

Thank you.

(Applause.)

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

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

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

From 1789 forward, debates over tariff laws--and
there were 42 tariff laws passed between 1789 and 1916--
reflected profound differences in perspectives about the
economic interests of Members' constituents. There were
certain tensions around the appropriate level of government
revenue, protectionism versus free trade, and the interests
of the Nation versus regions versus industry A versus
industry B versus consumers who were always present.
As a result, over this 127 years deliberations in
Congress over tariffs were always complex, passionate,
divisive, and lengthy.

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

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

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

At the same time, Congress's task in commerce
really had skin in the game. One of the prior speakers
talked about, you know, that Members of Congress lost sleep
and years off their lives trying to figure out tariff levels. Well, they had to set tariffs, line by line.

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

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

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

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

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

Secondly was national economic development. The
strategic use of tariffs to protect and promote job, wealth, and revenue generating industries, particularly manufacturing.

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

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

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

And then the third driver of course was constituent interest. Whether you were, you know, a
Congressman from Lowell, Massachusetts, representing textile
manufacturers, or a Southern Representative representing
cotton growers selling to England, you cared a lot, and your
political life was on the line. You had to address the
needs of your constituents.

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

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

One is, clearly they didn't think this way but
this was the result, the distinctions between data and
information and knowledge. And the administrative and the
statistical and the political methods for generating data,
information, and knowledge. So collecting comprehensive,
reliable data on specific economic activities like an
imported shipment. They had to figure out how to do that.
Turning data into useful statistical information,
detailed objective, reliable, descriptions of whole
activities, exports, imports, by year, by state, by port.
The industrial structure.

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

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

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

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

The second time this happened, the Secretary of
the Treasury, Albert Gallatin, said to Congress: Look,
here's my plan for you. The data is lousy, but this is my
suggestion. You just passed the Census Act of 1810. Go back and amend it and do a Census of Manufacturers. In that way, we can figure out what kind of manufacturing you have in this country.

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

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

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

And so Congress reinstituted the Census of Manufacturers in 1840, and it was better. Some learning went on. And so Congress went to Treasury and asked for knowledge. Treasury comes back and says we need better information, let's do a Census of Manufacturers.
The second stream of activity in this first period was trade reports. And from the get-go, Alexander Hamilton, the first Treasury Secretary, was sending to Congress reports on what was—how much money was being raised through tariffs. And between 1792 and 1798, each House of Congress acting independently passed resolutions saying, no, we want better information from you.

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

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

This was a major advance. The problem is that these reports themselves ended up not being that good initially. There were lots of omissions. How do you do the accounting? Human error. Inconsistencies. So the result was that Congress was still kind of working in the dark here.
In the 1840s, Congress tried two more things which started well and then kind of fell apart. One is they asked the State Department to describe tariffs laws in other countries. State produced two reports and then stopped doing it. And then the Treasury Department was told to prepare a much more comprehensive set of economic reports, almost like an 1840 version of what used to be the Statistical Abstract. And Treasury did that twice and then stopped.

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

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

And then things took off from there. So you can look at the 1850 to 1916 period as a progressive and
historically relatively quick going up the ladder of learning. So in 1856, Congress created a--Congress shifted from demanding reports to creating statistical agencies with mandates, and money, and staff. So they did it in State, and they got those missing foreign tariff reports to be sent. It created a Bureau of Statistics in the Treasury Department to create the reports that Treasury was supposed to create 20 years earlier. And then--so it was creating reliable streams of information.

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

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

This commission went in great depth about Internal Revenue, but punt on tariffs because it lacked the information. Congress liked this idea of having an expert, so it created a special commissioner for revenue in
the Treasury Department to give it advice on an annual basis about its revenue streams, including tariffs.

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

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

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

The government got really good at producing huge volumes of data, but the problem was they didn't know how to
translate the data into actionable knowledge.

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

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

So with that, thank you very much.

(Applause.)

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

PROFESSOR IRWIN: So I have to start with Star Trek. Angela Ellard started that way. One of the things I show my class is the Customs Declaration Form for the Apollo Astronauts when they splash down in the Pacific with moon rocks. Now there's no tariff line for moon rocks, but they
did have to fill out the form. It was processed. NASA
didn't have to pay duties to the Treasury Department because
they weren't duty free, but I think this indicates the ITC's
role in the 21st Century, which is as we move to
interplanetary trade, as private sector moves to mining
Mars, mining the Moon to bring things back, you're going to
need some reports indicating what is the impact on the
domestic mining industry when we start bringing back these
rocks?

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

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

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

First is the DataWeb. The DataWeb is an
invaluable resource for practitioners, researchers, in terms
of getting access to U.S. trade data. So I commend very
much the ITC for providing that service.
In addition, I would like to thank the ITC Library of International Trade and the librarians at the ITC. It's incredibly valuable, the resources that they have there. They maintain the whole historical record. They're putting up a lot of documents on PBS, on the website which is very useful for those of us who don't live in Washington. So I am very grateful. I know I speak for a lot of people in the trade policy community, very grateful to the ITC librarians for all they do.

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

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

And what's interesting and fascinating about him is he underwent an intellectual conversion. He had been vetted by the Republicans, the protectionists at the time. He was a safe appointment. Henry Carey, who was a leading intellectual in favor of high tariffs at this time, was a
good friend of his, trusted him, but in his role as Special
Commissioner he began to see the politics behind the tariff.
And he was appalled and disgusted by the difficulty of
going through Congress.

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

The second personality I would like to point out for the second period, for Professor Brownlee's period, and this is a person really who I hope gets his due on an occasion like this and for the International Trade Commission's Centennial, and that is Frank Taussig. Frank Taussig is a towering figure in the history of trade and trade policy. He was Professor of Economics at Harvard. He was a tremendous scholar, an inspiring teacher. He wrote the key memo to David Houston, who was the Secretary of Agriculture in the Wilson Administration, proposing, or at least providing a justification for the creation of a Tariff Commission. And that memo was very important in convincing President Wilson to change his position and adopt and advocate for a Tariff Commission.
And of course he was later appointed as the first Chairperson of, Chairman of the Tariff Commission, and he brought three things to that role. He brought tremendous good sense. He brought expert knowledge -- there's probably no person in America who knew more about tariff and tariff history at that time. And perhaps most importantly, he brought integrity, because he was respected across the aisle for this views and his knowledge. And starting the Tariff Commission on a good step forward in terms of being sound, trusted, was very important. Because as we look a little bit later, as we look at the Tariff Commission in the 1920s, we will see integrity is not the first word that would come to mind in describing the commission at that time.

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

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

That 1919 Report is still worth reading today.
It is exceptionally interesting and very sound in terms of its judgments on the future direction of U.S. trade policy, and I think is a tribute to what the Tariff Commission has done in the past and hopefully will continue to do in the future in terms of providing analysis and insight into U.S. trade policy that we've seen.

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

(Applause.)

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

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

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

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

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

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

So part of my job is to figure out ways to use that House to teach history. And as someone who was a history undergraduate, although I was a lawyer for 25 years—my mother now thinks I've finally found the perfect job for me—but I understand that good history is meaningful today. And I think the papers have done a good job of explaining
what went on then and how it relates to what's going on today.

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

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

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

There we are.

(Laughter.)

MR. ENHOLM: I assume the microphone still works, so we will carry on. How the history relates to our own times--oh, that's nice. I can see you're all here, actually, so that's good.
So let me jump into that, then, very quickly and say that Woodrow Wilson is often considered one of the first modern American Presidents, and that is because he really did see the opportunity to create a rational Federal Government system with the associated processes and, dare I say, bureaucracies which in this town I think is not a pejorative term, and he did that. He grew up in an era of, you know, he was born in 1857 and really came of age in the late 19th Century.

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

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

And today we are so steeped in a thought of data, data, data, setting metrics, setting goals, and managing to
them. That really was not something that Woodrow Wilson was
raised to think about and really came about during his
lifetime.

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

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

And we also need to not know, or to unlearn the
things that they didn't know in their time. Many people
come to the Woodrow Wilson House with sort of a mad-on about
Wilson's having laid the foundation for the nanny state, as
it's sometimes characterized, but I like to point out that
Wilson didn't know that World War II or the Great Depression
were going to come. He didn't even know that World War I
was going to come. It came as a complete shock to the
people of that era. And, frankly, world trade was beginning
to burgeon in that time before World War I, and it was that
War and the cataclysm that it represented that set back
world trade really for decades.

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

(Applause.)

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

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

PROFESSOR IRWIN: I'd vote for Taussig. Because,

once again, it was his--remember Professor Brownlee's
presentation made this very clear--President Wilson was very undecided, was opposed to a tariff commission initially.
House Ways and Means was very much opposed, as well. They didn't want to give up the prerogative.

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

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

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

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

It is very difficult to sort out, among the three
of them, who really shaped the final ideas. Wilson liked Houston's approach, which was narrow. He wanted a well-defined, limited tax commission, a fact-finding body, a very technocratic.

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

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

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

I think the statue should go to TR. I think he's the one who elevated this issue nationally for the first time. I think without TR and the leadership of the
Progressive Republican Party this idea would have gotten nowhere. It would not have made it through the Wilson Administration. McAdoo was intellectually the closest to TR. So I would trace it from actually TR to McAdoo to the final proposal.

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

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

COMMISSIONER BROADBENT: Good. I want to come at that question from maybe the reverse perspective. It sounds from Dr. Reamer's presentation that there was a perceived need for the Tariff Commission for hundreds of years, for a hundred years before we were actually established, and that tariff policy was central really to most big political debates and elections and so forth.
Why did it take so long to establish the Commission?

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

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

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

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

So there was a long process. The rise of
academic disciplines, as was mentioned, and the notion that
there could be a, quote/unquote "objective truth" was
something that was relatively new.

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

COMMISSIONER BROADBENT: Okay--Sure.

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

The Democratic Party saw tariff commissions as a
potential for permanent capture on the part of
protectionists. Republicans viewed tariff commissions as
being the covert way of working toward free trade.

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

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

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

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

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

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

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

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

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

PROFESSOR BROWNLEE: And that actually could work against him.

(Laughter.)

MR. ENHOLM: I well understand that. And McAdoo wanted the old man's endorsement to run for President, as you certainly know, and never got it. So there were limits.
But still he certainly had the old man's ear, and I think that is an interesting point.

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

(Applause.)

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

(Pause.)

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

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

Well I'm pleased to be the moderator for today's
Panel on Tariff Activities. I've always enjoyed working on tariff matters, and in particular I've enjoyed working with the Harmonized Tariff Schedule of the United States, or the HTS.

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

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

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

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

Second, for trade practitioners tariffs are at the heart of what we do. I began my legal career as an associate attorney at the law firm of Stewart and Stewart.
During one of my early weeks there, Terence Stewart, the firm's managing partner, told me that the first step to take when working on any trade matter is to go to the Harmonized Tariff Schedule and look up the relevant article's HTS number.

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

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

(Laughter.)

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

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

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

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

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

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

(Laughter.)

VICE CHAIRMAN JOHANSON: --and the HTS makes the discovery of these data possible. Some of today's panelists are fortunate to have spent decades working on tariff matters.
Alfred Eckes is a former Chairman of the ITC. He is currently a Professor at Ohio University. Gene Rosengarden was the first Director of the ITC's Office of Tariff and Trade Agreements. Janice Summers has worked in the ITC's Office of Tariff Affairs on Trade Agreements since 1981. Another of the panelists, Arun Butcher, is just now embarking on a career involving tariff matters. He is a new attorney and works in the ITC's Office of Tariff Affairs and Trade Agreements.

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

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

(Applause.)

PROFESSOR ECKES: Thank you, Mr. Vice Chairman. Good morning everyone. It's great to be back with you. I do have a tendency to shout, so I want to push the mike back a little bit. But if you can't hear me, why raise your hands and I will jump around a bit.
I confess I know very little about the Harmonized Code, and what I learned was from Gene Rosengarden 25 years ago. So I refer all questions about the Harmonized Code to him, and to Janice, and to others who have worked on it more recently.

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

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

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

And if Commissioner Broadbent had asked the
question to me that she did of the previous panel, I would
suggest that Reed Smoot is one of several who merits a
statue outside the Commission building.

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

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

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

     The Commission remained in Smoot's office space
until the 1980s when structural problems and rodents in the
basement promoted the Commissioners to ask Congress for new
facilities. I will always remember the occasion in April of 1983 when Chairman Bob Dole and former Chairman Russell Long, and several colleagues, came to a Chinese carry-out luncheon that we had prepared in the old building.

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

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

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

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

I suspect the last President to pay much personal attention to the Commission—and I could be wrong on this—was President Jimmy Carter, who reportedly sat in the White
House and actually read and underlined and put marginal notes in our reports. Some would say that he missed an opportunity to occupy himself with more significant issues, but those in this room may feel differently.

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

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

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

It would help establish the tariff, or at least make recommendations. That is, until the Commission
imploded during the much-publicized and politicized sugar investigation of 1924. That investigation tested the Commission's competence, which would be assailed, the lack of collegiality among Commissioners was exposed, the integrity of individual Commissioners impugned.

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

(Laughter.)

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

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

His example created a bitter division within the Commission, and Congress sided with Culbertson's majority. It amended the Tariff Commission's appropriation to bar
salary payments to any Commissioner participating in a case
in which any member of his family had personal financial
interest.

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

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

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

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

We do not have time to revisit Commission
activities after the 1934 Reciprocal Trade Agreements Act
was passed, but another set of issues arose. As the Commission became actively involved in the Reciprocal Trade Agreements Program, indeed Commissioners engaged in negotiations. Staff members were involved in more than supplying information to the State Department which handled negotiations. Some of the staff members engaged in negotiations.

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

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

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

Thank you very much. I look forward to your questions.
VICE CHAIRMAN JOHANSON: Thank you. And our next panelist is Gene Rosengarden, the former Director of the Office--I'm sorry, Jan Summers, who currently works in the Office of Tariff Affairs and Trade Agreements. Thank you.

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

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

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

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

(Laughter.)

MS. SUMMERS: --and therefore was dutiable.

(Laughter.)

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

(Applause.)

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

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

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

(Laughter.)
MR. ROSENGARDEN: My wife never did.

(Laughter.)

MR. ROSENGARDEN: I have about seven or eight
minutes to discuss the last 62 years, and I'm going to fly.

1954, Congress passes the Tariff Simplification Act of 1954
requiring the Commission to compile logical schedules,
reasonable and consistent in arrangement and terminology.

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

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

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

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

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

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

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

(Laughter.)

MR. ROSENGARDEN: --that had to be archived. I think it was 96. And he could find a document in any one of them. He was really rather amazing.
This brings us to the Harmonized System. In 1973 DOT, which is not really considered a trade agency, does a study and finds that as goods move from the purview of the shipper to the ultimate consignee, it can go under classification within the purview of about 17 classification systems, not just the government systems but the transport systems as well.

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

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

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

They wanted to in effect modernize it, and they wanted to expand the influence of the organization. So they greeted it. They wanted it. And they wanted the United
States in the game, the U.S., and Canada, and Australia were not yet in that game.

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

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

We tried to modernize as much as we can, but the
great lesson that we learned basically was that you don't
get what you want, you're lucky to get what you need. And
we got what we need. We had an enormous amount of support
from industry, and reasonably so I think because they had so
much at stake here.

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

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

HS had to go through five forums. After the WCO,
it came back to the Commission. We had 19 months to prepare
a tariff based on these new codes. That report was 11
pounds. It included not only the nomenclature but
cross-references between the old and the new, the source of all the rates of duty, and so everybody could tell where their ox was being gored.

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

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

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

It facilitated, if not enabled, all of these 200 Free Trade Agreements that you see. Because if you're not using the same system for tariffs, negotiations are really prolonged. In addition, we had U.S. imports and exports on the same system now. That's the first time. And we have a
promise from the Commerce Department to seek comparability with imports and exports with their output information, so you can more easily determine U.S. consumption of a product.

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

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

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

If I could take a minute and a half, there's something else I'd just like to mention about the Commission
and its work practices. Working in an independent agency in this town is a luxury, but it's also a responsibility. And I believe that the work practices of the Commission and the organization and the way the work is done really strikes at the soul of the place.

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

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

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

In addition, the senior staffs of the Commission
staff always work as cooperatively as possible with one
another, because the problem isn't people, the problem is
the problem of that investigation.

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

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

(Applause.)

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

MS. NORTON: Thank you. And thank you very much
for inviting me to come and participate in this birthday
celebration today. It's great to see so many old friends
and colleagues, former bosses, several former lawyers here.
So I'm really enjoying it.
I was asked to participate on this panel because in 1982 when I was working in the Commission's Office of Economics I was detailed over to USTR to assist in the Executive Branch review of the conversion of the TSUS to the Harmonized System.

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

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

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

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

And then thirdly, we had to do the implementing
legislation to implement the Harmonized Tariff Schedule in 1988.

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

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

There were also some concerns of course, not just about duty rates going up, or going down, but going the other way where there are occasionally, would be people who were importing things from other countries as inputs, and so
they, you know, wanted to make sure that their tariff rate
wasn't going up, and that would have been a problem for
their production processes.

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

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

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

And at the same time that we were defending our
own tariff conversion, we had to be analyzing the Tariff
Schedules and the tariff conversions of all of our trading
partners to make sure that in fact our industries were being
protected and would not suffer tariff increases abroad.

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

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

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

We also had Andy Rollick who I saw here earlier
today from the Commission's Computer Data Division. He was
in Geneva, and he also spent time in USTR Washington helping
us with statistical and other technical analysis, and also
Larry Butler who was an industry analyst at the Commission and he, along with Andy, had spent time in Geneva and at USTR Washington.

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

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

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

And just finally, I would say that I agree completely with Gene on all of the trade facilitation benefits that he mentioned. I had it on the import side, on the export side, as helping to facilitate negotiations and
for transport and shipping documents, as well as just
overall uniformity and predictability in tariff
classifications.

Thank you.

(Applause.)

Vice Chairman Johanson: Thank you, Ms. Norton.
And our last commenter will be Kenneth Mason, who is -- was
formerly Secretary at the ITC.

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

(Laughter.)

Mr. Mason: I had a dentist appointment that day.

(Laughter.)

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

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

(Laughter.)

Mr. Mason: I'm not going to get into the details
of the previous speakers. I went to the Commission in 1960.

I was in the Agriculture Division -- Mr. Vice Chairman, you
didn't see me. You were out of my -- I was out of your
sight. I raised my hand. I know what a Hennie is.

(Laughter.)

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

(Laughter.)

MR. MASON: I don't know what you did with that.

I also had the experience in 1963 of going to Geneva on an
Article XXVIII team of about 20 people from various agencies
to explain the change from the Tariff paragraphs and
Schedule A numbers to the TSUSA numbers.

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

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

VICE CHAIRMAN JOHANSON: Thank you, Mr. Mason, for
(Applause.)

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

(Laughter.)

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

That being said, how can it be improved?

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

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

One of the issues that I think you're interested in, too, is the accuracy of data. And generally rates are very low. I mean, I think the trade rate average now is probably about one percent, or one percent-and-a-fraction. Exchange rates differ more than that.
And we did a report on accuracy a number of years ago, around 25 years ago now, and the results were pretty good. I don't know if they would still be good, but a self-initiated study on the accuracy of imports would certainly pinpoint some problems perhaps, and send a message to those agencies that collect the data, Customs particularly, Commerce, as to how good a job they're doing.

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

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

(No response.)

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

(No response.)

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

Another question I have for you is, can you all discuss the attempts to bring new technology into the HTS? An example I know of is that most people in the room have mobile phones, or Smart Phones. How are they handled in the current HTS, given the constant change in technology?
MR. ROSENGARDEN: I guess a phone is a phone, whether it's wireless or not. The problem is, you're always behind in this business. You can't ever catch up. You don't know what's happening in the laboratory. If you go to Brussels with a new product that's just on the market, they'll tell you there's not enough trade to isolate it yet. That's one of the problems. They want probably $50 million in world trade to isolate the good. So it is very difficult to keep up. Thankfully, the rates are very low, so it may not be much significance to it, unless you're going to do a study, and then you have a problem.

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

CHAD HOUSTON: My name is Chad Houston (off-microphone). Getting back to the issue of how you can potentially improve upon data collection in the HTS, we've noticed in sort of the economic research literature with the global fragmentation of production and supply chains that there is a growing disconnect between how, you know, we record trade at the border which is gross flows, and what really matters, which is value-added flows. So for those of you folks that are in charge of,
you know, kind of keeping track of the nomenclature, do you foresee a period down the line in which we actually might get data on value-added trade flows and stop having to use input/output techniques that us economists can come up with, but that are somewhat inaccurate in terms of trying to come up with the actual value-added numbers?

MR. ROSENGARDEN: I have no idea.

(Laughter.)

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

VICE CHAIRMAN JOHANSON: All right. I think that our time is about expired. I appreciate you all being here today. I certainly thank the panelists for being here today. Once again, the HTS always raises a lot of questions in our minds. And once again, I was thumbing through it again yesterday and, going back to Chapter 1, I am going to leave you all with a question. That is: Why do live foxes have a relatively high tariff of 4.8 percent? And why are
live foxes not covered under GSP? Somebody has the answer.
I can't figure out what it is.
And I will leave you all with that before we go
to lunch. Thank you.

(Applause.)

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

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

AFTERNOON SESSION
(1:10 p.m.)

CHAIRMAN WILLIAMSON: Good afternoon, everyone.
As I had noted earlier, a key element of the mission of the
Commission is to investigate and make determinations in
unfair trade cases. And given this role, it is appropriate
that we hear from members of the courts that review our
determinations.

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

Judge Gordon has been on the CIT since 2006, and
before that he was Clerk of the Court. As you can see from
his bio, he has long and rich experience. It gives us
particular pleasure to welcome him from New York to come
down and join us today for this event, and to say a few
words.

Judge Gordon?

(Applause.)

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

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

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

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

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

(Applause.)

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

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

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

Throughout the years, leastwise in the past 38 years from my perspective first as a Hill staffer, then as a member of the staff of the Clerk's office of the Court of International Trade, and now as a judge, I have witnessed personally the cooperation of the Commission and its staff in making the litigation process meet the goals of US CIT
Rule One. Namely, the just, speedy, and cost-effective disposition of trade cases.

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

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

So on behalf of the court and our Bar, we again congratulate the Commission on its Centennial anniversary and wish it well in the days, months, and years to come.

Thank you for your kind attention.

(Appause.)

MR. BARDOS: Thank you very much, Judge Gordon.

The next panel will be on Import Injury and will be moderated by Commissioner Pinkert. So, please, if you would come up and take control.

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

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

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

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

Now to begin the session this afternoon, we are going to turn things over to Jim Lyons and Lynn Featherstone to talk about ADCBD. Jim Lyons is a former General Counsel of the U.S. International Trade Commission. He served in that capacity from December 2004 until July 2012, and was the Deputy General Counsel from 2001 to 2004.
He has practiced international trade law for more than 35 years, with an emphasis on trade remedy law and customs-related issues. After graduating from Georgetown University Law Center in 1977, he worked in the General Counsel's offices of the Departments of Treasury and Commerce, and he entered private practice in 1982 before returning to federal service.

From 1997 to 2001, he was Assistant General Counsel with the Office of the U.S. Trade Representative. Lynn Featherstone served as the Commission's Director of Investigations from 1988 until 2003 when he retired. Prior to that, he was Supervisory Investigator and Commodity Industry Analyst at the Commission. Between undergraduate and graduate schools, he served two years as a captain and two as a lieutenant in the U.S. Army.

So Lynn and Jim, take it away.

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

I'll kind of run through the sequential order of the chapter. First, the antidumping investigations, and I would refer any of those interested to the Commission's website where there is an antidumping and countervailing
duty handbook. It has lots of good information.

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

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

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

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

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

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

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

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

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

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

The next significant change in antidumping and
countervailing duty investigations came in 1995 when the Uruguay Rounds Agreement Act required reviews of all orders currently in place, and all new orders five years after they were issued.

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

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

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

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

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

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

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

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

For the very first time, there were time limits at a whole sequence of different stages. There were different factors to consider. There were different
processes, and there were important aspects of transparency which had not existed before.

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

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

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

Prior to that, many litigants found themselves very uncertain. Where do I bring my action? Do I bring it before the Customs Court? Do I bring it to a local federal district court? The Customs Court Act clarified that, making it clear that the Court of International Trade was the place to bring your action if you were challenging a Commission or Commerce determination.
Not long after that, there was a major change creating the Federal Circuit Court of Appeals. Roughly speaking, I think it was 1985-1986, that court came into being creating new responsibilities for that court, and additional oversight with regard to review of Commission determinations.

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

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

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

So the complexity, there's no question of the complexity of investigations included after those milestones
in the statutory changes. That also led to a significant increase in the administrative actions of investigations, as the number of petitions multiplied several fold.

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

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

Having said that, I think the Commission has had a remarkable record in terms of its ability to sustain a determination, which I think comes back to the time spent by Commissioners and the staff doing these cases.
Obviously every result doesn't please everybody, otherwise you wouldn't be in litigation. But I think the fact that so many of the decisions of the Commission have been sustained over time is a credit to it, and also as other litigants on the other side of the table would say: It's the standard of review. And the standard of review in these cases does give the Commission a head start. It is somewhat preferential. The courts reviewing these decisions are not going to put themselves in place of the Commission. They are going to take a look and see whether the Commission acted in accordance with the law, whether the determination is supported by substantial evidence, but they're not acting as a seventh commissioner.

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

(Applause.)

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

Professor Reynolds?

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

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

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

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

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

So under a safeguard investigation, increased
imports have to be a substantial factor causing or threatening to cause serious injury. And so this is in contrast to the material injury standard of antidumping investigations. And both in the legislative history and legally, meeting that serious injury threshold is supposed to be harder than meeting the material injury threshold.

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

To give a little bit of historical context of how we got to today, the first safeguard, or sometimes they're called "escape clause" provision appeared in the 1942 U.S.-Mexico Trade Agreement. And just three years later in the 1945, President Truman signed an Executive Order requiring that all U.S. trade agreements include an escape clause provision. And so it was under this Executive Order that the U.S. pressured the first GATT Agreement to also include a safeguard provision.
The first formal legislation in the United States that really documented how an industry would go about giving safeguard protection, it gave the Commission the ability to undertake these investigations, was the Trade Agreement Extension Act of 1951.

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

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

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

In the early 1960s, there was a feeling amongst some policymakers that it was almost unseemly for the United States to be promoting escape clauses or safeguard
protection; that we would be encouraging our trading
partners to renege on some of their own agreements with the
United States.

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

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

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

So then you get to the early 1970s and there's
really a feeling that we swung too hard in the other way.
Legislation, the legislative history when you look at the
Trade Act of 1974, you read through Congressional
statements, it said the 1962 law has proven to be an inadequate mechanism for providing relief to domestic industries. So there was a specific effort to loosen those restrictions and make it easier for industries to get safeguard protection.

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

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

So after the passage of this law, you did see a spike in the number of petitions between 1974 and 1977, but actually very few of those petitions actually resulted in protection. And so you saw the number of petitions filed actually drop off. So since 1974, the Commission has conducted just 73 global safeguard investigations through 2015, and the last safeguard, full-scale safeguard investigation was in 2002, and that was with the steel safeguards. There was a petition that was filed last year in aluminum that was withdrawn, that didn't proceed to a full investigation.
So one of the questions to ask is: Why are there so few safeguard investigations compared to other forms of trade remedies like antidumping and countervailing duty? It's likely partly due to the higher standards: the serious injury versus the material injury clause.

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

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

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

So to conclude my time, I just wanted to mention how U.S. safeguard kind of fits in with WTO law. The United States urged for there to be an escape clause in the
original GATT language, and so the original GATT language very much mirrored U.S. legislation and really wasn't changed until the 1995 Uruguay Round, at which time the United States also made some modifications to their safeguard legislation to match what was passed in the Uruguay Round.

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

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

But what early dispute settlement cases, the appellate bodies have said, and this was in particular a case, an Argentinian case, their safeguard action, is that there has to be some parallel. So that if you look at all imports in your injury investigation and the safeguard action has to be imposed on all imports. And oftentimes
when Presidential action has been taken, our Free Trade Agreement partners have been excluded from that safeguard action. And that is what the WTO has taken action with.

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

Thank you.

(Appause.)

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

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

Mr. Stewart has a B.A. from the College of The Holy Cross, an MBA from Harvard University, and an LLM from
Georgetown University Law School. He was an Adjunct Professor at Georgetown Law from 1995 to 2012, teaching courses on the GATT and the WTO. His practice focuses on international trade, notably trade remedies, where he's a frequent visitor to the ITC, although I don't see him roaming the halls very much, including antidumping, countervailing duty, and safeguard escape clause cases, as well as WTO and FTA negotiations and dispute settlement.

So, Professor Eckes and Mr. Stewart.

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

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

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

The results were to be deposited in the ITC
library and made available to other facilities and scholars. Bruce Clubb did the initial interview with Noel Hemmendinger, a lawyer who represented Japanese clients since the early 1950s. I interviewed Eugene Stewart, who represented domestic industries over the same period.

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

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

In the earlier years he said Commissioners gave abundant time to counsel and witnesses in presenting their cases. He added that one could simply call at a Commissioner's office with or without an appointment, be ushered into the office and invited to sit down and talk about the case. He said there was nothing untoward about such discussions because all counsel had the same opportunity, should they select it.
Noel Hemmendinger, who represented importers, also praised the relative openness and informality of the proceedings and the opportunity of counsel to cross-examine witnesses at length.

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

(Laughter.)

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

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

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

MR. STEWART: Thanks, Al.

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

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

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

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

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

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

For my Dad and for Noel Hemmendinger and for Joe Dorn, their initial cases that they did in this area were all safeguards. I doubt you could find a practitioner in the last 20 years for whom that would be a true statement today.
Al mentioned the very high regard for both Commissioners and the Commission staff. That was reflected by all of the interviews, and I think for those of us who practice today there's still an extraordinarily high regard for the Commission staff.

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

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

The '79 Act and the move to a formal administrative record, APR access, judicial review, dealing with two levels of court review and also potential WTO cases
obviously has changed the nature of the practice, and has
changed I think the quality of the information.

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

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

And what comes out of both those cases that are
identified, the '80 case and the '82 steel trade remedy
cases and the '84 steel 201 case, was that in those days the
U.S. had flexibility. There wasn't yet the Safeguard
Agreements in the WTO which bans the VERs and VRAs, and
hence governments could reach political solutions that were
important to the economic development and the economic
progress of the country under the trade rules.
That is no longer possible. And it was interesting that the reflections of parties on both sides viewed that as a significant loss.

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

(Applause.)

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

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

So let's start with Professor Brown.

(Applause.)

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

So my name is Chad Brown and I'm at Peterson, but
basically think of me as just kind of an academic. I've never worked at the ITC, as much as I might have liked to. I testified before the ITC once about 12 years ago.

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

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

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

So back in the early 2000s there had been a lot of research on the U.S. and use of antidumping and what the ITC was doing, and what Commerce was doing, done by some of my wonderful colleagues out there in the crowd, Professor Irwin, Professor Moore, Professor Prusa, Professor Reynolds, but what we noticed was, hey, there were all these developing countries especially that were starting to use antidumping, and nobody was studying it yet.
And part of that, we thought, was because of data. And so I went to the World Bank and brought this to their attention and said, you know, you guys at the World Bank should start collecting data on this. I was still an academic at the time in Boston. And my wonderful friends at the Bank said that sounds like a great idea, why don't you do it?

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

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

So Temporary Trade Barriers Database. But it's from that perspective that I wanted to give my two cents
about the ITCl And the perspective that bring here is, the
determination of public policy is increasingly reliant on
economic evidence.

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

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

The motivation for why this is important of
course is the policymakers and politicians like to run
around and tell you statistics like exports are important.
Why? Because 95 percent of the world's consumers live
outside of the United States, right? Well, we're
increasingly seeing that with trade remedies, as well. An
increasing majority of trade remedy use is happening outside
of the United States and it is increasingly affecting U.S.
exporters, and so it's sort of pushing the model that you
have developed here in terms of rigor and transparency.

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

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

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

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

Thank you.

(Appause.)

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

Much has been—oh, by the way, we did not eat all the candy.

(Laughter.)

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

(Laughter.)

MR. MASON: When I became Secretary in 1960,
transparency was a--never used it as a word. The staff in a dumping case would write up a staff report, send it to the Commissioners. The Commissioners would meet in closed session, decide the case. We had it locked up in my office until day of release. What was published was a very thin little publication. It was just the opinions. There was no background, no staff report; it was so small that when we sent our records to archives you could put in one box four, maybe five dumping cases.

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

(Laughter.)

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

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

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

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

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

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

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

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

(Applause.)

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

(Pause.)

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

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

I grew up on the South Side of Chicago in Hyde Park, right on the University of Chicago campus, and there are a number of murals like this that adorn the underpasses
of the, in those days, Illinois Central Railroad that went along the lakefront. And I always thought a lot about these murals, because of course as a kid you pay a lot of attention to the things you see. And these murals I think give us a chance to think about how innovation, how the economy, and how the government interact with each other in these areas.

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

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

Whether we ultimately consummate a deal or not, we can communicate with each other a great deal, and in so doing become socialized with each other and learn a lot about each other.
And just on the last panel, the discussions about transparency, it is a feature not a flaw in my perspective as a former academic to write a detailed opinion and be told I'm wrong. I think that's great. That helps me figure out how to write a better one next time, and it helps I think each of us better understand what about a particular case, a particular docket, a particular statute, matters to particular groups of people.

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

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

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

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

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

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

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

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

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

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

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

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

As we all deal as lawyers with rules every day, there's a section on the rules. That was a fairly interesting section to write. We went a little bit down the
rabbit hole looking for Federal Register Notices, and some of them predate the Federal Register.

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

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

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

The Commission, as one of its early investigative duties, had a request from Ways and Means for a report that's now referred to just as the 1919 report, but it was an investigation of dumping in various areas. And it also recognized in that report the lack of coverage of unfair
competition in import trade other than dumping, as well as
some difficulties with injury and dumping as well.

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

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

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

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

I'll just give you a couple of highlights. The
major shift in the '74 comes from being a statute in which
the President is responsible for implementing the violation, and the Commission gives advice, to flipping basically over so that the Commission would institute a remedy and the President would have the opportunity to review.

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

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

(Applause.)

MR. ADDUCI: Well thank you, Commissioner. As Yogi Berra said about baseball, I can say about the statute, Section 337 has been very, very good to me.

(Laughter.)

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

Now in 1976--I'm going to talk a little bit about the evolution of the Office of Unfair Import Investigations--in 1976, which is the year I arrived at the Commission as
an attorney advisor to one of the Commissioners, the
Commission decided to undertake an across-the-board
reorganization of all the Commission offices, including the
Office of the General Counsel.

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

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

(Laughter.)

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

This concern of the Commission found support in
the APA, which prohibited the decision makers--that is, the
Commissioners--and its legal advisors from having ex parte communications with the private parties who, following the 1974 Trade Act, as you know, had a much larger role in Section 337 investigations.

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

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

Today, OUII serves three primary functions. First, it offers complainants an opportunity to sit down and review the draft complaint, the so-called pre-filing review. This advice is neither binding on the complainant, nor is it required, but certainly from a practitioner's point of view it is very much to be encouraged and done.
Second, the OUII examines complaints for legal sufficiency and compliance with the T-10 rules, and makes recommendations to the Commission on whether or not to institute an investigation.

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

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

(Applause.)

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

Good afternoon. It's a great honor to be here to
help the Commission celebrate its 100th birthday. I was on
the Commission long enough to celebrate a couple of
significant birthdays, not as significant as the Centennial
Celebration, but certainly I have fond memories of being at
the Commission and sharing those times. And I certainly
think that this is a terrific opportunity to recognize the
important role the Commission has played, and I really want
to join all of those who have been here today to say thank
you both to the tremendously hard-working staff. The
Commission has many people who have served, and celebrate
many more birthdays at the Commission than I did, and that
continue to play such an important role, and then to
incorporate new staff as the mission of the Commission
continues to evolve. And then also just again to say thank
you to all my former colleagues and to the current
Commissioners for the work they do as public servants in an
important role.

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

So I hope as we look forward to what the
Commission can do in the next hundred years, that that is an area where both Congress and the President will look for ways to have the objective data that the Commission, objective works of the Commission, play a larger role in the dialogue.

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

But what do you say about the people who write the story about the Commission will be how it is remembered. So this is an important endeavor and I hope that our chapter contributes to that dialogue, and that you'll have an opportunity to read it. I learned things as we went through the history, and I think it's going to be, and probably because I guess the Commissioners and others have had a chance to see all the chapters together, that will be a nice
way to put them together. Because you have this political undertone to everything, and yet for our chapter we tried very much to focus on, you know, what did the statutes say? What did they get changed to? And there is some discussion about the politics in some of these other chapters, but it is very much what happens in the Commission at many levels where you have the Congress and the politics, and that's important.

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

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

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

His remarks were, he said that Congress has been reluctant to legislate on 337, and know that the creative
thinking of the Commission in taking the statute as the Congress wrote the statute, but undertaking what it could do with the statute to address what were some of the criticisms.

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

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

So it wasn't litigated that much in its early history. So in some ways this isn't a historical issue in the sense that there was a statute, you had to have a domestic industry, you proved it through your investments in capital and labor, and then as so many of us know because we
talk about it so much, the 1988 Act is what changes it to recognize that manufacturing is no longer the only thing that's important to the U.S. economy. And if you're protecting the U.S. economy you're also protecting intellectual property.

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

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

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

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

(Applause.)

COMMISSIONER KIEFF: Thank you.

Ms. Roberts, Stephanie Roberts, from Steptoe.

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

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

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

So overall, the chapter I thought was really
good, it gave you a good view of the history of the ITC, the
evolution of the rules, things that you don't realize just
coming into the practice a few years ago.

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

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

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

There were also--there was an in-depth
discussion, or a discussion of the injury requirement, and I
thought it was interesting that it really hasn't changed for
non-federally registered IP rights. And it's largely
remained the same. So I thought that was interesting.
The chapter did a really good job as well of going into the creation and the rule that OUII has played in all of the investigations and their importance in the Commission.

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

That's it.

(Applause.)

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

MR. YAWORSKI: Very good. Thank you.

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

I do commend to you the chapter in the forthcoming book which is well written, and it is very thorough. But I think if one does step back and attempt to
look at the sweep of the 94-year sweep of the statute, the
salient feature is of course the Trade Act of '74.

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

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

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

    Russ was a brilliant man, but his background was
in Customs. He came from the Customs Bureau, and his
interest was really in Tariff affairs. So when the statute
was amended, one of the things it did was it allowed the--it
permitted the Commission to represent itself in court, rather than having to go through the Department of Justice.

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

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

So the statute really got a jump start in '75. I think the effective date was 1/1/75, and it's sort of been onward and upward ever since. The 337 caseload was quite heavy, I thought, when I retired in '04, and I'm told it's worse today, although there was I guess a couple of years where the caseload declined slightly. But the general trend is upward.

And one can only wonder what the statute will look like in 100 years. Will it still exist? Will the Commission still exist in 100 years? I guess our great grandchildren will live to see it.

Finally, I just have a brief personal aside, which doesn't have anything to do with 337. My father, who was an economist by trade, worked at the Commission from 1947 until 1969. He was a chief of one of the commodities
divisions back when the commodity industry analysts played a much more centric role in the Commission than they do today.

Anyway, as a small boy in the late—and you can see what I look like, so I'm a long way from being a small boy—in the late '40s and early '50s, I used to come and visit him. And I remember, this is when we were in the 7th and E Street building that Al Eckes mentioned. I remember you could walk up the stairs, in the front door, and just go anywhere you wanted, to see your father, or whatever.

And I have to—I can't help but comparing that, contrasting that to the last time I tried to get into the Commission building. I think it's easier to get into Fort Knox than it is to get into the Commission.

Thank you, very much.

(Laughter and applause.)

COMMISSIONER KIEFF: Thank you, each, very much.

Let me ask us, as we turn to an opportunity for some dynamic exchange and dialogue with this panel, let me also ask for the record if you will for the first panel about the history of the Commission a question that maybe someone can answer in the book. But that question is:

It is impossible for me, and I think anyone else, to work at the Commission without coming away with a sense that the staff is just incredibly bright, and collegial, and cooperative, and straight down the middle of the strike
zone. And that's great. Okay. But I just think it's possible that people in other government agencies also are, and yet it turns out as people they may be the same, but as groups they act differently.

The ITC as a group maintains that neutral collaborative, analytical favor in a way that is distinct inside Washington. And so the question is whether it is the structure of the Commission, which is not common to the other three-letter commissions that share the 100-year history, does that structure help explain that collaborative, analytical, neutral approach?

And if so, who gets the Nobel Prize for coming up with that structure? My understanding was: Taussig. But I may be wrong. And my understanding was, roughly in the writings in the post-Civil War era there was some explicit discussion about how to implement that collaborative, neutral, analytical approach.

So that's the question I would love the answer to ponder, because I think it's been a key to the success of the Commission. For this panel, if we could start with the question, why do private parties pick the ITC as a place to bring their unfair competition and intellectual property cases?

MR. ADDUCI: My experience—is this on?--is it's quite straightforward. The Commission offers at least three
things that are not found elsewhere.

It's the speed. It's the automatic injunction, if you win, which post-eBay is no longer the case in District Court. And it is the expertise of the judges. We have six individuals who do patent cases nonstop, so they are, as we say, patent savvy supported by very knowledgeable and experienced staff. That same expertise extends to the General Counsel's office, and to OUII. And, I might say, to most of the Commissioners as well.

So particularly for companies, complainants, that have products with a relatively short shelf life like cell phones, the ITC is the place to come. You get relief in 16, 17 months, and you get a fair and predictable shake from the judges and the Commission. So that's why people are coming to the ITC, and I hope they continue to do so.

COMMISSIONER KIEFF: Any other thoughts on that question?

(No response.)

COMMISSIONER KIEFF: So how about another question related to that. Which is, then, this—you hinted at it in your answer—but there is of course in the 337 side of the shop at the ITC really a two-stage process.

There's the process before the administrative law judge, and then there's the process before the Commission whether to and how to review the administrative law judge's
initial determination.

It is often discussed at Bar Association events that that second phase operates to the Bar as something akin to a black box. It's a set of 200-page documents go in, usually petitioners brief, respondents brief, an ALJ opinion, sometimes some input from OUII, and then a few months later after silence comes a 200-page Commission decision that of course because we are a six-member Commission with each member having two hands, at least 12 views in this 200-page document on the one hand. On the other hand, times six.

So the Bar has often expressed a degree of concern about that black-box period, and that black-box process. There's been already discussion about the Government in the Sunshine Act, and the Administrative Procedures Act, and about various constraints on how Commissioners can interact with each other, and how the Bar can no longer walk the halls and provide boxes of candy.

Aren't there other opportunities for a way to bring Sunshine into the black box to allow for dynamic exchange among Commissioners, allow for dynamic exchange between Commissioners and the Bar, in a way that would, dare I say, comply with all of those legal rules?

So it seems to me a hearing akin to an oral argument could accomplish that outcome. Do any of you have
views about the pluses and minuses of some type of open, collaborative, on-the-record conversation that would be akin to an oral argument, hopefully not terribly long, hopefully easy for the parties to prepare for so that it doesn't add to the cost, hopefully easy for the Commission so it doesn't add delay. Certainly for me as a decision maker I can tell you I can make a much easier decision about what matters to you as a lawyer if I can look at you and talk to you, rather than just read your 200 pages. And I suspect you can get a lot from the questions I might ask if you were looking at me, too.

Is it so bad that we talk together? Is that possible?

MS. TANNER OKUN: I'll start. Obviously others on the panel have a lot of expertise that they can add to that, but having left the Commission and not been out for that long, I do get that question a lot from our clients about what actually goes on once we turn in all this material, as Commissioner Kieff said, and what should we expect?

When I was on the Commission, I think that I was interested in whether the Commission should have more oral arguments. As many of you who do 337 know, there was a big hearing in the 543 versus Qualcomm, and, you know, that may not be the best way to move forward if one were to have oral arguments on a regular basis. So I think there is an
opportunity that an oral argument could present for the type of dialogue that you've talked about.

I think one thing that I'm interested in now, having left the Commission, is right now the dialogue in some ways are the Commission questions. So you petition for review, and Commission questions come out. Not that there haven't -- not while I was there, there were oftentimes when the Commission was asked a lot of questions, but there are a lot of questions being asked now. And so I guess for some on the outside the question is: What does that mean? Does it mean more individual Commissioners are asking questions? And what does that mean for us in briefing? And should we be thinking about that in terms of who might be asking these questions, and what does that mean? And what is the role of the General Counsel's Office?

So there is some uncertainty even with questions being asked that you're answering.

On the other hand, because the Commission writes such a thorough opinion, I think for many clients there is certainty that you are getting a review. You know what it is. It's briefed. And at the other side you'll have an informed opinion come up which you would be able to appeal. And therefore if you introduce oral argument, do you increase or decrease your chances?

So I think that is an open question when it's not
clear how, if the Commission were to regularize oral arguments what they would look like, how the questions would be posed. Would you be answering the same questions you would have anyway in a written form?

And so I think that is part of the question. I also think it ties in--you mentioned The Sunshine Act, and that was mentioned earlier this morning. And when I was on the Commission I know some of my former colleagues are here. We, you know, chafed a little bit, some of us, under The Sunshine Act, thinking that in a quasi-judicial sense you would have better opinions come out if Commissioners were able to circulate something akin to a bench memo before a vote so that the differing opinions could be resolved earlier.

But I'm happy to hear from others. But those are my views on it could be helpful, but clients do have questions. And just one final thing. On cost, it does matter. I mean, you know, some clients, if they come to the ITC they're there because, you know, this is an important case and they're willing to commit the resources. And if you tell them a hearing is going to help them, they're going to go through a hearing. There are others, you know, in particular of course respondents who don't want to be there, where an oral argument could add--you know, you'd have to think about how to structure that. And I think the
Commission has done a lot of good things on the administrative side to try to cut down the cost on discovery.

There's always more that can be done for some of these cases, but I think all that the Commission should take into account if it's going to change what has been its practice to rarely have an oral argument.

COMMISSIONER KIEFF: Other thoughts?

MR. YAWORSKI: Two possible issues. One is will oral argument cause a delay in the issuance of the final decision? If it's just being grafted onto the present proceeding, I would think that would be inevitable. If there's some way to tweak the whole process so that you're not losing time, that's a different kettle of fish. But the statutory deadlines have been eliminated, but I think the legislative history indicates that Congress still wants these cases done expeditiously.

Plus, if you're a complainant and you hold a patent and the clock is ticking on that patent, you want the exclusion order sooner rather than later.

The other issue is, how shall I say, Commission amenability to preparing for these hearings. To do a good job of prepping for an oral argument requires time and effort. And when I was at the Commission it was my experience that most Commissioners decided that they could
spend their time better in other ways, and they're not really enthusiastic about the idea of oral argument.

COMMISSIONER KIEFF: One other?

MR. ADDUCI: For me, it's easy. I would welcome that development. I think you can build it into the procedural schedule and not extend the proceedings. I know personally I feel that I learn a lot more, and that I can influence people more easily eye to eye than through a raft of papers.

It also gives the private parties the opportunity to identify the critical pivotal issues. Judge Luckern would say, the jugular issues in the case. And get the Commission and the Commissioners focused on those issues.

So I would welcome it.

COMMISSIONER KIEFF: Well certainly if the Bar wants to ever explore that, it sounds like there's an opportunity for dialogue perhaps through the Bar on that one.

How about the part of the 337 docket that is not just about patents? What would not--there's of course trade secrets, and the new Federal Trade Secrets Act. There are trade market cases. There are of course antitrust availability at the ITC. What do you think?

MS. ROBERTS: Well I mean I think it's definitely been used a lot more. Obviously we're all familiar with the
Steel case. So, you know, I -- and I think that's, the Steel case is bringing up a lot of issues that really haven't been addressed at the ITC lately. You know, I think it's good to have the non-, you know, patent-related investigations as well. And, you know, just to do something different and also protect other rights that are also important. Not everything is about patents, so...

MS. TANNER OKUN: And again, I think one of the things that this going through the history of the ITC helped one think about is just, you know, because at its root it is a trade statute that was designed to protect domestic industries. And these unfair acts were written--it was written very broadly. And so, you know, it's kind of you read it and the statute has just evolved. I mean, it became a patent statute for some oddities, and there are many other ways where it might be a really good forum in terms of the things that Jim had mentioned why a client might want to come there. You have an expert agency. It's expeditious. And there's certainty at least what the remedy will or won't be. That can be very attractive, where District Courts are clogged up with all kinds of other stuff, and judges who may or may not want to see this type of case.

So I think that, you know, maybe practitioners, we haven't been creative enough on the outside to think about other places where our clients might think about using...
MS. HAMBLIN: You know, I was just going to--I mentioned earlier in the introduction about some of the colorful legislative history. And one of the things that Senator Smoot said, and I don't have the exact words in front of me, but what Section is broad enough to address any form of unfair competition and beyond antidumping. And I'll refer you to the chapter for the exact words.

And just to give you some examples, even though patent predominates, you know, the Commission has seen common law trademarks, passing off, falling off, unfair advertising, you know, a wide range. I think any generally recognized form of unfair competition would be fair game for Section 337.

COMMISSIONER KIEFF: Let's pivot off that, then, and ask for free advice--always worth the price you pay for it, but why not ask for it--in the 337 patent docket as of late, in the last decade, some of the cases that have attracted so much popular attention, all the way up to the Presidential review, have been cases in which our sister agencies in the government, including for example the Federal Trade Commission, have welcomed the opportunity to provide their input to us about how to think about the unfair competition--their view about unfair competition with respect to patents.
The Federal Trade Commission and the Department of Justice have recently announced that they intend to promulgate new guidelines about the interface between IT and antitrust. Should we return the favor? Is it part of our obligation to provide input on that topic when asked, as we as members of the--

MS. TANNER OKUN: I'm holding the mike so I'll start, but others please join in. Again, I think that the Commission should never forget that it is an expert agency and it does have a view on these things.

I say that. However, when I was on the Commission I didn't much like when the FTC sent in their advice, because they made it sound like they were the experts and we weren't, so I'd have to listen to them, but the statute actually tells you you're supposed to listen to all these folks.

So I don't know. I actually haven't looked at whether other agencies have the same statutory outreach to us that we have to them, and Congress set it up that way, but maybe we should--maybe the Commission might want to tell Congress that, you know, if you want us to give input, if you want the Commission to give input, you could add that to the FTC regulatory language.

No one wants to touch that.

(Laughter.)
COMMISSIONER KIEFF: Other questions from the audience for the panel about 337? What do you see--sorry, do we have--Yes, please. Please, we have a microphone.

MR. BUSEY: Alright, we're on? Hi. Brian Busey, Morrison & Forester. Thanks for the interesting panel discussion. One trend that I comment from on the panel is just we in the private Bar see a lot of change between the relationship between the ITC and the Federal Circuit. And obviously there have been many decisions in the last several years that raise the question about whether the Federal Circuit, at least in some parts of the Federal Circuit, developed kind of an adversary relationship with the Commission, and with respect to deference to its expertise and so forth.

So I'd just like any comments that you might have on that.

MR. ADDUCI: Well I think, Brian, you and I can both think of at least a couple of cases in the last year where there should have been a lot more deference given to the ITC.

Yes, I think the Federal Circuit has been more critical of the Commission than it has in the past. The Commission has always enjoyed about an 85 percent affirmanace rate. I don't know what the numbers are now, but it has changed.
So, yes, I think greater deference is in order.

COMMISSIONER KIEFF: Other questions for the panel?

(No response.)

COMMISSIONER KIEFF: What do you think, if you have questions, get my attention, and in the meantime we will keep the dialogue going.

What do you think are going to be the next 10 years? Let's be modest. Let's take a tenth of the history looking backwards and map it forwards. What do you think the next 10 years are going to be like in the 337 docket?

MR. ADDUCI: I can tell you what I hope it will be.

(Laughter.)

MR. ADDUCI: And that will be a great deal more nonpatent based investigations. I don't want to see any diminution in the use of the statute for IP violations and allegations of violations, but the statute is very under-utilized. The breadth of the statute extends to far more than just patent, trademark, copyright. I mean, you can think of a plethora of other unfair acts that the Commission could take jurisdiction of: fishing rights, violation of child labor laws. The last goes on. I know it sounds silly, but it can work.

And so I hope the next 10 years will see a lot
more nonpatent, or different kinds of cases other than just patent.

MS. TANNER OKUN: Just to add one thing. I certainly think the role of international intellectual property has grown, and we see that in cross-border trade, and we see it in all these companies. So it seems like the Commission's mission grows with that and it will be a place for companies to continue to look to the ITC as one form of relief.

I think that is only true if the Commission holds to what Congress has, previously at least, said about having an expeditious time table. Because if it gets bogged down like every place else, I think it will be much harder for companies to want to commit the resources necessary to see the ITC as being effective, particularly for technologies, wearable technologies, any of these technologies that have a short shelf life. So I think those are important things to keep in mind in terms of the mission.

And then of course Congress makes the ITC. Congress can break the ITC. I think, you know, if there are changes to the statute, some that have been contemplated, not speaking on behalf of any of our clients because they're on many sides of it, but for me personally I think that Congress could change what the Commission is doing. And then the Commission just has to do that. I mean, that is
their right. It is a body created by statute, but I do
think that companies, practitioners, and others need to
think about that as they look ahead.

MR. YAWORSKI: In other words, don't get too
creative.

(Laughter.)

COMMISSIONER KIEFF: Well please join me in
thanking this great panel. Thank you all, very much.

(Applause.)

MR. BARDOS: Thank you. And we're now ready for
the next panel, which is on Industry and Economic Analysis,
moderated by Commissioner Schmidtlein.

(Pause.)

COMMISSIONER SCHMIDTLEIN: Alright, well I guess
we should get started so we can stay on schedule.

So, good afternoon. If everyone could take their
seats--and the light, I guess the prior panelists all know
this, but the light is blinding up here. I cannot see
anything.

So my name is Rhonda Schmidtlein, for those of
you who don't know me, and I have been a Commissioner now
for two-and-a-half years. And I have to say that all of
this talk about 100 years has brought to my mind this
country song, and I will admit that I am a country music
fan. I grew up in a small town in rural Missouri. And so
we always listen to country music, and there's a song by Kenny Chesney that, the name of it is "What's The Secret to Life?" And his main refrain in that song is "Don't blink. A hundred years goes faster than you think."

And so I certainly feel that way about my time here at the Commission. It's hard to believe that it's already been two-and-a-half years. So I should feel like a veteran, but I still sort of feel like a newbie.

In any event, I'm very pleased to be moderating the panel this afternoon on the current and historical activities of the Commission related to its economic and industry analysis. I'm guessing all of you would agree with me when I say that the expertise, objectivity, and commitment of the ITC's economists and industry experts have garnered widespread respect throughout the trade community.

I have been told that we have more economists and industry experts than any, including more Ph.D. economists focused on trade than any other U.S. agency. And I suspect that if we were to check, we would find that that is true of any organization anywhere in the world. I can't think of another organization that has as many economists and industry analysts looking specifically at the effects of trade as the USITC.

I know I speak for all of my colleagues when I say we are very proud of the ITC's long history of providing
objective and innovative reports, and the role that the
agency plays both here at home and globally in helping to
develop the tools that allow us and others to improve
economic research methods.

Today we are honored to be joined by the folks
who authored four different chapters of our Centennial Book
related to this topic, and I'm going to go ahead and
introduce them now. And then they are going to get up, one
by one, as the prior panelists have done.

Here to my immediate right we have Thelma Askey.
She is a former Commissioner who has spent her long and
distinguished career analyzing economic and trade issues
both in terms of the U.S. economy and foreign markets, with
a special expertise in developing countries.

To her right we have Catherine Field, who started
her career here at the ITC and then, as Ambassador Froman
commented on this morning often happens, was stolen by USTR
and remained there as a revered and I dare say feared
negotiator and lawyer. And I worked with her, so I can
attest to that.

To her right is Neena Shenai, who is currently--
and I apologize if I get this wrong--Principal Globe Trade
Counsel at Medtronic, and she prior to that worked for Ways
and Means and Senate Banking. She is a reviewer of the
chapters.
To her right is Dr. Michael Ferrantino. Dr. Ferrantino, who is now at the World Bank, spent almost 20 years with the Commission as the Lead International Economist, and was a key person in developing many of the ITC's economic models that we still apply today.

To his right we have Dr. Moore, I believe Professor Moore—around the corner there. Professor Michael Moore is at GW's Elliott School of International Affairs. He has published extensively on international trade policy issues with a particular focus on WTO commitments.

And to his right is Doctor—or Professor Thomas Prusa, who is a Professor of Economics at Rutgers University. And his research has focused primarily on ITC decision making, and I know he has appeared many times before the Commission.

So we are going to begin with Commissioner Askey. And then at the end of all the presentations, I will ask a few questions and then we'll open it up to any questions from the audience.

MS. ASKEY: Hello everyone. The light is a little bit strange, but I think I can see my notes. But anyway, it's a pleasure to be here. It's an exciting opportunity, and it's certainly an effort well worth the time I think for all of us to contribute to this important book.

Oh, about 100 years ago when I first was dragged
into the trade field, as a very junior Ways and Means staffer, I was sent to Geneva. And of course that was a big plus. But the reason I was sent to Geneva was to sit and listen to the conversation, along with my ITC counterparts and the U.S. Customs Service counterparts, hearing the international discussion on why this item should be classified as in the Harmonized System as a chemise, rather than a blouse, or a vest.

(Laughter.)

MS. ASKEY: So that was my introduction to the trade field, was to kind of listen to this long conversation about the transfer from various tariff schedules to a Harmonized System, which of course was very important in its outcome but it was certainly a challenge when it was going on.

But of course my part of the chapter is on the Congressional relationship with the ITC. And of course it is a crucial relationship. And it has developed over time, but it does--it leads to important things, more than that probably, but two big categories of things.

One is to allow Members of Congress to have a fundamental basis in data and information collection that allows them to make a solid, intelligent decision about what to codify in the statute and how the legislation should proceed, and how to support USTR and other agencies involved
in trade, but particularly USTR in implementing trade negotiations.

And then of course the complement to that is that it gives them a political underpinning for supporting these trade agreements, and for implementing trade legislation at a time, which has always been the case in my career, where it's not always easy to convince the public that free trade and logical trade rules are the way to go, and are fundamentally important for the U.S. economy. So it has both the political and a data rich role.

The role of the Congress of course has been what drives the relation--what has driven the relationship between the Congress and the ITC on information-gathering. And I think we've talked about this today a little bit in earlier meetings, but the role of the Administration and the Congress in the trade negotiations as they proceeded had a lot to do with the demands by the Congress on the ITC for solid information, and that kind of informational exchange.

It really, although there were trade agreements--Trade Acts prior to '74, it really took its root in the '74 Act when we had this broad discussion of just how Congress was going to assert its role. And Harold Dumas of the Ways and Means Committee, along with Charlie Vanik, and Barber Conable, were very interested in asserting the role of Congress in this process so that the Administration would
not be in a position of negotiating trade agreements, particularly agreements that included elements beyond tariffs, without a very strong role of Congress. And of course the House had a particular interest because revenue measures, under the Constitution, have to originate in the House.

But the Senate was asserting its role as well, because although they do advice and consent of any treaties, if that were the route to go, they would be giving up quite a bit with respect to procedural aspects of trade agreements. And all of this took its current form, really, in the '74 Act.

So you have the--but the evolution of the importance of trade agreements informed those decisions also. You know, in '47 when the GATT very fundamentally came into being, you had only 23 nations talking about, about $10 billion worth of trade effects with respect to the General Agreement on Tariff and Trade.

You moved to the Kennedy Round in '62 and, you know, Kennedy took an initiative and wanted to further cut tariffs by 50 percent, and asked for authority to do that. And that was the Trade Expansion Act of '62.

But when the Kennedy Round was approved in '67, you had 66 nations covering about 80 percent of world trade, $40 billion in tariff effects, and the expansion of trade
agreements into other fields like antidumping, special and deferential treatment for developing countries and--excuse me, in the '62 Round you first had Trade Adjustment Assistance introduced.

So you can see already the expansion of trade agreements and their importance to world trade in these multilateral trade negotiations. And I'm focusing here only on the multilateral ones, but remember for the U.S. and others there were many bilateral negotiations going on, and of course key among them were U.S.-Canada, U.S.-Mexico, and eventually the NAFTA Round.

But the U.S. pursued bilateral negotiations, unlike many other countries I think, with the multilateral negotiations in mind. They were precursors to multilateral negotiations.

Then we moved to the Tokyo Round, '73-'79. You now have the 102 countries, $300 billion in tariff concession effects, and more non-tariff measures included, dumping, subsidies, framework agreements, et cetera.

Then when the Uruguay Round was signed in Marrakesh in 1994, you had 111 countries, and you had an extreme expansion of trade agreements into services, Ag subsidies, intellectual property rights, dispute settlement, and the WTO was born as a--following GATT, cut tariffs 40 percent and continued special and deferential treatment for
LDCs.

Senator Brock, who was USTR at the time, thought, okay, let's keep point. You know, we have all these procedures in place, let's have a continuous round of negotiations going on, because we achieved so much in the Uruguay Round with respect to procedural aspects.

He was not quite successful in that effort, but eventually we did begin the Doha Round, and 159 countries are participating, and it has of course a very ambitious agenda: labor, environment, trade facilitation, competition, investment, transparency, patents, et cetera. I think a question does come into play at some point of are they sinking of their own weight? Perhaps we need to get back to narrower trade agreements.

But in any case, we still have a broad effort. But it makes it all the more important for Congress to insert its role with respect to USTR, the negotiators, and with respect to the Commission, its supplier of information.

And Congress also required the USTR to rely heavily on the ITC with respect to information, so that we were proceeding on some basis that reflected a solid factual basis. But the '74 Act is really where this effort and this delineation of roles in the negotiation, with Congress asserting a very, very strong element into that process, and relying quite heavily on the ITC for information.
Obviously it's not been a totally clear and easy path. There's conflicts that emerged in efforts to achieve outcomes. Everybody looks to the legislation, of course, and tries to write in as much detail as they can to get particular outcomes, including legislative history.

Then of course we look to the ITC and try to kind of construct their investigation into their particular way. They have particular outcomes, I think, too. In some respects, do we ask the ITC to investigate in depth? Or even at all? If you're looking at particular elements of the trade law, then you're thinking about particular outcomes that you might want to achieve.

Do you ask the ITC to evaluate everything in depth? And I think it's a real compliment to the ITC in the face of different objectives by different Members of Congress, different Commissioners, different elements in the public sector. The ITC has really shone through, I think, with respect to its analysis and the relationship between the ITC and the Congress on this exchange of information. Because they are respected, both nationally and internationally. They have created modeling that's been top-of-the-charts. And they have consistently provided information that is unbiased, down-to-earth, straightforward, here's the facts, just the facts, ma'am. And Congress has responded, as much as the conflicts of
particular policy objectives occur all around us. I think the respect that Congress has for the ITC, the respect that USTR has for the ITC, has always restrained Congress in trying to manipulate the ITC--and "manipulate" may be too strong a word--but push and pull about data.

Sam Givens was quoted earlier. You know, everybody's entitled to their own data. But the ITC has made sure that the data it provides Congress, and Congress has made sure I think, too, that the data it expects from the ITC is the unvarnished and objective data that we can--that they can rely on, Members of Congress can rely on, when it makes very, very tough decisions to implement trade agreements, or even to proceed with them, and how to proceed with them. It is very well informed by the data that the ITC collects and presents.

(Applause.)

COMMISSIONER SCHMIDTLEIN: Thank you, very much. Next we'll move to Ms. Field, who will discuss the ITC's assistance to the Executive Branch.

(Applause.)

MS. FIELD: Okay, alright, let me join others in doing two things: thanking you for inviting me. It's good to be back to see old friends and colleagues. And second, to endorse the ITC as a great place to start your career in international trade. I have lots of fond memories here.
To try and condense the chapter into a few minutes is a difficult effort, but I am going to try here. I will say that the Commission provides the Executive Branch with information and analysis and it effect on specific industries and the U.S. economy as a whole under a number of authorities.

Some of the Commission's reports have a special status under trade law. Commissioner Askey touched on that a bit. Congress has made receipt of Commission reports and analysis a precondition for the President to proclaim changes to tariffs, to implement bilateral and multilateral trade agreements, to implement U.S. tariff preference programs, and to make other changes in U.S. tariff schedule. And the Commission's reports are also part of trade promotion authority procedures.

Much of the statutory foundation for the Commission's mandates were set out in the Revenue Act of 1916. And although those authorities, and in particular their use, have evolved over time, the core has remained responsibly--remarkably, I'm sorry, constant.

The three authorities in the 1916 Act require the Commission to investigate the effects of Customs laws and tariff-related issues on U.S. industry and labor, to investigate tariff relations with other countries such as the volume of imports compared to domestic production and
consumption, and the cause and effects of foreign
competition on U.S. industries. And, to put at the disposal
of the President, the Ways and Means Committee, and the
Senate Finance Committee all information at its command and
make such investigations and reports as requested by the
President, either of these committees, or either Chamber of
Congress.

Sound familiar? It should. All are from the
1916 Act, and all have some progeny in more recent tariff
laws. The 1916 Act also required the Commission to make an
annual report to Congress consisting of a statement of the
Commission's methodology, its expenses, and a summary of
each report that it issued each year, during the year.

The reports are a tremendous resource, both then
and now. To go back to touch on some of the history, the
focus of trade tariff policy at the time the Commission was
created was on enhancing the U.S. industries' ability to
compete with imports on the domestic market.

In the Tariff Act of 1922, Congress authorized
the President to implement a so-called "Flexible Tariff"
based on the idea of using the tariff to equalize the cost
of production of domestic goods with that of imports from
the principal competing country.

The Commission needed to complete an
investigation of the differing cost of production before the
President could change the tariff. The President was also authorized to increase or proclaim new tariffs if he determined that a foreign country was engaged in discrimination against U.S. commerce.

Again, the Commission was tasked with investigating and providing a factual basis for this action. The authorities provided in the 1922 Act were used frequently. In its 1929 Annual Report, the Commission stated that since 1922 it had completed 183 reports and special surveys under the authorities of the 1922 Act.

The next significant revision of U.S. tariff law was the Tariff Act of 1930 which included section 332. The language in section 332 is very similar to that that I read out from the 1916 Act, and section 332(g) remains the basis for today's requests for the Commission to investigate various matters, requests from the Senate Finance Committee, the Ways and Means Committee, and the USTR.

Initially, the committees in Congress were the source of requests for Section 332 investigations. The Executive Branch did not make its first formal request for an investigation under section 332 until 1940. And it was not until 1965 that the Executive Branch began to request the Commission to conduct investigations on a regular basis.

Starting in 1934, however, interaction between the Executive Branch and the Commission began taking place.
in a very different context. Enactment of the Reciprocal Trade Agreements Act marked a historic change in the Executive Branch's authority with regard to tariffs. In the RTAA, Congress authorized the President to enter into trade agreements with foreign governments, cut tariffs up to 50 percent, and to proclaim those cuts without further Congressional action. This was a major change.

Section 4 of the RTAA required the President to provide the public with reasonable notice of the intention to negotiate an agreement, and an opportunity for interested persons to provide views to the President.

Before concluding an agreement, the President was required to seek information and advice with respect to the proposed agreement from the Commission, the Departments of State, Agriculture, and Commerce, and other sources as appropriate.

The authority granted under the RTAA was time-limited, three years. However, Congress repeatedly extended that authority up until 1962. Negotiations were typically bilateral with the principal supplier of a particular good, and any tariff cuts were then—those that were agreed, were applied on an MFN basis.

Under the RTAA and its extensions, the Executive Branch concluded and implemented trade agreements with 29 countries between 1934 and 1946. Then in November, 1946,
the Secretary of State announced the President's intent to
enter into negotiations with, quote, "various countries."
Unquote.

These negotiations resulted in the General
Agreement on Tariffs and Trade, the GATT. Between 1948 and
1994, the United States engaged in several rounds of
negotiations under the aegis of the GATT.

The result of these negotiations were implemented
through special procedures. Starting with the Trade Act of
1974, the requirements of the Executive Branch had to meet
to obtain application of these special rules for
consideration and approval of trade agreements change and
became far more complex than those that applied to the early
GATT negotiations.

This was in part because of a change in the focus
of the negotiations to include non-tariff measures.
Congress acted to ensure that it was consulted and informed
on the proposed agreement before, during, and after its
negotiation.

As of last year, the requirements to use what is
now known as "Trade Promotion Authority Procedures" are set
forth in the Congressional Priorities and Accountability Act
of 2015, TPA.

TPA procedures require compliance with Section
131 of the 1974 Act under which the President must seek
advice from the Commission on the probable economic effect
of reduction or elimination of tariffs on industries
producing like or competitive articles, and on consumers.

The Commission was required to provide its advice
within six months after receipt of a request, and receipt of
the commission's advice, or expiration of that time period,
is a prerequisite to making a formal tariff offer in
negotiations.

Section 105 of TPA requires the President to
request advice from the Commission on the probable economic
effects of a tariff reduction on import-sensitive
agricultural products before initiating tariff negotiations
on those products.

While the President is required to seek the
Commission's advice regarding tariff modification, seeking
advice on non-tariff matters is discretionary. The
Executive Branch, however, had sought such advice for
example in connection with the multilateral negotiations on
trade and services, TSA.

Under TPA, the President is also required to seek
advice from the Commission near the end of the negotiations.
Not later than 90 days before the President signs the trade
agreement, he must provide the terms of the agreement as
they exist at that time, and ask the Commission to prepare
and submit an assessment of the agreement to the President
and Congress.

In May of this year, the Commission submitted its assessment of the Trans Pacific Partnership Agreement.

Needless to say, the Commission's analysis of the effect of this agreement on particular industries and the U.S. economy is far more complex and focused more on non-tariff measures, such as intellectual property rights, services, technical barriers to trade, investment, and other non-tariff matters, than its reports on early free trade agreements.

Although trade negotiations and Section 332 investigations are often the focus of public attention, the Commission's economic analysis and recommendations to the Executive Branch play an important role in other contexts. These include implementation of U.S. tariff preference programs, especially the Generalized System of Preferences, and the African Growth and Opportunity Act, AGOA, on issues such as the eligibility of products for treatment under the particular program, and requests for waivers and competitive need limitations.

The Commission also has a significant role in the implementation on the convention on the Harmonized Commodity Description and Coding System. We talked about that a little this morning. And provides recommendations to the President under Section 205 of the Omnibus Trade and Competitiveness Act of 1988.
The Commission also has an important role in connection with the President's use of the consultation and layover provisions that you find in the Uruguay Round Agreements Act, and the legislation implementing each of our free trade agreements.

The authority is used, for example, to implement the WTO Sectoral Agreements such as the Pharmaceutical Tariff Agreement. It is also used to implement agreements to change rules of origin in our FTAs, or to accelerate tariff cuts under those agreements.

The President must receive advice from the Commission on the proposed action, and submit that advice to the Ways and Means and Senate Finance Committees as part of the package that is the basis for consultations with Congress.

In summary, although the Commission's responsibilities and procedures have evolved over the last 100 years, the core principles of objectivity, transparency, and responsiveness to the requests for its analysis have remained constant.

The Executive Branch considers the Commission to be an invaluable resource to the President, USTR, and other agencies that make and implement U.S. trade policy.

Thank you.

(Applause.)
COMMISSIONER SCHMIDTLEIN: Alright, thank you very much. Next we will hear from Dr. Ferrantino, who will discuss the chapter that he co-authored with Bob Koopman.

MR. FERRANTINO: So I am going to be using my phone as a timer. And despite what has been said earlier—well, if I can figure out how to do it—okay, there we go. Never mind. I'm just going to try to be on time. And, by the way, a phone is not a phone in the SICT 3. This is a radio transceiver.

(Laughter.)

MR. FERRANTINO: And you'd be surprised how many countries trade in them. It is very humbling and a great thing to be here to join in the celebration for this institution, and I say this not only on behalf of me but on behalf of my co-author, Bob Koopman, who did the heavy lifting and the drafting of this chapter. Most of you here will remember Bob as the long-time Director of Economics and Director of Operations, now the Chief Economist at the World Trade Organization. And he sends his greetings.

So I think a lot more people do economic analysis in the Commission than think of themselves as that. And it goes far beyond the, you know, people who have the job title of "economist."

And so if you ask yourself, what are the circumstances under which you really need an expert? I
would identify the circumstance in which somebody thinks
they're an expert and has no idea what's going on.

(Laughter.)

MR. FERRANTINO: And I've had this experience
myself. One of the most frustrating experiences in my life
was having a months' long conversation with the Internal
Revenue Service, which was fine to the extent that I got a
lot of money, but at the end I found myself shouting at the
telephone: Excuse me? I have a Ph.D. in economics from Yale
University. Why is it that I cannot understand from reading
all your instructions what number to put in this box?

(Laughter.)

MR. FERRANTINO: And was given no coherent answer
to that question. Now I think that Frank Taussig was having
a day like this ---

(Laughter.)

MR. FERRANTINO: -- in 1910. As has been
mentioned, he was not only a graduate from Harvard, he was a
Professor of Economics at Harvard, and was supposed to be
the world's leading expert on the tariff.

And the experience he was having was that when he
read the results of Congress's most recent action on the
tariff, he couldn't actually tell which tariffs had gone up
and which ones had gone down. And as a result of that, he
ended up displaying a lot of the traits which I think are
now briefed strong in the Office of Industries, and the
Office of Investigations, all over the Commission. And he
wrote a piece on this which appeared in Volume One, number
one, of the American Economic Review in 1911, and it was
called "How Tariffs Should Not Be Made."

(Laughter.)

MR. FERRANTINO: And at the end of this piece, he
comes out in favor of establishing a permanent body, which
happened five years later, in order to systematically do the
things that he's just done with great frustration. He picks
out four products that seemed to him particularly puzzling.

And by the end of it, he has done the equivalent
of a competitive assessment of an industry in which it
expected to do a miscellaneous tariff bill, and even a value
chain analysis. And he's done this in this sort of spirit
of muck-raking journalism, which is what you actually used
to have in the American Economic Review in those days. Not
a single equation. Not a single regression table.

So he's very curious about the tariff on
manufactured steel, okay? And he wants to know what's
happened to it. And he notices that the duty that's been
written in the schedule for structural steel hasn't changed
much, but they've added some language that the tariff line
is for beams, girders, joists, angles, blah, blah, blah, and
what Congress has put in there is the phrase "not assembled
or manufactured or advised beyond hammering, rolling, or casting." That is the action of Congress.

And he thinks to himself, you know, I wonder what happened to the tariff in those items that were assembled or manufactured or cast, all those fabricated steel? And he scratches his head, and he thinks, and he says: You know what? This must kick them into this category "manufacturers of iron and steel not otherwise provided for."

And the duty there is 45 percent. And so he finds that when the whole debate in the House and all the testimony has been to leave the tariff the same or cut it, in fact for this huge category of goods it's been raised.

So he calls the Treasury and says: Are you really charging 45 percent? Yeah, yeah we are. And then on his own motion, he starts to call people in the private sector, as I would imagine one of our industry analysts would do, and said: So could there be any supply from Europe?

Well, no, there couldn't because they don't even understand the blueprints and designs for American steel forms there. Oh, really? And he contacts four or five other people and comes up with an assessment. And then he does this several times to show you that the tariff is not transparent and at every point is not only doing all this economic analysis, but calling out all these special interests.
Look how strange the tariff on cotton gloves is. And at just that price point it cuts. And it cuts for the type of white gloves which are worn by the U.S. Marines, and by police on dress occasions, which the government is buying a million of.

And this guy, who happens to be a friend of this Congressman in New Hampshire, is making a lot of these. And I really would think it would be great if every new analyst read How Tariffs Are Not Being Made.

But, so now that I've sort of emphasized that everybody here is doing economics work, you expect me to say something about the geek stuff. That's why I'm here. And this being the 100th anniversary of the Commission and the 50th anniversary of Star Trek, this day, but not this year, is the 25th anniversary of the Office of Economics Working Paper Series, which started in 1991. And I think this is a good place to look at this history.

Because what we had was a bunch of people in economics which were very sort of ivory tower oriented. It was Joe Francois and David Rosenholtz, and Carmen Reinhart, and they developed a set of tools, The Partial Equilibrium Analysis, The Compass Model, which for quite a while was actually used in Commission Title VII investigations.

And then the U.S. model, the first General Equilibrium Model. And then not long after that, we had the
global models. And it turns out that these tools were
introduced not too much for NAFTA and the Uruguay Round. A
lot of people were using those, and in our commissions we
were--our studies, we were reporting on other academics'
results.

There was maybe one NAFTA model in a working
paper, but we were called on to use the General Equilibrium
Models for the first time in a context which was guaranteed
to make a lot of people unhappy. And this was due to 2.332
letters that came from USTR Carla Hills toward the end of
the Bush 41 Administration.

The first one was the one that established the
Import Restraint Study which essentially said imagine that
the United States unilaterally disarms from all of its
statutory duties. What would be the effect of that?

And so you end up coming up with a broad number.
Well, if we adopted unilateral free trade it would increase
welfare by about $18 billion. It would be in those days
when the tariffs were higher. And it would displace about
200,000 workers from one industry to another. But it showed
where, what Bob Koopman would say, "the big dead animals,"
here in textiles, here in apparel, here in sugar, here in
dairy, and so we got a lot of comment from industry on, oh,
this can't possibly be the correct data. We have a
narrative about ourselves which is not like the one being
presented in this study.

But as this was repeated every two years, which is what the request was, people began to understand what we'd be doing. Then there was the other request from Carla Hills, the one-time one, look at the economic effects of antidumping countervailing duty orders and suspension agreements.

In other words, what is the economic effect of the operation of Title VII? And this was the model we had. It made sense to us as economists, and what do we think? When you cut duties, yeah, there's some redistribution from producers to consumers, and an increase in overall welfare. And so the economists ended up reporting the result that the operation of Title VII was doing $2 billion worth of economic damage a year. And since the Commission itself only had a budget of $40 million at that time, that was factually quite impressive.

(Laughter.)

MR. FERRANTINO: And it was a very difficult study to get out the door.

(Laughter.)

MR. FERRANTINO: I think it was a -- I think it may have been coincidental that the modelers developed those studies--Bruce Blonigen, Joe Flynn, Michael Galloway, they all shortly afterwards decamped to other institutions. They
got better data, and reported: No, the ITC actually does $4 billion worth of economic damage a year.

  (Laughter.)

  MR. FERRANTINO: And they got a lead article in the Journal of International Economics and lived happily ever after.

  I think one of the things which has made the ITC a thought leader and a methodological leader in the things that we do is just the way that Section 332 works. Our three customers can ask us any question about international trade, and they don't have to ask us whether we have a method to answer it. They can wake up one day and say, hey, if China adopted intellectual property standards the same as the United States, what would be the effect on us?

  Hey, what about, like is Europe out-competing us in terms of small and medium sized enterprises? You know, on technical assistance. We could be asked can you analyze a climate change agreement. And many times the question will say, huh? Okay. But then we come up with an answer to this in 12 months. It's a technology-forcing event. It's like, you know, President Kennedy saying: Get a man on the Moon by the end of the decade. And then you have a lot of surprises in the answers that you have to come up with along the way because they're obvious at the start.

  And I think what has now happened in--
Trade Act of 2002 and its successor, and the set of analysis that has led to the TPP, is that now we have a ratcheting effect. We have a Congressional mandate to analyze everything that's done in these ever more complex trade agreements that have state-owned enterprises, and SPS measures, and everything else in them. And at the same time, then we have to constantly improve our game, right? And so you end up getting people who are really good at what they do. And you did such a good job on the Trans Pacific Partnership, and brooked so many new pathways, that people noticed the project leader on that study, Jose Signoret, and my institution stole him as soon as we could. And we're looking forward to having him.

Thanks, very much.

(Applause.)

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much, Dr. Ferrantino. And now we'll have Professor Moore.

PROFESSOR MOORE: Thanks very much. Well, it's a pleasure to be here. I'm going to be brief, because I don't have much time. And I never know whether people invite me, with a name like "Michael Moore" to talk about trade --

(Laughter.)

PROFESSOR MOORE: -- because it's about my new film, which I've got nothing to report. I'm actually interested in trade issues from a more academic standpoint.
If you Google Michael Moore and trade, you'll get the Director. If you Google Michael Moore and GWU in trade, you get Michael Moore the Director. If you Google Michael Moore GWU Trade and Antidumping, I show up.

(Laughter.)

PROFESSOR MOORE: So I'm proud of that. So I've got just a few minutes here, but I want to just talk about some broad patterns in these fact-finding investigations by the Commission since especially 1930 when I started looking at the 332 investigations.

So just very briefly -- I should say before that, that I knew absolutely nothing about the process in general. I was aware of individual investigations that I found very interesting, important for my own work, but I hadn't looked at the investigations more broadly.

And I think there are some very interesting patterns, if you go back to 1930 and look at who asked for the investigations, what questions that they answered, and the techniques that were used.

And my contention is that you can see the broad changes in the U.S. economy, the broad changes in the U.S. trade policy process, and also the expanding economics profession's tool kit. And I think that's pretty cool. Just by looking, in my home in Santa Fe, New Mexico, at stuff online, look at all these reports from the comfort of
my home in Santa Fe, New Mexico, one thing that's very
interesting about this process is that, unlike the
antidumping and 337 investigations and safeguards,
countervailing duty, which are generated by the industry,
these cases, or these investigations, are requested by
either the House, the Senate, the President, or sometimes by
the ITC itself.

And so you see a kind of revealed preference
about what these different organizations think is important.
In the early days, it was very much in the first couple of
decades, it was about defensive interests, import-competing
industries. Especially agriculture, from 1930 to 1950, 17
332s about agriculture, only 4 about manufacturing.

The way this process was being used was a
particular Congressman or Senator is concerned about
agricultural products. If you go forward to in recent
years, it's about digital trade, the broad economic effects
of a massively complicated agreement like TPP on the U.S.
economy. Not just on import-competing interests, but about
export interests, about U.S. foreign direct investors, about
services, an incredibly interesting set of topics that would
have been unimaginable in the first decades of the 332's
use.

Also, the requests are quite different. From
1930 to 1970, Congress--either the House or the Senate --
had 26 requests. There were 26 requests for the first 40 years. Office of the President, 8, Congressional driven. 2002 to 2015, Congress asked for 40; the President asked for 119; and mandated, now as part of the TPA, 81.

So what you have is a kind of revealed preference about who really cares about trade. And now the President is pushing the process, but with Congress mandating certain types of requests, which have actually already been mentioned here.

Very briefly on the techniques that are used. In the early days it was a counting exercise. It was the comparison of U.S. costs versus foreign costs. Frankly, I have no idea how they got foreign costs in order to make this request. I know that facts available in investigations of the Department of Commerce are rife with problems. But anyway, that's what they used to do at the Commission.

It evolves in the 1980s in a dramatic way. The late 1980s, you start to use input/output tables. You start to use simulations, computable partial equilibrity models. Now computable generatable computer models. On methods that were completely unavailable in the early decades of the Commission, weren't available to the economics profession. So as Michael was saying, you've seen this increasingly complex methodological toolkit that's developed in the Commission, in the profession, to answer the increasingly
complex issues that face the U.S. economy.

And I would say, broadly speaking, this reflects the changing role of the U.S. economy and the global economy. We don't just talk about import competing industries. We talk about offensive interests—"offensive" in the mercantile industry; ways in which our small and medium enterprises can operate in a global economy, where services industries can operate in a global economy.

That is a much more interesting process. But I really appreciate Paul asking me to do the study because I really learned a lot about the way the U.S. economy has changed. And here are concrete examples in these reports.

So thank you very much.

(Applause.)

COMMISSIONER SCHMIDTELEIN: Alright. We've also asked if the reviewers would like to make some comments, and so I believe, Neena, you would like to, and Professor -- okay, so, Neena.

MS. SHENAI: Well good afternoon. Mindful of the time, I will be really brief. It's just a great opportunity to be a part of this accomplished panel. I just feel privileged to have had the opportunity to review a number of the chapters already discussed, and just be a part of this 100th birthday celebration.

I left the Ways and Means Committee now just
about a year ago, and I have to say that working with the
ITC during my tenure on Capitol Hill was just such a
pleasure. The agency has some of the hardest working, most
experienced, and nicest staff that I've ever met.

And I had the privilege of having the ITC
portfolio at Ways and Means, so I worked with the ITC on
everything from trade negotiation, to trade remedy, to ITC
337, to the India Study, the 332 study, as well as critical
technical support on legislation and the MTB.

A few comments on the general subject on the
relationship between Congress and the ITC, one of the
chapters that I did review. There is a great deal on trade
negotiations supporting the ITC provided to Congress in that
chapter, and it touches on a number of different things.

And Congress's ability to get information is I
think different from the vast resources of the Executive
Branch. Congress has the Library of Congress, and the
Congressional Research Service, but we really do rely a lot
in the trade world on the ITC providing this impartial,
nonpartisan information to Congressional staff and Members
to really make the best decisions to conduct oversight on
trade activities, as well as just broader policy activities
in the global trade space.

So let me touch quickly on trade negotiations and
the MTB. I think the most critical report that the ITC does
produce, and one that's already been discussed, is in the context of TPA. And with respect to the assessment of the potential effects of the new trade agreement.

And I think it would be even more high profile if the ITC, for example, went negative on that report and said it would be actually harmful to the U.S. economy. In fact, even the TPP report that was recently issued forecasts modest gains for the U.S. economy, but was really spun in all sorts of different ways both positive and negative.

On the MTB, I worked many long hours with dedicated ITC staff on the miscellaneous Tariff Bill. And for those of you who are not familiar with the process, prior to the changes that were recently enacted to the process, Members of Congress introduced specific bills which either suspended or reduced tariffs for a period of three years on products not made in the U.S.

Now the ITC's role in the process has traditionally been to produce reports on each and every bill. And this last time around I think there were something like 2,000 bills. And the ITC did a report for every single bill, identifying domestic producers, looking at the content of the provision, looking at the revenue loss. And the ITC's reports really formed the basis of determining which provisions Congress would ultimately decide to put in the bill, as well as the Congressional
Budget Office's revenue loss estimates.

But there's just a lot more to it. The ITC also provides invaluable technical support for actually writing the bills and making sure that they are administrable, along with the Department of Commerce and Customs.

But given the difficulties over the MTB being considered earmarks, and Chairman Brady discussed it this morning, Congress recently enacted a new process which puts the ITC front and center in the miscellaneous tariff bill process.

Now so instead of starting the process were Members actually introduce bills, the ITC had to develop a portal and a process for accepting these submissions directly. And it's actually slated to start next month. And then the ITC has to play a critical role in determining which of the products make the final cut in order that Congress stays in compliance with the earmark rules.

So this new additional reliance on the ITC is a real testament to its independence and expertise; that it would be entrusted with the responsibilities once held by Members of Congress.

So let me stop there. I could talk for much longer on the critical role the ITC plays, but look forward to the conversation. Thanks.

(Applause.)
COMMISSIONER SCHMIDTLEIN: Alright. And,

Professor Prusa.

PROFESSOR PRUSA: Thank you. Today's conference
has been really interesting. I really enjoyed hearing some
of the older stories from long-time ITC people, the
nostalgia about the way things used to work. And that's
particularly relevant I think in light of my comments here
on this session. And that is, reading these industry papers
makes me really nostalgic for the good old 1960s and '70s
when we had really high tariffs, and we economists could
really focus in these trade negotiations on the trade
effects of tariff reductions.

That's our sweet spot. Bring on NTB, right?

It's going to be small effects if you go from 2 percent to 1
percent, or one-half percent to zero percent. In the good
old days we'd go from 30 percent to 5 percent, and as
economists we'd give you a big bang for your buck.

And that's really a challenge right now. I
think, looking back for what the last 100 years, the
industry reports, as Mike Moore documented, and Koopman and
Farrentino talked about in theirs, this evolution of how
economics was used. It's really interesting to see how the
Commission and the profession developed together, and the
Commission embraced as economics with learning how to model
price effects--that is, these tariff effects--pretty
accurately. We can argue about elasticity, but we were
developing a really good framework, and the ITC embraced it.

The problem is, that's not where trade
negotiations are right now. Most of the heavy lifting on
tariff reductions has been done. These trade agreements now
are on areas that aren't just simple price effects. So
we're going to have trade agreements where we're going to
have child labor rules--super important. I think we all
agree these are important things that we can engage in trade
agreements.

We can't tell you truly the GDP effect on the
United States of this provision of TPP. We struggle on a
lot of these new areas. So going forward over the next 10,
20, 30, 100 years, the economics profession has to develop
more and new methods to try to quantify economic effects of
these new parts of these trade agreements.

I don't think we're going to go back to trade
agreements where they're just about tariffs. And that's
going to mean I think unfortunately for the Commission you
will produce reports where the simple price effect is going
to give you a .2, .2 percent GDP effect. And then we're
going to wonder why are we doing TPP when the ITC, the
definitive economic study, is, you know, this is the same as
a small strike of an automaker in Detroit. These are very
small effects for the whole national economy.
And that's because we are struggling with these ideas of measuring these new topics. So in my comments I want to say that I think when we all get together in 100 years, we will see that economists and the nature of these reports are going to continue to evolve in a way that allows us to try to discuss these really important aspects of trade negotiations that don't fall under simple price effects that we as economists, and I think the ITC therefore, struggle with giving you good, accurate assessments that you can bring to Congress.

(Applause.)

COMMISSIONER SCHMIDLEIN: Alright. Well, we're out of time, but I do want to pose at least one question. And I'll open it up to any of the panelists. I thought it would be just very interesting to hear, given the breadth of the experience and expertise that we have sitting on the stage, what areas do you think the ITC should be studying? What areas should Congress or the Executive Branch be asking the ITC to study? And you can answer either from the perspective of this is important for U.S. trade policy; this is important because it's something I see going on in the economy right now; or I just think this would be a really interesting question to have asked.

And then the second part of that would be -- and this is a little bit of a geeky question -- is: Does the
ITC, or do economists currently have the tools that would be necessary to give a robust answer to the question that you think ought to be asked?

So I will open that up. Anybody? Okay, Ms. Shenai?

MS. SHENAI: I would say duty inversion are an area that the ITC may want to take a look at. Those are situations actually that were mentioned in a prior panel, and I think it was an issue that was discussed 50 years ago, but it's one where there may be higher duties on inputs from manufactured products, as opposed to the final manufactured product. And we have lots of examples of those in the Tariff Code. Like golf clubs. It's actually more expensive for a producer to import in components of a golf club and manufacture it in the United States than it is for them to actually import the golf club. It's a lower duty.

So there are disadvantages for actually manufacturing in the United States that are built into the Tariff Code. And I'm not an economist, but I would say that that's probably a really sweet spot for the ITC to be able to determine what the type of competitive effects are.

COMMISSIONER SCHMIDTLEIN: Professor Prusa? Pass that mike down, would you?

PROFESSOR PRUSA: So one thing that's evolving and is really going to continue to grow in importance is global
supplier chains. So what industries are really affected by this? How these global supply chains are set up. To what extent are we setting tax and trade policy as a way to allow the U.S. companies and the economy to benefit from global supply chains.

And so one level, I don't know the measurement, but I think still we need to get a better handle on just measuring these methods, and then second would be trying to quantify it. But that's I think going forward some of the frustration that we hear from people about being left behind on trade involve this phenomenon. And we don't really have an exact handle on it.

COMMISSIONER SCHMIDTLEIN: Yes?

PROFESSOR MOORE: I would add a related issue. In the academic literature there's a lot more emphasis on firm level activities. One firm is not like another is not like another. And I know, by necessity you're looking at big economy-wide models and you tend to group things into industry sectors, but a lot of the things happen at individual firm level, at individual worker level. And looking at that level of disaggregation is daunting, but more and more economists are doing it. And it's where a lot of the action is.

And one firm decides to outsource certain products, and the other one doesn't. They have different
effects. But getting to that granular level of economic effects I think is going to be more compelling for a lot of people than just looking at broad sectoral analysis. That's easy for me to say, but if you ask for what you could do that might be one thing.

COMMISSIONER SCHMIDTLEIN: Michael?

MR. FERRANTINO: Yes. So I think all these things are related. And we do have some capabilities that we could have more. So if we look at duty inversion and supply chains, yeah, your example of the golf clubs is a supply chain issue. You know, which parts of the production process do you have here? And the question of firm level data enters into it because how do you see golf clubs?

Now actually the Commission has done a fair amount of work on global supply chains. This was the special topic in import restraints a couple of issues back, and the economists at the Commission have contributed a lot, I would say, seminally to these methods using global input/output tables. But the limits of those are that we can see things on the level of chemicals and electronics, and so you could answer questions about the duty inversion on that level but not on the level of golf clubs where I think you would need to have different skill sets. You'd need to have industry analysts. You might need to have firm level data.
I think one of the ambitious things that the Commission tried to do, and I don't know what became of this, is to attempt to work with the U.S. Census to access some of the confidential data that some academics like Mr. Jenson at Georgetown has done, and have some Commission employees become sworn Census agents.

Now that model works very awkwardly with the time limits of, you know, doing something like a 332 investigation. So there may be some more creative ideas that somebody would have about how to access firm-level data. And I think that would be well worth pursuing.

MS. ASKEY: I just wanted to--most of the responses, except for the last one, I think was more reflective of traditional trade agreements, except in a more sophisticated way I would add transaction costs to supply chain, which would be really the same thing.

But what I wanted to say is it's a bit of a cautionary tale as well about what we are going to ask the ITC to do, and what we're going to have trade agreements cover. I think TPP is a perfect example, of course, even if you separate out the political electioneering aspects of it, creating kind of tailored models to try to answer questions that really perhaps are--I mean they certainly are important, but at some point are you going to undermine the value of the ITC's analytical output by asking it to contort
itself so much, and ask trade agreements to contort themselves so much, that you really are carrying a lot of weight?

There's an incentive to do it because you can get it approved and passed, although TPP is another cautionary tale. Can you get it approved at that under a simplified system of TPA? But, really, I even have some problems with the ITC doing miscellaneous tariff bills because why should that not evolve from the legislative process as opposed to advocating that?

In my view, the Members got a lot of political points for introducing these bills that eventually got approved, even though the discipline of it had to be paid for and had to have some ITC backing with respect to analytics. But I just think there's a cautionary tale there as to whether we're going to be able to keep the value of the ITC and the value of trade agreements in the new world of piling everything into that basket.

COMMISSIONER SCHMIDTLEIN: Would anyone like to --

sure, yes?

PROFESSOR MOORE: We talk a lot about trade agreements. I mean it's conceivable that big trade agreements may not be the future. It may be trade and investment, you know, ongoing relationships that is really the focus.
I mean, I've been out of Washington these days, but from outside TPP looks in trouble. You know, this crowd would know much more than me. I don't think DOLA is going anywhere. You know, maybe there's a lot more optimism around, but even if you don't have new agreements, globalization continues.

And so building up the ability to understand some of these nontraditional models, or issues, is still going to be useful, with or without new trade agreements. So I wouldn't let how it fits into trade agreements stop you from moving forward with some issues.

COMMISSIONER SCHMIDTLEIN: Um-hmm? Mike?

MR. FERRANTINO: Yes, I would agree with that. Because as far as we can tell, the largest share of what people would call "globalization" isn't actually due to things that are negotiated, but due to big forces in the world economy. And people would want to understand that.

COMMISSIONER SCHMIDTLEIN: So what kind of forces? What are you talking about? Can you be more specific?

MR. FERRANTINO: I'm talking about economic growth in general, about the general reduction in transaction costs, whether it be things like container shipping, or the internet, or whatnot. And so the fact that we saw trade grow more rapidly than income for almost the whole World War II period, and then somehow seeming to stop after 2009, is--
some sense those things are a bigger deal than everything
than anybody's ever negotiated. And I would think would be
curious as to what the impact was on the U.S. economy.

COMMISSIONER SCHMIDTLEIN: Alright. Anybody else?
(No response.)

COMMISSIONER SCHMIDTLEIN: Alright, well I'm
conscious of the time so thank you for indulging me. Please
join me in thanking this panel. It's been very interesting.

(Applause.)

MR. BARDOS: Okay, so we'd like to take just a
five-minute break. So if you would, come back at 4:35.

Thanks.

(Whereupon, a brief break is taken.)

MR. BARDOS: Please take your seats. We're going
to move on to the next, the final panel, which is on the
Institutional Evolution of the Commission. And it will be
moderated by Chairman Williamson.

(Pause.)

CHAIRMAN WILLIAMSON: Okay, well welcome to the
final panel of today's program. This is kind of like, shall
we say, a wrap-up panel because this panel will be
discussing the institutional evolution of the Commission.
The panel will focus on two major chapters of the Centennial
Book, and a third chapter.

The first chapter is Chapter 4, The Substantive
and Institutional Evolution of the ITC. This chapter was written by Will Leonard and Dave Foster. While their bios are already in your program materials, I would note that Will was a Commissioner at the ITC from 1968 to 1977, and Chairman from 1975 to 1976, and he is now with the firm of Adduci & Mastriani.

Dave Foster was at the ITC as an attorney from ’73 to ’76. He was involved in the ITC's implementation of the ’74 Trade Act, and in the transformation of Section 337 following the ’74 Act. He is a partner with the form of Foster, Murphy, Altman and Nichols, and has been an active 337 litigant.

The second Chapter of this book we will be discussing is Chapter 5: Evolution of the Chairmanship. This chapter was written by three former Chairs of the Commission, Chair Aranoff, who was Commissioner from 2005 to 2014, and Chair from 2008 to 2010. She is now with Covington & Burling. Deanna Okun, who was Chair--Commissioner from 2000 to 2012, and Chair from 2002 to 2014, and from 2010 to 2012. And she is now at Adduci & Mastriani. We've heard from her today already. And Daniel Pearson, who was a Commissioner from 2003 to 2012, and was Chair from 2006 to 2008. And he is now at the Cato Institute.

And Paul Bardos has written a chapter on the
Offices of the Commission, and he will have a few words
regarding OPAL--we've seen him a lot today, but he is going
to talk a little bit about that chapter.

As reviewers from the two chapters we have Lynn
Bragg, who was a Commissioner from 1994 to 2003, and Chair
from 1998 to 2000. And she is now President of the Glass
Packaging Institute.

Our second reviewer is Dan Leahy, who was with
the Commission from 1974 to 2004, in a number of capacities
including as the first Director for External Relations. And
then we also have as a reviewer Kenneth R. Mason, who as you
know was Secretary for the Commission from '69 to 1992.

I would now ask Dave to discuss the institutional
evolution of the Commission. Unfortunately, Will Leonard
cannot be with us today, but Dave, Will and I had a very
good conversation on Tuesday and had some very interesting
points, and he has licensed Dave to make the points for him.
In short, anything that Dave feels is controversial he will
attribute to Will.

(Laughter.)

MR. FOSTER: Thank you, Mr. Chairman. Yes, I
wanted to make that clear from the start. Anything
controversial, Will said it, not me.

The substantive evolution of the Commission has
been very interesting. It started out, as everybody knows,
to provide advice and counsel and develop an expertise on
the tariff to help the Congress set the tariff.

This changed really in 1922 when they established
the Flexible Tariff Provision, the so-called "scientific
tariff," but the Commission still basically provided
information at that point to the President who could then
adjust the tariff.

So you had a movement from Congress setting it,
to the President establishing it through the Section 315
procedure which became Section 338 of the Tariff Act of
1930.

And they also developed extreme expertise in
tariff and trade matters, and that was their duty, to become
the expert body within the U.S. Government on international
trade matters, to advise both the President and, more
importantly, and perhaps principally, Congress in
establishing the trade policy of the United States.

As was already mentioned by an earlier speaker,
in 1934 were the Reciprocal Trade Agreements Act, the HALT
Tariff Act. This focus changed yet again because now
Congress basically gave the authority to the President to
establish the tariffs of the United States through
reciprocal trade agreements programs, and the Commission's
function moved to continuing to advise the Congress on
international trade matters and tariffs. But now also to
work even more closely with the President in terms of giving what we now call "probable economic advice" as to what would be the impact of tariff changes that were proposed in the Reciprocal Trade Agreements.

This continued largely to be the work of the Commission until the Trade Act of 1974. And the Trade Act of 1974 really was the seminal Act for what I would call the modern day Commission. Because what it did is move the Commission more and more into the trade administration aspects, if you will, of international trade. And this was done purposely by Congress.

They took authority away from the President with respect to Section 337 and gave it to the Commission. They got the Commission much more involved in antidumping areas, and approved the antidumping--approved the antidumping decisions of the Commission that had been made up at that time. And they did this basically to create the Commission as part of an apparatus within the Government that would be a type of safety valve for the Trade Agreements Program, and to build support for the Trade Agreements Program.

And here the phrase, "all the time, free but fair trade." And that's basically how the Trade Agreements Program has been sold in the United States: We're going to liberalize trade, but don't worry, we're going to make sure it's fair trade. And furthermore, with our Trade Adjustment
Assistance Program we're going to take care of the people that are displaced and harmed by trade.

And so the Commission became a part of this regime more and more. And now, to the point now where about fifty percent of the resources of the Commission are spent on the trade regulation, if you will, or the trade administration, principally antidumping, countervailing duty and Section 337. And about fifty percent of the Commission's resources still go to developing expertise, providing advice to Congress and the President, and preparing reports, that type of thing.

So that's been sort of the substantive evolution of the Commission.

There's also been an institutional evolution of the Commission, although really from the foundation of the Commission it was meant to be independent, nonpartisan, objective, and expert. Those were the objectives in setting up the Commission. And institutionally, the principal way they did that was to provide that no more than three Commissioners could be from one party. Also, to provide for extended terms of appointments so that the President, whoever appointed them, would have less control, if any control, over their reappointment.

And this was the principal method for achieving objectivity and nonpartisanship up until 1974. And again
you saw the '74 Act, a further extension of this idea of
let's make the Commission truly independent.

And it was a realization, of course, by that
time, as there had always been a realization in Congress
that control of the budget, control of the ability to go
into court, those were key aspects of being able to be
independent. And so in the '74 Act the Congress provided
that the Commission could set its own budget, and it would
be included in the budget of the President without change.

It also provided that they could go into court
and represent themselves in matters of their jurisdiction,
and with respect to cases that they had decided.

Both these changes were vociferously opposed by
the Nixon Administration. There were some nasty letters
exchanged, some of which are public, about how this was
going to destroy the ability of the Administration, of the
Executive to control what went to the courts and what didn't
go to the court, or to control the budget.

And of course that's turned out to be way
overblown. In fact, the Commission has come into
accommodation with the Administrations that followed both
with respect to how its budget is set, and the Commission
has never been one to over-reach on budget matters.

And it also has established a method of operation
with the Executive in terms of how it would represent itself
in court. And so that's been, again, an evolution of initially independent, even more so now. And so that's basically been both the substantive and the institutional evolution of the Commission, and that's basically what Will and I try to describe in our chapter.

Thank you.

(Applause.)

MS. TANNER OKUN: Well hello again. I'm back up here on the last panel of the day, the last panel between you and your reception, so I'm wondering if, for those of you who are still here, whether Chairman Williamson sent out an email saying that we had written--that Sarah and I had written a tell-all about all the Chairmen and ranked all 35 individuals who have served one or more terms as Chairman of the ITC in the last 100 years at the time we wrote the book, though we ranked them in order.

(Laughter.)

MS. TANNER OKUN: But we did not. So, sorry about that. But you should still read the chapter.

Instead, what we tried to look at is, keeping in mind the things you've heard this morning and this afternoon, Democrats versus--the tensions, Democrats versus Republicans, free-traders versus protectionists, and of course we all know that doesn't necessarily translate into Republicans versus Democrats. Strong Chairman versus a weak
Chairman. Independence from the Executive Branch.

Independence from the Congressional Branch.

How did those tensions translate into the Chairmanship and the changes that we've seen over time?

So I'm going to just briefly give an overview of what we focused on, and then turn it over to have a conversation about it. And of course the Chairmanship and the Vice Chairmanship have existed since 1916.

What you see, and again related to things about tension, you heard a reference earlier this morning that, while the -- Frank Taussig, who might be our founding father than Len Miranda makes a play about, right, we can figure out who was the most important ITC Chairman or Commissioner, but there was a period during the '20s when there were many issues about the Commissioners, and integrity, and unhappiness. And so that's when you had several changes made to the Chairmanship, and we cover that in our chapter.

And then you have a period of time where the statute has some tweaks in it that relate to the Chairmanship, but the next time you see some changes, what we refer to as the "modern Chairmanship," really are in 1977.

And what you had then, and an interesting read, is the Ways and Means, the Congress really becoming concerned that this division between what Commissioners and
what the Chairman did on the administrative side versus the substantive side, whether the independence had become such that they were spending too much time arguing with each other over particular issues, including administrative matters, that you needed to make a stronger chairman in some ways to handle administrative matters.

So there is an interesting report that was prepared by the House Ways and Means Committee that talks about some of the issues that they saw there. One thing they said was they wanted, the legislation in 1977 was intended to enable the Commission to devote all its energies to substantive matters within the jurisdiction of the Commission, leaving responsibility for administration of the Commission to the Chairman and his delegates.

And that translated into what we refer to as the modern Chairmanship, where the Chairman makes administrative decisions, subject to disapproval of a majority of the Commission. And that under that rubric there has been I think, we view a way forward where the Commission really does have a way to deal with administrative matters, but letting the Chairman do a lot of the details. And for those of us who served as Chairman, we know that there are lots of details that you deal with.

So that's really, again, I want to leave this brief so that we have time for the questions that we want to
talk about and how this rubric that was set up over time for
the modern Chairmanship relates to what's happening today in
the increased responsibilities and missions of the
Chairmanship.

(Applause.)

MR. BARDOS: So I wrote a short chapter on the
headquarters and field offices of the Commission. I found
this a very interesting topic, remembering the grand old
building we used to be in until 1988. And I just remember
the grand staircases, and the cupolas, and you can see it
now. It's the Hotel Monaco, but in those days it was our
digs. And it was grand, but unfortunately it was also
falling apart. I think Professor Eckes mentioned some of
the problems. Metro construction was undermining the
foundations, and vast cracks had shown up.

This was followed by a rodent infestations,
leading to a Washington Times article quoting an ITC
employee saying the squeamish cannot survive long here.

(Laughter.)

MR. BARDOS: So our current building, although
perhaps less historic, has been I think a lot more
comfortable. And then I wanted to mention there were a
number of other offices. For many years we were in New
York, as well. We briefly were in Richmond, Virginia.

But the interesting thing for me was the European
offices. Back in the '20s we started having a European
headquarters in Berlin, and that moved to Brussels for a
good many years. We briefly also had an office in Paris.
And I was amused to find an odd way of finding information
was that the Government Accountability Office had done a
report on the per diem paid to an accountant who had gone to
visit Brussels and determined that that person needed to pay
some money back. And it gave the address of the Brussels
office, which I enjoyed. But we got rid of all our European
offices long ago.

And the last thing I'll say is that, sort of in a
similar vein but not quite, many years ago we received a
Freedom of Information Act request that also went to other
agencies, and I was asking for information about our Hawaii
office.

(Laughter.)

MR. BARDOS: So I went to the Chairman and I said,
I didn't know we had one. And are there any employment
opportunities? I think it was Steve Copeland that was
Chairman at the time, and he laughed.

But, anyway, that's what I wanted to say about
our buildings. Thank you.

(Applause.)

CHAIRMAN WILLIAMSON: Thank you, Paul. And, no,
there are no European or Hawaiian offices in the budget.
CHAIRMAN WILLIAMSON: Okay, let's turn right to the questions. This is the last panel, so it gives us a chance to sort of wrap things up.

I want to start off with this question. A key theme in the Centennial Book, as of course there's been a lot of talk today, is the mandate for the Commission to be independent and nonpartisan and objective. And I want to ask this question:

Is this mandate still as relevant in 2016 as it was in 1916? And will it continue to be relevant going forward? And if you think yes, why? So I throw that open to the panelists.

MR. FOSTER: Yes, I think it is still relevant, and it will continue to be relevant. Again, I think part of the reason of—well, originally the Commission was set up to take politics out of the tariff. That was the phrase that as used. And of course it was not successful in doing that, but what it did establish is an agency that developed some extreme expertise in international trade, and became the go-to agency in many ways for both the Congress and now the President in terms of trying to get objective, nonpartisan, exceptionally expert advice that really lays the foundation for the support for the entire Trade Agreements Program.

And you will not get that support if the agency
becomes perceived as being not objective, or partisan. And
so I can't stress, in my own view the Commission is central
to the entire Trade Agreements Program, because it is the
agency that becomes the safety valve for many of the issues.
And Congress and the President can say, well, we gave that
question to the Commission and here's what they say.

And it's the same way that the tax committees in
Congress uses the Joint Tax Committee, and other agencies--
other committees of the sort. It is an agency that people
can trust and can cite, and it won't be possible if they're
not perceived as objective and nonpartisan.

CHAIRMAN WILLIAMSON: Dan?

MR. LEAHY: Mr. Chairman, I would just say that I
think being seen as objective and independent is really
helpful when talking to appropriators. I mean they get
suspicious if they think you're leaning too much one way or
the other. So I found it helpful to go into those sessions
being able to say, quite honestly, yes, we do some work for
USTR. The statute says we ought to. We're doing a lot more
work right now for Finance and Ways and Means, da-da-da-da-da,
and you're emphasizing the balance in our approach between
the Hill and the Administration I think is helpful to the
Commission's long-term survival.

CHAIRMAN WILLIAMSON: Lynn?

MS. BRAGG: I really feel that it's more important
than ever before, given the hard swings in partisanship that we're seeing on Capitol Hill. And I think that's very--
you've seen the results of that, basically. And I look at it now from a manufacturing and a business perspective.
Nothing gets done.

And I think more and more both the business communities and manufacturing communities are looking for objective information, and information on which they can make very key business decisions.

And the International Trade Commission remains one of those agencies. So I do have to say I'm somewhat concerned over the role that the Commission now has with the miscellaneous tariff bills that I think may put the Commission, while it will elevate it into a leadership role, you also are elevated to be the head of the nail, as well.

So you basically have a de facto decision-making role, which I think will be subject to some political pressure.

CHAIRMAN WILLIAMSON: The head of the nail?

That's very good, Dan?

MR. LEAHY: In 1996 I became Director of the Office of Executive International Liaison. Shortly thereafter, I managed to get that office switched into the Office of External Relations, which brought in the Congressional side of the House as well as the Public
Affairs. It also brought with me a lot of input from those parties.

One of the things that I noted from Dr. Ferrantino's remarks was that I can now date the beginning of my hair loss to the 25 years ago when the Office of Economics put out their first working papers.

(Laughter.)

MR. LEAHY: It certainly brought a lot of attention. But in a good way. But as I sat here today listening to all the presentations, which truly I thought were excellent, two things struck me.

One, I wish I had known a lot of the history before I took on the positions I took on. It would have made my life easier. But secondly, that everyone that spoke, starting with the keynote speakers this morning, they had the same message. And the message is that 100 years ago a group of people thought they could put together an agency that would give them expert, objective, nonpartisan advice. And 100 years later, both the Congressional and the Executive Branches have continued to give us the control, give away control, which in Washington is not something that happens very often. But giving this agency control over matters of great importance to them and to the country.

And, that the staff of this agency, the career staff, the staff that work for the Commissioners, the
Commissioners themselves, over that 100 years have managed to keep that trust. And I hope for the next 100 years they continue to do that. Thank you.

CHAIRMAN WILLIAMSON: Thank you. I'm going to put another spin on it. The points that most of you made are really inside the Beltway, you know, interaction with Congress, business people and tariffs, so—but if you think about the view of trade in general among the general public, if you look at some of the Pew studies and things like that, I want you to think about that and sort of say, if yes, these things of independence and nonpartisan and objective are still important, how do we navigate in this time?

How does living in an age of instant communication and all news all of the time affect the Commission's role and ability to do the things that our founders want us to do, and that we say are still important?

Dave, you had some thoughts about this on Monday?

(Laughter.)

MR. FOSTER: I should have been quiet. Well, you know, I think it is a question of sticking to what we -- and I still use the word "we" when I talk about the Commission -- what the Commission has done well all along. And what it has done well is maintain its independence but develop the expertise that's needed to where, to a point now, and I think this was made earlier, I don't think there's a
concentration of expertise in international trade anywhere
in the world that compares to what's at the International
Trade Commission now.

And I think people see this as a very valuable resource. But you got there by sort of sticking to your
knitting, not being afraid to call things as they are,
developing the expertise and earning the respect,
maintaining the relationships. The Commission has always had
an extraordinarily strong relationship with the staffs of
the Ways and Means and Finance Committee, and I think this
has been critical in maintaining the relationship with the
Committees.

You've also had a very strong relationship with
the Administration, with USTR. Commission employees now are
spread out throughout the world in international trade
organizations and everywhere else.

And so I think, stick to your knitting and you'll
do find. And so basically the advice is, continue.

CHAIRMAN WILLIAMSON: Lynn?

MS. BRAGG: Well, I think outside of the Beltway
trade and trade negotiations and trade agreements are
completely misunderstood. And they have been spun, no
matter the benefits that the trade agreements bring to the
United States, and to businesses and manufacturing in the
United States. There's always a real, to me, a very
negative, a negative, negative spin. And I think that is
what has really stuck, that impression.

So I would say most people don't know. I mean,
most Members' constituents don't know, most consumers don't
know that this truly nonpartisan, independent agency exists.
And they oftentimes aren't aware of the fine, fine work that
is done here in terms of thought papers on the economic
analysis, and the really key research that is done to lay
the groundwork for trade agreements.

So the one piece of advice I guess that I might
impart is in the new world of instant communication try to
find a great niche for the ITC in a very respectful and
professional way to get the fine work that is being done in
this Commission out in the public when it's published.

CHAIRMAN WILLIAMSON: Shara?

MS. ARANOFF: I was thinking about this idea of
outside-the-Beltway and how the Commission can and can't be
relevant to people outside the Beltway.

And one of the things that the Commission has in
fact tried to do is get outside of Washington when it can
and show people on the factory floor, or through field
hearings, that this is your government working for you.

So one of, I thought, the best parts of being a
Commissioner was getting to go and tour plants around the
country that were making products that were subject to
of the most important things about that was actually walking around the floor of the plant so that all of the workers there could see that you were there, and usually management had told them why you were there so that they could see that there was a government agency who cared about what was going on in their facility, who was interested in how they did their jobs, and who was working for them.

The same with field hearings, where I think the Commission doesn't do it often, but when it's appropriate to get out of Washington and make itself more accessible to the viewpoints of people who are out in other parts of the country. That's also been well received.

And I must say, though, when you think about it from a government, Washington versus outside-of-Washington standpoint, that the Commission always had to tread a very fine line between wanting to be out there, and showing people the relevance of what the Commission does versus being accused of going on junkets.

Now I would suggest that a lot of the places that we went to do plant tours were not the type of places that you would go if you had a junket in mind, but that's a very hard argument to make when, you know, official government travel is being highly scrutinized.

But on balance I would say it's a good thing that
the Commission goes out there and tries to make itself
visible and make the Commission more visible to people
outside the Beltway.

CHAIRMAN WILLIAMSON: Paul?

MR. BARDOS: I just wanted to do a plug for the
Commission's website. I don't know that we'll ever be--
well, that people around the country will ever be aware of
us, but I think we've done a very good job of putting out
information on the Internet. The DataWeb, the HTS. So for
those people who do know us and can benefit, we do a lot for
them.

I remember when our website was basically just a
toy, and it has just become so much more. It's such a huge
fount of information.

CHAIRMAN WILLIAMSON: And it's going to become
even more of a fountain of information after today with
what's been learned today. Dan?

MR. PEARSON: Mr. Chairman, I actually think it's
difficult for the Commission to do much more to engage in
policy debates that are now so political. I think the
Commission, as it sticks to its knitting and does good
analysis, is providing information that can inform that
debate. Unfortunately, in recent months we haven't seen
much informing being done--not the Commission's fault, but
people aren't terribly interested in it.
But those of us who use some of the Commission's work and are in a position to be actively engaged in the public debate I think need to try to raise our voices further. Although I've been trying to do that, and frankly my team is losing rather badly. But that's another story. But we have to divide the line I think between what the Commission legitimately can do and what those people can do who are more actively involved in public policy debate.

CHAIRMAN WILLIAMSON: Okay, can I summarize this by saying—Yes, Lynn.

MS. BRAGG: I just have one more comment, and just so you know, my industry is a heavy, heavy user of the Trade Data Website. So thank you. Thank you, very much for that.

CHAIRMAN WILLIAMSON: Thank you. Okay, can I summarize this by saying, keep on doing a good job in getting the facts out there. Stick to our knitting. Don't tweet, or at least be careful what you tweet.

(Laughter.)

CHAIRMAN WILLIAMSON: For the authors of the Chairmanship chapter, in your chapter you say: While the role of the Commission continues to evolve along with the substantive and administrative challenges facing the agency, the current structure of the Commission designed to strike a balance with neither a strong nor a weak Chairman, has on the whole proven effective.
And the question I have for you: Should anyone in
the general public care about this? Whether we have a
strong or a weak Chairman?

MS. ARANOFF: So the answer to that question I
think is yes and no. We've talked a lot today about how the
Commission is structured in a way that on the Commission's
substantive work on antidumping cases, on Section 337 cases,
on Section 332 studies, the Chairman's vote is not worth any
more than any other Commissioners' vote. And so in that way
the strength or weakness of the Chairman really doesn't
matter at all to the public that's interested in the broad
products that the Commission puts out.

The fact also that the Commission really doesn't
have any policy-making powers means that the strength or
lack thereof of the Chairman doesn't have nearly the impact
that it would have in an agency that does have policy-making
authority.

That said, it does matter. And it matters for
the reasons that were laid out in that Congressional Report
that Deanna quoted earlier when she was introducing our
chapter. There have been periods on and off in the
Commission's existence where in-fighting over administrative
matters have taken up so much of the Commission's time and
energy that it has distracted the Commission's ability to
focus on the substantive mission. And that harms everyone
out in the public that has an interest in the agency.

So this need to strike that balance, you want to have a Chairman who has enough power to get day-to-day things, just to keep them moving. There have been times in the Commission's history where chairmen have not been able to do that. I think all of you are familiar with the Action Jacket. That's the written voting method that the Commission uses on everything for which it doesn't hold a public vote.

There are, at any given time, dozens of those circulating. And there were times in the past where people would hide them in their desk drawers in order to prevent decisions from being made. So you want a Chairman who's got enough power to keep those trains running, but not so much that they can single-handedly take those small areas where perhaps the agency could be politicized or moved off the rails in things like budget, or hiring of staff, or setting the research priorities. You don't want a Chairman who is strong enough to wrest control over those things and move the agency off of that sort of stick-to-the-knitting path that we've talked about.

CHAIRMAN WILLIAMSON: Anyone else? Dan?

MR. PEARSON: The public may not care much about the Chairmanship structure in the agency, but I do think that the current arrangement does help to maintain the
independence of the Commission.

A Chairman, at least the ones I have dealt with, tend not to take the approach that they own the office, but rather they hold it in trust for two years, and then they're going to pass it off to a member of the other party. And most Chairmen don't want it to look like they've entirely blown it during their tenure. And so, you know, there's a collegiality that grows out of a relatively weak temporary Chairmanship.

The value of when a challenging administrative matter comes up, the value of walking down the hall and visiting with the other Commissioners, and developing as much of a consensus as possible, that really helps to keep the place going.

MS. TANNER OKUN: If I could add a couple of brief points. One which is that Dan's right about the ability to walk down the hall and not be constrained by the Sunshine Act on most of these conversations that you can have was a way to maintain collegiality and get things done. And I think, again we haven't spoken--as I think many in this room know, I mean the Chairmanship is unique among the alphabet agencies in terms of rotating from one party to the next and only lasting two years, and therefore no one can really consolidate power during that time, which goes to the weak Chairmanship, and certainly it is weaker than the President
when he's elected get to, you know, put you in place and you have substantive rulemaking power.

So it is much weaker in that sense. But I think the allowing the Chairman to make decisions and then just make sure that he has the support of his or her colleagues has, or at least it did during our period, which is kind of what our observations are on this chapter and not trying to talk about other periods of history.

CHAIRMAN WILLIAMSON: Dan?

MR. LEAHY: Yes. Having worked also for a Chairwoman for two years in a more or less administrative capacity, there were certainly days when I would have loved to have a very, very strong Chairman.

However, I think in terms of the general public, I don't know that there'd be much of a difference. But I think there would definitely be a difference in those customers that we serve and their view of us and our objectivity, and to lose that is essentially to lose the agency.

MS. BRAGG: I would agree with everyone's comments so far on this question. I would also just add that I think the duality of the Chairmanship can have a very large impact on Commission staff.

So I think when there isn't collegiality and those jackets don't make their way down the hall like they
should, it really impacts the morale of the staff. And having entered the Commission at a time when I think it's fair to say morale was at a low, I just think it's key for the Commissioners to engage in that kind of collegiality and really work together in terms of making administrative decisions together.

CHAIRMAN WILLIAMSON: Thank you. Ken?

MR. MASON: I would agree with the last. I was a staff member at the time when a Chairman gave an almost world-famous interview to the Christian Science Monitor. The headline was something like "Chairman Doesn't Have Enough To Do." He gave a quote that he only spent four hours a day on work. He didn't know what the rest of the Commission was doing.

This went over about like a pork chop would at a Bar Mitzvah.

(Laughter.)

MR. MASON: The staff was horrified. The Congress was horrified. The other Commissioners were united in opposition.

CHAIRMAN WILLIAMSON: Thank you.

Drawing on the Commission's history, what do you think are the most pressing, substantive institutional and procedural issues facing the Commission? And do you think the Commission is equipped to handle these issues? And one
thing I'd like you to comment on is Commissioner Kieff has asked the question about the approach, the interdisciplinary approach, and Gene Rosengarden had referred to it this morning, too, about this interdisciplinary approach that the Commission had.

So in thinking about that larger question, if you want to touch on that, too. What do you think are the key substantive and institutional issues facing the Commission going forward?

(No response.)

CHAIRMAN WILLIAMSON: If you don't want to start with that one, take the second one. Dave?

MR. FOSTER: Well, in terms of the substantive issues, I think a number of people have discussed already today the concept of tariffs becoming less and less significant in trade, and other issues becoming more and more prominent.

And so I think, as was mentioned by a panel I think very effectively, the Commission is going to be asked to assess the effect of nontariff barriers and other activities, such as child labor and that sort of thing, more and more. And that is an extraordinarily difficult task, and one that I think the Commission is probably up to but it's going to be a huge challenge to figure how to deal with this in a way that provides advice and support for the Trade
Agreements Program.

In terms of sort of the institutional aspects of it, I think if you read the annual reports of the Commission going back to Report No. 1 issued in 1917, and from that point on, the Commission was really sort of in the forefront in establishing an interdisciplinary team approach to addressing issues, bringing together the economists, the commodity specialists, the analysts, the lawyers, the professional investigators, to get the information together and present it.

And this has been an approach that has really resulted I think in the Commission being recognized for the leader it is in terms of expertise international trade. And I think it is just critically important that that continue, and that you not let groups in the agency become siloed, that they continue to work together as teams. Because it has just resulted in enormous beneficial results in the past. And it has been something that, again, the compositions may have changed over time but the basic approach has been consistent since the founding of the agency. And I think it has worked very well.

CHAIRMAN WILLIAMSON: Dan?

MR. LEAHY: I'm not going forward with the Commission. I haven't been going forward with the Commission for a number of years now, actually, but I have
been paying attention. But since this is a historical gathering, there is a little bit of history that I think is pertinent here, and it goes to the point of objectivity and perceived objectivity of the staff and the Commission.

I started out in the Office of Textiles back in 1974. In 1976, I was recruited into a newly established, or maybe reformatted Office of Investigations, in the role of a sole professional investigator with all responsibility for that investigation.

It sounded very exciting to a young people that I was. In very short order, I found out it wasn't exciting at all; it was a tremendous burden, workload burden. We did that for I'm not sure how long. Lynn Featherstone might remember better than I, because we were both in that role, but that was a real example of where once again I think it may have been coming from the Hill, there was some perception that something was amiss within the Commission and within certain offices that caused them to start doubting it.

And quickly we resolved the issue because we had to in order to keep going forward. And we went back to that interdisciplinary system where all the offices participated. And it may have been a lesson learned in terms of the care that needed to be taken, and I think it has been in the remaining years a very successful way to approach the work
of the Commission. And I don't really see another way of

doing it.

CHAIRMAN WILLIAMSON: Thank you. Deanna?

MS. TANNER OKUN: One thing that I found difficult
when I was there, and I think it's an institutional
challenge, is the Commission in some ways is reactive to its
customers, and to the Trade Bar because you have to do the
cases that are before you, if it's under Title VII, or the
337 side. And for Title VII you have very strict deadlines,
and 337 you're moving under deadlines as well. And then in
332 you have Congress and USTR who get excited about
particular things at a particular moment, and sometimes it's
because they're passing the hot potato, and we can debate
whether that's MTBs or not, but -- and the Commission just
has to deal with that.

So I think the team approach has worked well. I
think, you know, the focus on trying to bring--have staff be
able to play many roles is helpful. Again, not being
silooed. But I think that will just continue to be a
challenge for the Commission, even in thinking about what
issues you should be thinking about.

I think the Commission and the staff have done a
great job in trying to talk to their customers, but we all
know, for anyone who sits down with Members of Congress and
their staff, they have so many things going on that asking
them to think about, you know, something futuristic is also
difficult. So they want you to come and say: What should we
be thinking of?

So I think really it can be a virtuous cycle, but
it's difficult because you're dealing with people who can't-
aren't focusing long term, and the Commission is one its
resources. So you can't say we're going to become experts
in all these issues, you know, all at once.

CHAIRMAN WILLIAMSON: Thank you. Commissioner
Kieff?

COMMISSIONER KIEFF: Thanks. This may be too
arcane, but it's designed to follow up on the question that
our panel got on 337, intellectual property, about the
relationship to the Federal Circuit. And it might be Dave
Foster who could answer it, but others might as well, and it
follows up on your main initial theme of independence.

In complicated areas, arcane areas of law like
intellectual property, it can be hard, it can be difficult
to really understand the nuances. And fashion and politics
can blow in ways that can mask nuances. A truly independent
Commission would have the statutory power and contracting
ability to go out into the market and hire top Supreme Court
litigator talent to bring certiori when it feels that it's
being misunderstood. Do you think the Commission either has
that ability, or should have that abilities? And why, or
why not? If you really think it's an expert, independent
commission and reasonable minds can differ about all sorts
of stuff like that, but the opportunity to get the Supreme
Court to hear directly from the Commission doesn't seem to
exist at the moment. Do you think it should? Why? Why
not? How would you do it? Why didn't it go along with
independent litigation authority?

MR. FOSTER: Well, when the independent litigation
authority was added in '74, I don't know. I can't say that
Congress focused on how high this would go. Could we go to
the Supreme Court? Or should we just stay at the CIT, or at
that time the CCPA, now the Federal Circuit?

But the intent behind it was that the realization
that if the Administration in the form of the civil division
of the Justice Department, or the appellate division, had
the ability to decide whether a particular issue would be
taken to court, that this could compromise the independence
of the Commission and the ability of the Commission to
interpret the laws that Congress had passed in the way
Congress wanted.

So from that perspective, I would think the
answer is, yes, the authority should probably be interpreted
to mean taking an appeal to any available forum.

Having said that, of course the Commission has to
live within the government. And especially when you get to
the Supreme Court level, it may be that the last thing the Commission would want would be for it to seek cert and then have the Court ask the Solicitor General, well, what do you think about this? And have the Solicitor General say, well, I don't think it's a good issue to take up. So there's a certain reality in terms of how far you can take that authority. And so I think the Commission has done a good job in trying to weave this process. But I can see that it is frustrating. And it's frustrating for me. I mean, I make no bones about it. I think the most recent decision in Clear Correct was just an absolute incorrect decision by the CISC, and I would have loved to see it taken up. But on the other hand, I can understand how that might not be possible.

CHAIRMAN WILLIAMSON: Yes?

MR. BROWN: So, Chad Brown, Peterson. On June 23rd, our friends across the Pond made a vote that they were going to make a change. So the UK voted for Brexit. And then what they quickly realized is they didn't have anybody in-house that knew anything about trade. So they decided to go out and hire--the latest numbers I heard were, 300 new trade negotiators. So my question is a little bit tongue-in-cheek in part. First is, has your senior staff been pirated? Is the UK coming here?

(Laughter.)
MR. BROWN: To kind of steal them? And if not, might you offer them a deal for the right price that they could borrow some of the expertise for a while?

But the second is, have you thought a little about your book marketing tour? Because this might be an institution that they might want to sort of model themselves after, as they really very much are starting themselves from scratch.

So it's very much tongue-in-cheek, but I think what I want to highlight is, trade is an issue even in the absence of no new trade agreements. It doesn't go away. We always need to have the expertise that you provide here, and the independence that you provide here, and you never know when it is that you're going to need it. So thank you.

CHAIRMAN WILLIAMSON: Thank you.

MR. ARANOFF: Well I was going to say, while I was doing trade capacity building projects, I used to say every country needs an ITC. But go ahead.

MS. TANNER OKUN: Well I was going to say, for one thing you're suggesting is not new. In addition to what Ambassador Froman said this morning about the Commission providing many, many staffers at USTR as well as on the Hill, when the WTO was created quite a few Commission employees decamped to Geneva, and several have gone since then as well. So I think the Commission as an institution
is respected as a great training ground for trade professionals. And while that can be inconvenient when your really good people leave right when you need them to do some important project, it's also a great way of spreading the expertise, spreading respect for the agency, and spreading the respect for what the Commission stands for in terms of objectivity, independence, and expertise into other institutions. And I know when I was Chairman we would meet with folks from sister agencies in other countries, and the line that we often received was: Well, we kind of have the same mission as the commission, or some of the same missions as the Commission, but, boy, we wish we had your budgetary independence.

(Laughter.)

MS. TANNER OKUN: I was actually thinking along the same lines, which is I think the Commission has a lot of expertise that other countries have called on in the past, and we've been helpful. And I was thinking that we needed Former Commissioner Hillman up here, although she right now is teaching a class on Brexit and has someone there from I think EU and Britain in kind of a seminar session where they're going to be talking about some of the legal issues and the trade agreements going forward. So maybe she'll be doing some of that role as well in her capacity.

CHAIRMAN WILLIAMSON: Okay. Sure.
PROFESSOR MOORE: So, Mike Moore, George Washington University. Thinking about the unthinkable, since World War II we have had Presidents that seemed to be fairly open to trade liberalization and the multilateral system. One of the candidates--I've forgotten which--has a distinctly different viewpoint. Is there anything that the Commission should do or think about in just anticipating the possibility of President Donald J. Trump?

MR. PEARSON: The Commission has prepared this great history book of the 100 years of its existence.

(Laughter.)

CHAIRMAN WILLIAMSON: Good. And as Dave Foster says, stick to your knitting. Anything else anyone want to add?

(No response.)

CHAIRMAN WILLIAMSON: Okay. I think then it is time to wrap it up. I want to thank the panelists for their excellent contributions. I want to thank all of the panelists today for their excellent contributions. I think this last discussion about what other countries need, we do have a good thing here and we want to keep it going and export it around the world, too, but in any case I think this has been a wonderful day, and a wonderful celebration of our history. And we are going to continue by having the reception at the Commission. And so
everybody who wants to go there. Paul, anything further?

MR. BARDOS: Just about the shuttle.

CHAIRMAN WILLIAMSON: There is a shuttle bus. If you go out the C Street exit and walk to the end, there will be a shuttle bus that will be doing a continuous loop taking people to the Commission, or else you can walk over there. But we will adjourn this session and look forward to seeing you over at the ITC. Thank you.

(Applause.)

(Whereupon, at 5:38 p.m., Thursday, September 8, 2016, the meeting was adjourned.)
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