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THE CANADA-UNITED STATES SUPPLY CHAIN IN THE ERA OF GLOBAL ECONOMIC COMPETITIVENESS

Session Chair – P. Kelly Tompkins
Canadian Speaker – Garland Chow
United States Speaker – Paul Vandever

INTRODUCTION

P. Kelly Tompkins

MR. TOMPKINS: Good morning. My name is Kelly Tompkins. I am an Executive Vice President of RPM International.¹ And sitting next to my colleague from Ford, I feel like a really small company with a mere \$3.5 billion in sales.² That said, it is my pleasure to chair this opening panel. I can assure you that the expertise lies to my left and right; indeed, I am merely the appetizer for the main course, which my two colleagues will serve us in a few minutes.

Let me also thank Henry King for his kind, if not persuasive invitation. Those of you who have known Henry, he is very capable of twisting arms, although he did not need to do that in this case. Henry, thank you, it is a pleasure to be here.

DR. KING: Thank you.

MR. TOMPKINS: Our topic today is U.S.-Canada Supply Chain Logistics. I am assuming that most everyone in the room is not an expert in supply chain logistics. Fortunately, our opening speaker, Professor Chow, will give us the big picture view of supply chain logistics to frame our discussion.

Following Professor Chow, Paul Vandever will take us a little deeper into the automotive industry, in particular Ford, to give us a real-life example of the tension between supply chain logistics, economic considerations, and border security.

¹ See generally RPM International, Inc., available at www.rpminc.com (last visited Oct. 8, 2008).

² See *E-xact Achieves PCI Compliance Again in 2008*, E-xact Transactions Ltd. (April 14, 2008), available at <http://www.e-xact.com> (last visited Oct. 8, 2008).

I was struck by some of the economic statistics between the U.S. and Canada which Valerie mentioned as she was heading off to China this weekend; that was shocking to me. Not only did Canada import \$248 billion from the U.S. in '07, but the province of Ontario buys more from the U.S. than does China at about \$160 billion.³ So we are talking about significant economic stakes.

The Ambassador Bridge, which we are all familiar with, which connects Windsor and Detroit, exports roughly that which is equal to the U.S. exports to China across that one bridge alone.⁴ From a two-way trade standpoint, we are talking about nearly \$2 billion a day between our two countries, \$1 million a minute, a 400,000 people per day crossing on average.⁵ Clearly we are talking about significant economic relationships and economic implications.

As Sam Palmisano, the chairman of IBM, remarked recently, we are in a globally-connected world, and when we are globally connected, work moves to the places where it is done best, most efficiently, highest quality, and that is the essence of the global supply chain.⁶

Perhaps as a working definition—and I can assure you Professor Chow will give us a more refined explanation of global supply chains—we refer to it simply getting the right product at the right place at the right time at the right price.⁷ That is really the essence of the global supply chain.

As I mentioned, Paul will take us into the automotive industry where the assembly of one car can involve three, four, five border crossings.⁸ Producing each part in the most efficient location improves productivity, lowers costs, increases profits and that is the essence of today's global supply chain manager's challenge.⁹ Inefficiency, whether it is due to a lagging

³ *Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping*, Statistics Canada, available at <http://www40.statcan.ca/101/cst01/gblec02a.htm> (last visited Oct. 9, 2008); *See also, Ontario Exports/Imports by Country*, Ont. Econ. Dev., available at http://www.2ontario.com/welcome/ooit_317.asp (last visited Oct. 9, 2008).

⁴ *See generally* Stephanie Fitch & Joann Muller, *The Troll Under The Bridge*, *Forbes*, at 134 (Nov. 15, 2004).

⁵ *See Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping*, *supra* note 3.

⁶ *See generally* Samuel Palmisano, *The Globally Integrated Enterprise*, 85 *Foreign Affairs* 127, 127-136 (2006).

⁷ *See generally* William Hoffman, *Global supply chain? What global supply chain?; People talk about them, but BDP study says they're still relatively rare*, *J. Com.*, June 4, 2007, at 42.

⁸ *See generally* Fred Blazer & Dennis Desrosiers, *Nasty rattle in the offing if Auto Pact isn't tuned up*, *The Globe and Mail (Toronto)*, Dec 18, 1986, at A7.

⁹ Ruud Bossman, *The New Supply Chain Challenge: Risk Management in a Global Economy*, FM Global (2006), available at <http://www.fmglobal.com/pdfs/ChainSupply.pdf> (last

infrastructure or well-intended but improperly-scoped security, is the key to the competitiveness of an integrated North American economy vis-a-vis Asia and Europe among other regions of the world.¹⁰

So among our questions today are, is the border thickening, and if so, what are the trade implications? Are well-intended security rules and regulations having unintended consequences to our collective competitiveness around the world from the perspective of global supply chain considerations? Do our regulators and policymakers really appreciate the full economic impact of delays and just-in-time delivery systems on U.S. and Canadian suppliers, customers, OEM's, and ultimately consumers? Hopefully during the course of the next hour, we can address some of these and other questions, and I look forward to active participation by the audience.

So with that, let me introduce our first speaker, Professor Garland Chow, an Associate Professor of Logistics and Supply Chain Management at the University of British Columbia in Vancouver.¹¹ He teaches and writes in the field of supply chain logistics, freight transport pricing, an internationally known authority, and has done extensive research on the role of Canadian firms in the global supply chain, the relevance of Canadian labor standards, the long-distance truckers, modeling of supply chains, utilizing the Asia-Pacific Gateway, and I could go on and on.¹² Suffice it to say, we have great expertise on this topic. So with that, I will turn it over to Garland and let him frame our global supply chain logistical challenge for us. Garland.

visited on Oct. 9, 2008).

¹⁰ See generally *id.*

¹¹ Chow, Garland, Sauder School of Business, available at www.sauder.ubc.ca/AM/Template.cfm?Section=Faculty_Research_Directory_alphabetical&Template=/CM/ContentDisplay.cfm&ContentID=6665 (last visited on Oct. 9, 2008).

¹² *Id.*

CANADIAN SPEAKER

*Garland Chow**

DR. CHOW: Thank you. Actually last night, Dan, you mentioned that Cleveland has the Rock and Roll Hall of Fame.¹³ Well, you know, that got me thinking. It got me thinking about when I was in the University, I was thinking about The Rolling Stones. Now, at my age, and I think some of you all, we are thinking about the kidney stones. You know, back in those days some of you folks were getting in trouble with the authorities because you had long hair. Now you are longing for hair. And did not we all anticipate those big weekends where we empty a keg of beer? Now on weekends, instead of thinking about a keg, K-E-G, we are thinking about our EKG.

Well, not only have we changed, but also the geoeconomic landscape that we live in has changed. You know, for practically anywhere from 20 to 30 years after World War II and the Korean Conflict, both U.S. and Canada experienced a significant period of economic growth with much of that value-added activity performed right here in North America.¹⁴ This is enabled in part by the world's best transportation system because in the United States, we developed the national interstate highway system, and in Canada, in parallel, the Trans-Canada Highway, supplemented by the railroad.¹⁵ In cooperation with the railroads, this meant we had good internal transportation to move goods around so that, yes, where work was best done in North America, or at least in United States or in Canada, it was done there.¹⁶

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¹³ See generally Rock and Roll Hall of Fame and Museum, available at <http://www.rockhall.com> (last visited on Oct. 9, 2008).

¹⁴ See generally Karen Rasler & William Thompson, *War and the Economic Growth of Major Powers*, 29 Am. J. Pol. Sci. 513, 513-538 (1985).

¹⁵ See generally Cynthia Clark Northup, *The American Economy: A Historical Encyclopedia*, 111 AFL-CIO (2003).

¹⁶ See generally *id.*

Now as Paul will bring out more detail, free trade between the U.S. and Canada was pioneered by the auto industry in the 1960's, and with the FTA and NAFTA agreements in 1989 and 1994 respectively, integrated supply chains further developed within North America primarily through the reduction in trade barriers.¹⁷ Since then, globalization has taken place.¹⁸ I am not going to thrill you with a bunch of numbers because you are all well aware of that the numbers. Much of the world's low-cost manufacturing has migrated to Asia, spurring the impressive growth of not only Asian countries but trade between Asia and developed countries such as North America, Canada, United States.¹⁹

This is all very interesting, but globalization is more than just offshore sourcing to low-cost manufacturing companies.²⁰ The rise of global supply chains in which imports and exports are exchanged across borders as part of the production and marketing processing of a single company or a network of companies means that firms should not be asking where should we create an entire product or service. No. What firms should be asking, and what they are asking, is where is the best place to locate each specific activity? And that is the essence of the supply chain.²¹ The supply chain, as Kelly mentioned, is getting the right product to the right place at the right time in the right quantity and in the right condition.²² When a consumer says I want a product, then someone has to design it. Where is it going to be designed? It can be designed anyplace in the world.²³ That product has to be developed and engineered. Where is that going to happen? It can be done anyplace in the world.²⁴

The raw materials have to be sourced. Where is it going to be sourced? It can come from many places in the world.²⁵ And components need to be sourced. Where are they going to come from? They can come from many different places in the world.²⁶ Lots of products today go through several

¹⁷ See generally Paul Wonnacott & Ronald Wonnacott, *Free Trade between the United States and Canada: Fifteen Years Later*, 8 Can Pub. Pol'y 412, 412-427 (1982).

¹⁸ See generally Duncan Bell, *History and Globalization: Reflections on Temporality*, 79 Int'l Aff. 801, 801-814 (2003).

¹⁹ See generally Louis Kraar, *Asia's Rising Export Powers in the 1990s*, *Fortune*, at 23 (Fall 1989).

²⁰ See generally John Isaac, *Product Development Challenges in a Global Market*, 25 Printed Cir. Design & Mfr., 24, 24-27 (2008).

²¹ See generally Hoffman, *supra* note 7.

²² See *id.*

²³ See Dawn Calleja, *Earning its Wings; Boeing's New Dreamliner Is Lighter, More Fuel-Efficient and Easier to Build. Talk about Flying Economy*, *GLOBE AND MAIL* – Toronto, April 25, 2008, at B2.

²⁴ See generally *id.*

²⁵ See generally *id.*

²⁶ See generally *id.*

steps in manufacturing.²⁷ You manufacture an intermediate product which then is transformed again and again and again until it gets the final manufacturing or to the OEM for final assembly.²⁸ Where is it going to be done? It can be done at many different places.²⁹ And finally there is distribution. Where do you locate your distribution centers? Where do you locate your stocks of finished goods? Typically they are close to the customer.³⁰

Let us look at an example. Now, some of you may have heard about the Boeing situation.³¹ And as complicated as it looks, Boeing will assemble, they will assemble.³² They conceptualize by the way what this product's going to look like, a 787. They are going to assemble it in Seattle, but where do all the components come from?³³ It is a joint effort where they have source, the design and engineering, and the production of many different parts all over the world.³⁴ If you look at it, you are going to see the United States, you are going to see Italy, you are going to see France, you are going to see Australia, and you are going to see Sweden.³⁵ And right down there on the bottom, you will see wind body faring landing gear doors from Boeing Canada.³⁶

And I know that right in British Columbia we have a company called Avcorp.³⁷ While they are not supplying parts and components to this plane, they do supply significant assemblies to Boeing for other aircraft.³⁸

Here is another good example. Bombardier Transportation.³⁹ Bombardier recently signed a contract to provide 88 advanced rapid transit cars to Malaysia in Kuala Lumpur.⁴⁰ In this case, they have partnered with Hartasuma, or HSB.⁴¹ They are partnering with a Malaysian company.⁴²

²⁷ See generally Clare Ansberry, *The Economy — The Outlook: Manufacturing Confounds Economists*, WALL ST. J., May 5, 2003, at A2.

²⁸ See generally Mitzi -Weiss Montoya & Roger Calantone, *Development and Implementation of a Segment Selection Procedure for Industrial Product Market*, 18 Mktg. Sci. 373, 373-395 (1999).

²⁹ See generally Calleja, *supra* note 23.

³⁰ See generally *id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See generally *Avcorp confirms deal to supply CJA Cessna*, THE TORONTO STAR, Sept. 11, 2008, at B02.

³⁸ *Id.*

³⁹ See generally *Bombardier to Upgrade Kuala Lumpur Lines*, THE GLOBE AND MAIL — Toronto, Aug. 31, 2007, at B5.

⁴⁰ *Id.*

⁴¹ *Id.*

But wait a minute. How is this product produced, and where? Well, first of all, the components are sourced globally.⁴³ Some from United States, some from Canada, and much from other parts of the world.⁴⁴ All of those are going to converge in Canada where in Montreal Bombardier will in fact manufacture these cars.⁴⁵ They are going to manufacture it just like Ikea.⁴⁶ It is going to be knocked down. Where does it go after that? It goes to Malaysia where the partner, HSB, will actually assemble a final product and customize it so that it meets the needs of the citizens of Kuala Lumpur.⁴⁷

Illustrating Canadian participation in global supply chains, you see that with respect to the large companies in Canada, they are acting globally,⁴⁸ where more than almost 80 percent of those companies in some way participate in global supply chain by sourcing research, raw materials, using global suppliers, selling to global suppliers, and so on.⁴⁹

Of course as companies decrease in size, they have less exposure.⁵⁰ They also have less assets and less ability to go offshore.⁵¹ So as you get to smaller companies as illustrated by the light blue and the red, you see less participation in those global supply chains.⁵² I am sure that the same pattern exists in the United States.⁵³ So with this globalization, however, nothing has really changed between Canada and the U.S.⁵⁴ Today, as has been the case for decades, Canada and U.S. trade, which totals in 2007 \$562 billion, is number one.⁵⁵ We are the number one traders in the United States, and for Canada, the U.S. is the number one trade partner.⁵⁶

⁴² *Id.*

⁴³ *See generally id.*

⁴⁴ *See generally id.*

⁴⁵ *See generally id.*

⁴⁶ *See Ikea Products are Manufactured All Over the World*, available at http://www.ikea.com/ms/en_GB/about_ikea/press_room/manufacturesproduct.pdf (last visited on Oct. 14, 2008).

⁴⁷ *See generally Bombardier to Upgrade Kuala Lumpur Lines*, *supra* note 39.

⁴⁸ *See generally* Danielle Goldfarb and Kip Beckman, *Canada's Changing Role in Global Supply Chains*, THE CONFERENCE BOARD OF CANADA (Mar. 2007) available at http://www.internationaltransportforum.org/2009/pdf/CDN_GlobalSupply.pdf (discussing how companies increasingly use inputs from two or more countries to produce a single good or service).

⁴⁹ *Id.*

⁵⁰ *See* Press Release Arati Sontakay, Small Business Growth Means More Jobs in Virginia, Maryland, and Washington, D.C., http://www.wachovia.com/inside/page/0,,134_307%5E348,00.html (last visited on Oct. 14, 2008).

⁵¹ *Id.*

⁵² *See generally id.*

⁵³ *See generally id.*

⁵⁴ *See generally Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping*, *supra* note 3.

⁵⁵ *See generally id.*

⁵⁶ *See generally Top Trading Partners - Total Trade, Exports, Imports*, U.S. Census Bu-

U.S. exports to Canada is \$249 billion.⁵⁷ That is number one for the U.S., and it is number one for Canada.⁵⁸ Canada exports to the U.S., in other words imports into the U.S., \$313 billion.⁵⁹ Yes, it is number two for the U.S.⁶⁰ China is number one to bringing in more products from China than they are from Canada, but it is, again, number one for Canada.⁶¹ Now, Canada's trade with the U.S. is a much larger percentage of GDP than it is for the U.S.⁶² Therefore, Canada as a trading nation has a greater dependency, or has a bigger stake in this.⁶³

In fact, here is the saying that is so true: If trade is a foundation on which Canada's economy is built, then trade with the United States is its cornerstone.⁶⁴

But what we see here is the following. First of all, let us do a little thinking here as to what these numbers mean. Entry, middle, and end. Entry level exports or imports, they are usually raw materials.⁶⁵ They are goods that go into the production process of whoever is buying them. And they come in right at the beginning of that production process.

On the other hand, middle entry products, those are products that are going into the process of production to the buyer, but they have already been processed.⁶⁶ In other words, more value has been added to this product.

And finally, if it is an end product, then it is a finished good.⁶⁷ If it is an end product and a country sells it to Canada, then for all practical purposes, we are not doing anything to it.⁶⁸ We are just reselling it. We are retailing it or wholesaling it.

reau, available at <http://www.census.gov/foreign-trade/statistics/highlights/top/top0712.html> (last visited Oct. 4, 2008).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping, supra* note 3.

⁶² *See generally id.*

⁶³ *See generally* Paul Wonnacott & Ronald Wonnacott, *supra* note 17.

⁶⁴ *See generally Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping, supra* note 3.

⁶⁵ *See generally* Asia-Pacific Human Development Report, *Adjusting to a New Era for Textiles and Clothing*, available at http://www.undp.org.fj/_resources/main/files/asiapacifichdr2006/Chap%2004.pdf (last visited Oct. 12, 2008).

⁶⁶ *See generally id.*

⁶⁷ *See generally id.*

⁶⁸ *See Product of Canada, Eh?*, available at http://www.cbc.ca/marketplace/2007/10/24/product_of_canada_eh/ (last visited on Oct. 14, 2008).

So what you see here is that since NAFTA there has been growth in all three of these, but the greater growth has been in the middle and end product areas.⁶⁹ In other words, it signifies an integration between the Canadian supply chains and the U.S. supply chains, or better yet, that the supply chains of the U.S. and Canada are integrated.⁷⁰

To add to that, let us look at the products that are imported into Canada from the United States. Notice that the entry level, in other words, raw materials coming from the United States to Canada is very low.⁷¹ It was low before, and it has hardly grown since NAFTA's started.⁷² On the other hand look at that middle one. The middle entry products are not only very large, but very significant in terms of growth as is with the end products.⁷³

And what does this all represent? It means that the Canada-U.S. economies are highly integrated together.⁷⁴ In fact, they have discovered in this research that 70 percent of the goods moving back and forth are in the same product category.⁷⁵ In other words, these are products that are in the same industry going as an input into the production process.⁷⁶ They are coming the other direction to the other country.⁷⁷ That represents an integrated supply chain between players and stakeholders in both countries.

Let me give you a few examples of this. Here is the North American beef industry. When you look at the notes when, you will see that there is a tremendous amount of trade between Canada and the U.S. with regards to beef, whether it be the actual steers, whether it be fresh or frozen meet, it is going back and forth, indicating an integrated economy.⁷⁸ Now of course this is a market though that has been impacted by a number of factors such as BSE or what is called Mad Cow Disease.⁷⁹ So that hurt the situation badly.⁸⁰ But the United States had such a large demand for this product they have overcome this problem and started importing not only from the Canada, but also from Mexico and Uruguay.⁸¹ Canada is not the only source.⁸² But on the other hand, the United States is not the only market.⁸³

⁶⁹ See generally 48 C.F.R. Parts 1, *et al.*

⁷⁰ See Paul O'Connor, *Canada, not China, is Partner in Our Economic Prosperity*, Crain's Chi. Bus., Apr. 14, 2008.

⁷¹ See generally *id.*

⁷² See generally *id.*

⁷³ See generally *id.*

⁷⁴ See generally O'Connor, *supra* note 70.

⁷⁵ See Goldfarb, *supra* 48.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See generally Sebastien Pouliot & Daniel Sumner, *Traceability, liability, and incentives for food safety and quality*, 90 Am. J. Agric. Econ., 15 (2008).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Greg Doud and Julie McWright, *U.S. Beef Imports through August Continue at*

Another example parallel to this is the swine and pork industry. And I was very fortunate to hear one of the participants at this conference actually elaborate on what is happening here. This is the perfect example of specialization, the perfect example of where one country can do something better than the other.⁸⁴ A lot of the pork export from Canada to the U.S. is what is called weanlings.⁸⁵

In other words, Canada, and in particular, Manitoba, is very good at the sow industry where they actually birth the young pigs, get them to a certain age, and then export them to the United States where they are raised and where they are slaughtered and then processed.⁸⁶ So here is a highly integrated industry in which the specialization of the first year of these hogs and pigs are in Canada, then they are exported to the U.S. for the rest of their life.⁸⁷

However, there are barriers.⁸⁸ Those barriers are not necessarily transportation.⁸⁹ In this case there are of course competitors in the United States.⁹⁰ They are seeking protectionist-type of regulations.⁹¹ And one particular one which apparently is being considered right now is the requirement for the animal identification so you can track this animal all the way back.⁹² And apparently this is going to result in some extra costs and some barriers that would make it very difficult to freely move the young weanlings from Canada to the United States.⁹³ Here is another example. This is actually a company in British Columbia. This company, Alco Ventures, has its main plant in Langley, British Columbia.⁹⁴ But it also has a plant in

Record-setting Pace, Issues Update 2005, Nov. 2005, at 42.

⁸² *See id.*

⁸³ *See id.*

⁸⁴ *See* Kevin Grier, *Risks to Canada's Domestic and Export Markets*, *Advances in Pork Production*, Vol. 17 2006, at 19.

⁸⁵ *See*, Karl Jynoch, *Manitoba Pork*, *The Hog Industry in Manitoba* (2008), available at <http://www.mnpork.com/producers/2008/mpc2008.pdf> (last visited Oct. 7, 2008).

⁸⁶ *Id.*

⁸⁷ *See generally* United States Department of Agriculture, *mCool Update* (2008), available at <http://www.beefretail.org/prodMCOOL.aspx> (last visited Oct. 8, 2008).

⁸⁸ *See generally* Grier, *supra* note 85.

⁸⁹ *See generally id.*

⁹⁰ *See generally* National Pork Producers Council, *National Pork Producers Council Discuss MCOol*, Issue Paper (2003), available at <http://www.thepigsite.com/swinenews/5635/issue-paper-national-pork-producers-council-discuss-mcool> (last visited Oct. 8, 2008).

⁹¹ *See generally id.*

⁹² *See generally* United States Department of Agriculture, *supra* note 87.

⁹³ *See generally* National Pork Producers Council *supra* note 90.

⁹⁴ *See generally* Alco Ventures Inc., available at http://gawain.membrane.com/decks/railing_systems/alco_ventures.html (last visited Oct. 8, 2008).

Cambridge, Ontario and a plant in Bakersfield, California.⁹⁵ What do they do? They make windows and aluminum rails.⁹⁶ Now, you might think, well, is that a pretty standard product? Well, the answer is no. These rails can be shaped in many different ways, they can be customized for the customers, they need to be in certain lengths so that there is a lot of customization done and quality is important.⁹⁷

So this company has three plants in North America to serve customers in North America.⁹⁸ But wait a minute, where do they get their supplies? Well, the first source of supplies is a supplier in Port Coquitlam which is not too far from Langley, so you would consider them an onshore local supplier.⁹⁹ So this supplier by the way is ensuring that the Langley plant, the Bakersfield plant, and the Cambridge, Ontario plant are getting the supplies that they need, such as the railings and the processed aluminum that they are going to use to develop the product.¹⁰⁰

But they also source from China.¹⁰¹ In fact, what they do is that they have this Port Coquitlam supplier actually manage the sourcing from China.¹⁰² Why is that the case? Because of a simple, simple principle of logistics. The bigger your shipment, the lower the cost.¹⁰³ And so what they will do is they will have China ship all the way to Coquitlam, and in Coquitlam, they will consolidate the China supplies with the domestic supplies so you have one large load going to Cambridge and Bakersfield, and of course Langley.¹⁰⁴ And then it will be from these sites they serve the customers.¹⁰⁵

But then we have another problem, and that is while the Cambridge, Ontario, is in the heart of the market.¹⁰⁶ But on the other hand, the Langley, BC, plant is on the Canadian side of the border, it has to get across the border, and the uncertainty of serving customers on the other side of the border has caused them to set up a distribution center in Kent, Washington so that in order to serve the United States market, they will operate from the Kent, Washington distribution center to deliver products.¹⁰⁷ Of course they will deliver from Cambridge, Ontario into the U.S. Midwest and Central

⁹⁵ See generally *id.*

⁹⁶ See generally *id.*

⁹⁷ See generally *id.*

⁹⁸ See generally *id.*

⁹⁹ See generally *id.*

¹⁰⁰ See generally *id.*

¹⁰¹ See generally *id.*

¹⁰² See generally *id.*

¹⁰³ See generally *id.*

¹⁰⁴ See generally *id.*

¹⁰⁵ See generally *id.*

¹⁰⁶ April Robinson, *Small Cambridge Firm Gives Big to the United Way*, *The Record* (Sep. 26, 2008), available at <http://news.therecord.com/article/420328> (last visited Oct. 9, 2008).

¹⁰⁷ See Alco Ventures, *supra* note 94.

states, and of course the Bakersfield, California will take care of that very large single market in California.¹⁰⁸

So here is a supply chain that sources from domestically, internationally. It has plants in Canada and the United States, and it uses distribution centers to effectively source, manufacture, and deliver the products. That is supply chain management, sourcing, making, and delivering at as low a cost as possible, but still providing a service that the customer wants.

Now one last example. Fuji Film.¹⁰⁹ I have a friend who ran the regional distribution center in Richmond, BC, which is no longer a distribution center.¹¹⁰ I asked him, what does the company bring into British Columbia? He said that it used to bring in container after container of product into British Columbia.¹¹¹ Then they would leave British Columbia and go to Toronto to go to Toronto distribution center.¹¹² But that has all disappeared.¹¹³ Why did it disappear? Because North America is a North American market, not a Canadian market. And as a consequence, as there was enough growth in North America, Fuji Film set up its own plant in Greenwood, South Carolina.¹¹⁴ By setting up the plant, it now had the economies to scale, the long production runs to be economical, and therefore they stop moving products from Japan although they would bring some components, but now the production is in North America.¹¹⁵

But for that plant to be economical, for the production runs to be very large, you had to combine the U.S. and the Canadian demand for the product.¹¹⁶ One problem with that, if the border at the border was so thick and the product could not get across, then they would either have to hold huge inventories on the Canadian side, or they would continue to send the products via Vancouver to Toronto.¹¹⁷ Luckily at least at that time, they felt that the border was not too thick. Yes. They consolidated everything, so you see the movement of products moving around.¹¹⁸

¹⁰⁸ See generally *id.*

¹⁰⁹ See generally Fuji Film, available at <http://www.fujifilm.com> (last visited Oct. 9, 2008).

¹¹⁰ See generally *id.*

¹¹¹ See generally The Ministry of Small Business and Economic Development and the Ministry of Transportation, *British Columbia Ports Strategy* (2005), available at http://www.gov.bc.ca/ecdev/down/bc_ports_strategy_sbed_mar_18_05.pdf (last visited on Oct. 13, 2008).

¹¹² See generally *id.*

¹¹³ See *id.*

¹¹⁴ John Welbes, *Fuji's U.S. Operations at Home in S.C.*, Columbia State, Feb. 8, 1998, at G1.

¹¹⁵ See generally *id.*

¹¹⁶ See generally *id.*

¹¹⁷ See generally *id.*

¹¹⁸ See generally *id.*

There are a number of industries of course that are very important and affected by the border. One study indicated that the five largest supply chains moving between the U.S. and Canada are of course automobile manufacturing, the mineral market which is concentrated in Alberta moving to the United States, the machinery and equipment market which is concentrated in Ontario, and forest products which are concentrated actually in Quebec and Ontario as well as the West Coast.¹¹⁹ And each coast serves the respective ends of the country, and agriculture and fish where most the fish products of course come from, BC to California or the Maritimes to New England.¹²⁰

Now, we are leaving out one important supply chain though, and that is the international global supply chain.¹²¹ Many products can move to North America. And how do they get there from Eastern China via West Coast ports? And as you can see from the map, there are a number of West Coast entry points into North America.¹²²

As it turns out, Prince Albert and Vancouver save at least two days from going to Los Angeles or Oakland.¹²³ The result of that is that what customers want is to minimize the total logistics cost of moving a product from Asia to North America. To do that, Canada has decided that we must develop the Asia-Pacific Gateway because it really is a gateway and corridor to North America with a natural advantage of being closest to Asia with regard to port-to-port movements.¹²⁴ To do that, Canada is embarking on the Asia-Pacific Gateway and corridor initiative.¹²⁵ It is one of three initiatives, two of which will be discussed later on. But it is one in which Canada has private investment, 21st century governance.¹²⁶ They are moving on strategic infrastructure, changing policies, and trying to improve security and border efficiency.¹²⁷ The result of that hopefully is to move products effectively

¹¹⁹ See generally Canadian Logistics Industry, Canada-U.S. Perspective, available at http://strategis.ic.gc.ca/epic/site/dsib-logi.nsf/en/h_pj00163e.html (last visited on Oct. 12, 2008).

¹²⁰ See generally *id.*

¹²¹ See generally *id.*

¹²² See Ron White, *West Coast Ports have Sinking Feeling*, L.A. Times, Mar. 5, 2008, at C-1.

¹²³ Peter Bradley, *Spreading the Wealth*, DC VELOCITY, Mar. 2008, available at http://www.dcvelocity.com/articles/?article_id=1760&channel=8 (last visited on Oct. 7, 2008).

¹²⁴ Bill Dibenedetto, *Building a Trade Gateway*, Pacific Shipper, 2008 WL 18127345 (Sep. 22, 2008).

¹²⁵ See *id.*

¹²⁶ See *id.*

¹²⁷ See *id.*

through Canada to get to not only Canadian consumers, but also U.S. consumers.¹²⁸

So why do we talk all about this? It is because there is a challenge, and that challenge is a thickening of the border.¹²⁹ The fact is inefficiencies at the borders mean inefficiencies in the supply chain.¹³⁰ We have already seen enough studies to prove this, and I know that many of the later participants are going to discuss that as well.¹³¹

There is a Canada-U.S. Chamber of Commerce report just this year.¹³² You can see the sense of frustration in that report.¹³³ 25 recommendations on change.¹³⁴ The conference board study of Canada in 2007, and the main point here is that there is a lack of predictability at the border, and there is a thickening in the border that will eventually erode Canada's attractiveness as a foreign investment location.¹³⁵ So can we afford that? Can we let that happen? Because the integrated supply chain that has developed because of NAFTA which has made North America competitive is being affected.¹³⁶ Can we afford for that to happen? Can we afford for North American production to lose access to the most efficient sources of raw materials and components? Can we afford for North American producers to lose access to markets that are the best for them?

So there are some issues. And many of these are being covered in this -- I know -- the seminar today and tomorrow. Yes, I have indicated that Canada has the various corridor programs like the Asia-Pacific Gateway and corridor program.¹³⁷ Canada is taking action because it has to because it needs efficient trade with the United States.¹³⁸ But how important is a seamless border to the United States?

Transport agencies can only do so much. How important is a seamless border to the Department of Homeland Security and CBSA? Infrastructure is a challenge, but what about the regulatory barriers which might be the root

¹²⁸ *See id.*

¹²⁹ Barrie McKenna, *Biden Favours Trade that is 'fair' not Free*, GLOBE AND MAIL, Aug. 27, 2008 at B1.

¹³⁰ Hercules E. Haralambides and Maria P. Londono-Kent, *Supply Chain Bottlenecks*, 31 Int'l. J. Transp. Econ. 2, 171 (2004).

¹³¹ *See id.*

¹³² Louise Egan, *Update 1 – Canada, U.S. must Unclog Border – Business Groups*, Reuters, Feb. 20, 2008, available at <http://www.reuters.com/article/rbssIndustryMaterialsUtilitiesNews/idUSN2037733120080220> (last visited Oct. 4, 2008).

¹³³ *See generally id.*

¹³⁴ *See generally id.*

¹³⁵ *See id.*

¹³⁶ *See id.*

¹³⁷ *See Dibenedetto, supra note 124.*

¹³⁸ *See Egan, supra note 132.*

problem?¹³⁹ And institutional change is needed as the current institutions are ineffective, there needs to be a continental perspective.¹⁴⁰ What has been achieved through trade liberalization is being undone with these thicker borders.¹⁴¹ There is an increasing need to address the complete supply chain from Asia and North America.¹⁴²

Thank you very much.

MR. TOMPKINS: Thanks, Garland.

Our next speaker is Paul Vandever. Paul is a very experienced international trade attorney with Ford, began his career in private practice in New York City, and is a proud graduate of this institution.¹⁴³ He reminded me that he usually sits in the back of the room, so Paul, welcome to the front of the room.

Paul is going to take us into a little bit of a deeper look into the automotive industry which I think will bring a real-life example to the broader policy issues that Garland so well articulated a few minutes ago. Paul, the floor is yours.

¹³⁹ See The Conference Board of Canada, *The Impact to Barriers to Competition on Canada-U.S. Relative Productivity* (2004), available at <http://www.conferenceboard.ca/canadaproject/research/2-BackgrounderForBarriersToCompetition.pdf> (last visited on Oct. 13, 2008).

¹⁴⁰ See generally *id.*

¹⁴¹ Michele Fratianni and Heejoon Kang, *Borders and International Terrorism*, June 14, 2004, available at <http://www.kelley.iu.edu/GPO/documents/Borders%20and%20international%20terrorism.pdf> (last visited on Oct. 8, 2008).

¹⁴² See generally Canadian Logistics Industry, *supra* note 119.

¹⁴³ Canada-U.S. Law Institute, *Paul Vandever*, available at <http://cusli.org/conferences/annual/bios/vandever.html> (last visited on Oct. 6, 2008).

UNITED STATES SPEAKER

Paul Vandevert[†]

MR. VANDEVERT: Thank you. As Kelly mentioned, I am a graduate of Case and, unfortunately, like many wayward children, I have come home with maybe some not-so-good news. I was telling Professor King when I came in this morning, my remarks for today coincidentally, but actually became the subject of a conference call I had with our Washington office and with our competitors in the auto industry on just this issue about the thickening of the borders and the measures that the various governments are taking, primarily the United States, and our concern about them.

To give you a bit of an overview, as Kelly mentioned I am the in-house customs and international trade attorney for Ford.¹⁴⁴ We were founded in 1903, and we began doing business in Canada in 1904. So we have now been doing business across the border for 104 years.¹⁴⁵

Some of the more astute of you, those who study the auto industry and things like that may notice that I have got four brands up here, two just recently dropped off the map with our sales of Aston Martin, Jaguar, and Land Rover.¹⁴⁶ But nonetheless, we have a collection of five globally-

[†] Paul Vandevert has been the International Trade Attorney for Ford Motor Company since 2000. In this position he has been responsible for a wide variety of international trade and Customs related matters for Ford around the world, including managing a Customs audit in Norway, structuring duty-efficient transactions in South Africa, appearing before the WTO Committee on Non-Preferential Rules of Origin on behalf of the US automotive industry, managing Ford's participation as an industrial consumer in the Hot-Rolled and Corrosion Resistant Steel Sunset Reviews before the US International Trade Commission, as well as managing Ford's defense in an US Customs penalty case involving recordkeeping. Prior to joining Ford, Paul was International Trade Counsel at Delphi Automotive Systems Corp from Delphi's spin-off from General Motors in 1999 and prior to that, he was an attorney with General Motors, also responsible for global international trade and Customs matters from 1994. Paul began his career as an international trade and Customs lawyer in 1987 with the law firm of Soller, Shayne and Horn in New York City.

¹⁴⁴ Canada United States Law Institute - Conferences & Events - 2008 CUSLI Annual Conference - Panelists - Paul Vandevert, *available at* <http://cusli.org/conferences/annual/bios/vandevert.html> (last visited Nov. 8, 2008).

¹⁴⁵ *The 1904 Model C Ford - Canada's First Ford*, *available at* http://media.ford.com/article_display.cfm?article_id=18757 (last visited Nov. 4, 2008) (stating that "[o]n October 10, 1904, eight workmen began to build the first Ford automobile in Canada - the 1904 Model C. It was assembled in . . . Windsor, Ontario.").

¹⁴⁶ *See generally Ford to Announce Jaguar Sale to Tata on Wed*, *available at* <http://www.reuters.com/article/mergersNews/idUSN2434519120080324> (last viewed Nov. 4, 2008); *See also, Ford Selling Aston Martin in \$925 Million Deal*, *available at* http://money.cnn.com/2007/03/12/news/companies/aston_martin_sale/index.htm (last viewed

recognized brands, and we are manufacturing vehicles on all six continents except for Antarctica, which will have to be the seventh.¹⁴⁷ And we are selling our vehicles in all automotive markets.¹⁴⁸ At times it is tough. We may not sell very many in every place, but we are selling in almost every country around the world.¹⁴⁹

Also as was mentioned, the auto industry I think can take credit for, while it is certainly not the only industry, but has certainly been a pioneer, and I do not know that we can overestimate the benefits to our industry, and therefore to the national economies of Canada and the United States, of free trade across the border and open borders.¹⁵⁰

The Automotive Products Trade Agreement of 1965, which would put the U.S. in a free trade environment with Canada now for over 40 years.¹⁵¹ And I am going to keep stressing the number of years that we have been doing business because there is a point to that. The APTA was a conditional free trade agreement.¹⁵² It allowed for free trade and parts and materials and then, consequently, vehicles only as long as the parts and material were used in the original production of motor vehicles.¹⁵³

The industry both recognized and facilitated the further development of what was becoming a completely integrated production base in Canada and the United States while the automotive industry respects and treasures the political, social, economic, and cultural differences among the three North

Nov. 4, 2008).

¹⁴⁷ See Mira Wilkins & Frank Ernest Hill, *American Business Abroad: Ford on Six Continents* (Wayne State U. Press, 1964).

¹⁴⁸ See generally Ford Global and International Information, available at <http://www.ford.com/about-ford/company-information/ford-international-websites> (last visited Nov. 4, 2008) (showing Ford's presence in international markets).

¹⁴⁹ *Id.*

¹⁵⁰ See generally David J. Andrea & Brett C. Smith, *The Canada-U.S. Border: An Automotive Case Study 1* (Center for Automotive Res. 2002) (stating that the “[a]utomotive trade flowing between the two countries in 2000 was US\$43.6 billion of vehicles and US\$34.6 billion of automotive parts.”); See also *id.* at 3 (indicating that “[o]ver 97 percent of Canadian automotive exports are shipped to the United States and approximately 80 percent of all of Canada's automotive imports originate in the United States. This level of integration [from NAFTA] . . . has broken down the political pressures of local production for local consumption and other allocation mechanisms that compromised the rationalization of production capacities in the most market-efficient manner”).

¹⁵¹ See 19 U.S.C. § 2001 (1965).

¹⁵² See generally CBC News In-depth, *Auto Industry: History in Canada*, available at <http://www.cbc.ca/news/background/autos/> (last visited October 31, 2008) (last visited Nov. 8, 2008) (describing that “[the APTA] established a conditional free trade zone for both vehicles and original equipment parts”).

¹⁵³ 19 U.S.C. § 2011.

American countries.¹⁵⁴ But for purposes of doing business, North America is a single operation.¹⁵⁵

Ford's purchasing is based in the United States, but when buyers source material and parts, they are sourcing for Canada, United States, and Mexico, and the only distinction is a plant code.¹⁵⁶ And actually in my business, it can become a problem. It is like, wait, Canada is a border, we need to do some formalities.¹⁵⁷ But it is important that as a business to remember that North America is where we do business. We do not do business in Canada and Mexico and the United States.

In 1989, it was broader to trade in all sectors, although NAFTA was an intervening event, with unconditionally duty-free trade of qualifying goods between Canada and the United States occurring in 1998.¹⁵⁸ And then on NAFTA of which in one sense we are all familiar, but it is good to reflect for just a few minutes on the importance of it. I mean NAFTA, it is almost assumed.¹⁵⁹ In fact, actually within the company when we are doing audit risks and things like that, I have had trouble. I personally think, and you will see why in a minute, the benefits to Ford alone of NAFTA are huge.¹⁶⁰

¹⁵⁴ Cf. Paul Parker & Tesshu Koshiba, *Trade Policy, Open Regionalism and NAFTA: The Socio-economic Context for Japanese Automobile Investments in North America*, 29 *Environments* 35 (2001) (discussing the importance of the automotive industry respecting differing cultures post-NAFTA).

¹⁵⁵ See, e.g., Ford Motor Company, *2007 Annual Report* (2008), available at http://www.ford.com/doc/2007_ar.pdf (last visited Nov. 6, 2008) (annual report discussing the separate branches of Ford Motor Company, including Ford North America).

¹⁵⁶ See generally Ford Assembly Plants by Code Letter, available at <http://www.wctatel.com/web/crye/plntcode.htm> (last visited Nov. 8, 2008); See also Sturges, Dave, *Assembly Plants and Body Numbers*, available at <http://www.mafca.com/downloads/Technical/Assembly%20Plants%20Body%20Number.pdf> (last visited Nov. 5, 2008) (discussing the different plant codes for Ford Model "A"s).

¹⁵⁷ See generally U.S. Customs and Border Protection, *Importing into the United States: A Guide for Commercial Importers*, available at <http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/iius.ctt/iius.pdf> (last visited Nov. 4, 2008) (outlining the procedure for importing into the United States).

¹⁵⁸ See Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/R at 3 (Feb. 11, 2000) ("Trade in automotive products was also affected by the Canada – United States Free Trade Agreement (CUSFTA), which entered into force 1 January 1989. The CUSFTA provided for the elimination of duties on automotive products by 1 January 1998, so long as the products qualified under CUSFTA origin rules").

¹⁵⁹ See generally Nejdet Delener, *Strategic Planning and Multinational Trading Blocs*, 48-52 (Greenwood Publishing Group, 1999) (discussing why industry groups, including automotive manufacturers, find trading blocs, such as NAFTA, beneficial).

¹⁶⁰ See generally *id* at 52 (benefits of NAFTA to the automotive industry); See also Kelly, William P., *Restructuring under NAFTA: What are the considerations and how do we implement them? Has NAFTA Changed Patterns of Manufacturing Location, Distribution, and Market Penetration? – A U.S. Perspective*, 23 *Can.-U.S. L.J.*, 497 (1997) (discussing the benefits of NAFTA to Ford).

I have actually argued that our NAFTA qualifying operations should be audited not because of the money we are laying out, but because of the money we are not laying out because if we are not qualifying right actually, we could owe a significant amount of money.¹⁶¹

I wanted to put some actual numbers in front of you. And my hope is that as we go through the conference over the next two days, you will be able to put into some kind of perspective the remarks and issues and discussion that we will have. These numbers are just Ford. But consider that there are six major automotive manufacturers operating in North America: GM, Ford, Chrysler, Toyota, Nissan, Honda.¹⁶² Those are the big six. And we also have Mercedes, BMW.¹⁶³ I am going to stumble on some of our very significant but smaller European competitors and transplants.¹⁶⁴

MR. HICKS: Kia.

MR. VANDEVERT: Kia? Kia is not yet manufacturing in North America I do not believe.¹⁶⁵ And CAMI, correct.¹⁶⁶ That is a GM and Suzuki joint venture.¹⁶⁷

But just for Ford, overall into the United States, and I apologize for not having numbers for Canada, Ford makes 200,000 separate import transactions called entries a year.¹⁶⁸ We rank in the top five U.S. importers by entry volume.¹⁶⁹ Of those 200,000, over 163,000 come from Canada alone.¹⁷⁰

¹⁶¹ See generally Robert Feinschreiber & Charles L. Crowley, *Import Handbook: A compliance and Planning Guide*, 114-18 (John Wiley and Sons, 1997) (giving formulations for non-qualifying operations shipping non-originating goods).

¹⁶² See, e.g., Marvin B. Lieberman, Lawrence J. Lau & Mark D. Williams, *Firm-Level Productivity and Management Influence: A Comparison of U.S. and Japanese Automobile Producers*, 36 *Management Science* 1193, 1194 (1990).

¹⁶³ See generally Mercedes-Benz USA, *About Mercedes-Benz USA*, available at <http://www.mbusa.com/mercedes/MBHome.html#/companyInfo/> (last visited Nov. 4, 2008); See also BMW of North America, *Company Information*, available at <http://www.bmwusa.com/Standard/Content/CompanyInformation/> (last visited Nov. 4, 2008).

¹⁶⁴ See generally ACEA - European Automobile Manufacturers' Association, available at http://www.acea.be/index.php/collection/about_us_acea_members/ (last visited Nov. 6, 2008) (listing members, including, BMW, Volkswagen Group, Volvo, DAF, Renault, Fiat Group, Scania AB, Porsche, Mercedes, PSA Peugeot Citroën, Jaguar, and MAN AG).

¹⁶⁵ See State of Georgia Office of Communications, *Kia to Build Assembly Plant Invest in Georgia*, available at <http://www.georgia.org/Mobile/PressCenter/NewsItems/Kia+to+Build+Assembly+Plant+Invest+in+Georgia.htm> (last visited Nov. 4, 2008) (manufacturing plant set to reach full operations in 2009).

¹⁶⁶ See generally CAMI Automotive Inc., *About CAMI*, available at <http://www.cami.ca/aboutCami/aboutCami.shtml> (last visited Nov. 5, 2008).

¹⁶⁷ *Id.*

¹⁶⁸ See generally Katherine Young, *A NAFTA success story*, DALLAS MORNING NEWS, Dec. 7, 2003, at D1 (discussing auto-industry trade under NAFTA).

¹⁶⁹ See generally Robert Malone, *Biggest Importers and Exporters*, FORBES, July 5, 2006.

¹⁷⁰ See generally Young, *supra* note 168.

And then of those 163, 156,000 entries enter through two U.S. ports, Port Huron and Detroit.¹⁷¹ That is 156,000 separate entries crossing into the United States every year through two ports.¹⁷²

A total of our top 20 Canadian suppliers account for over 92,000 of our entries.¹⁷³ And I consolidated our supply base because, as I said before, we treat both our production facilities and receipt facilities and our suppliers by codes, and we all have ship-from codes, ship-to codes.¹⁷⁴ But I put together some of the suppliers, and I guess if there is a security problem, it might be Henry's former company, TRW, because they are a major supplier, and maybe that is the whole problem right there.¹⁷⁵

Anyway, entered value which in this particular context is not as significant, but we import goods valued at over \$15 billion.¹⁷⁶ Again, we rank in the top five by entered valued.¹⁷⁷ Over half of that comes from Canada.¹⁷⁸

And although I was told in a bar review exam that the good thing about lawyers is we do not have to do the math, I quickly calculated that of \$313 billion exported from Canada and United States, if we have \$8 billion, Ford alone accounts for two-and-a-half percent of Canada's trade with the United States.¹⁷⁹ And I think that would put the automotive industry at well over ten percent. That actually surprised me.

To show the importance of free trade, and I am not even addressing the things that Garland just addressed, which are supply chain, the actual facts, and the mechanics of industry. This is an important point. Under NAFTA we save or avoid in duties over \$1 billion, and I do not want to be too specific about the number.¹⁸⁰ But I will tell you that number is actually extremely conservative, on the low side of the amount of the money that we avoid in duties. Our effected duty rate on goods imported from Canada is 0.1

¹⁷¹ See generally *id.*

¹⁷² See generally *id.*

¹⁷³ See generally *id.*

¹⁷⁴ See generally Bryce G. Hoffman, *Ford heads off supplier problems; Sophisticated computer programs, CIA techniques tell automaker who is ailing*, DETROIT NEWS, Feb. 26, 2007.

¹⁷⁵ See Andrew Leckey, *Shaped-Up TRW Looks Attractive*, CHI. TRIB., Sept. 28, 1987, at C3.

¹⁷⁶ See generally Young, *supra* note 168.

¹⁷⁷ See generally Malone, *supra* note 169.

¹⁷⁸ See generally Young, *supra* note 168.

¹⁷⁹ See generally *Top Trading Partners - Total Trade, Exports, Imports*, U.S. Census Bureau, available at <http://www.census.gov/foreign-trade/statistics/highlights/top/top0712.html> (last visited Nov. 8, 2008).

¹⁸⁰ See generally Preuninger, Jim, *NAFTA Grows Up*, Supply & Demand Chain News, July 30, 2008, available at [http://www.sdexcec.com/print/Supply-and-Demand-Chain-Executive/NAFTA-Grows-Up/1\\$10560](http://www.sdexcec.com/print/Supply-and-Demand-Chain-Executive/NAFTA-Grows-Up/1$10560) (last visited Nov. 9, 2008).

percent.¹⁸¹ And that is just really the very, very few suppliers that do not qualify or cannot qualify their parts for NAFTA.¹⁸²

Actually for supply chain and for operational purposes, this is an interesting fact. I have here that we effectively claim duty-free imports in over 99 percent of our entries from both Canada and Mexico.¹⁸³ We measure two points in that. We measure what we call first time through, meaning that a shipment has a NAFTA certificate of origin, we have it in-hand, and we can claim the NAFTA benefit at the time of entry.¹⁸⁴ And then if a shipment does not but we can subsequently qualify the goods or get proof of qualification, we will then claim NAFTA, and the effective is the combined.¹⁸⁵

But operationally, and this again gets back to concerns about measures that will thicken the border, the reason that we want first-time through or emphasize first-time through is we want actually our duty-claim process to be as quick and as efficient as our physical crossing.¹⁸⁶ And it would be ironic, to say the least, if our first-time-through rate was better than our ability to physically move our goods across the border.¹⁸⁷ In fact, actually, I would not have a job anymore. It would be a really interesting statistic that I could sit around at a bar and tell people because our plants would be shut down.

And here is where I can do some offering of opinion. With Ford making just on the Canadian border over 163,000 individual shipments a year, can anyone reasonably think that we have the ability to increase shipping time or increase inventory stored? Or if we could, what would be the cost of that, what would be the impact of that?

I would like to suggest that, and this is not just the United States, this is all customs authorities, security is, and let it be very, very clear, Ford Motor Company are a bunch of people who live in Canada and the United States

¹⁸¹ See generally Daniel L. Kiselbach & Katherine Xilinas, *Reducing duties on imported goods*, Law Wkly, Apr. 8, 2005 (discussing the calculation of duty rates).

¹⁸² See generally 19 U.S.C. § 3332.

¹⁸³ See generally Krista Boryskavich et al., *The Auto Pact*, Kluwer L. Int'l., 2003, (noting that "NAFTA provides for the duty-free movement of vehicles and parts as long as the North American content requirements are met").

¹⁸⁴ See generally Condon, Bradley J., *NAFTA, WTO, and Global Business Strategy: How AIDs, Trade, and Terrorism Affect Our Economic Future*, Greenwood Pub. Group, 2002, (discussing NAFTA customs procedures and the preferential tariff treatment received by importers with a valid certificate of origin).

¹⁸⁵ See generally *id.*

¹⁸⁶ See generally Cliff Sosnow, Prakash Narayanan & Elysia Van Zeyl, *Canada: Budget 2008: The Trade and Border Security Agenda*, Blake, Cassels & Graydon, L.L.P., March 18, 2008, available at <http://www.mondaq.com/article.asp?articleid=58258> (last visited Nov. 9, 2008).

¹⁸⁷ See generally *id.*

and Mexico and a whole bunch of other countries around the world.¹⁸⁸ We do not want to be afraid that terrorists or criminals or other bad people are going to hurt us. We are as interested and as patriotic as anybody else because we are anybody else. We are not just a big blue oval sitting up there and I think that is sometimes lost.

So security is important, and we recognize and support the interest of the government in maintaining the national security and the regional security of us, people, but we also need to have security of economy. We all need jobs. We all need to eat, and we need to have the means that we can eat. And some of the measures that have been suggested threaten them.¹⁸⁹

We would suggest that security measures be risk-based, meaning that the customs authorities based on information provided to them by shippers, by importers, by exporters, by carriers, by brokers, freight forwarders, all the service providers and all of the participants in the supply chain, that with information provided by those, all those participants, they can make programmable risk assessments as to which shipments pose threats.¹⁹⁰

But first, I need to go back and cover C-TPAT. Ford was one of the original seven members in C-TPAT.¹⁹¹ I do not know how many of you know that. It is the Customs-Trade Partnership Against Terrorism.¹⁹² It was one of the first programs announced by U.S. Customs after the events of 9/11 in which participants voluntarily joined with Customs, provided them with data so that Customs can determine whether or not a particular supply chain is both secure and in the level of risk that the supply chain represents.¹⁹³ Ford was one of the original seven members.¹⁹⁴ We were just revalidated as Tier 3, meaning that we are within the class of the lowest risk importers validated by U.S. Customs.¹⁹⁵

¹⁸⁸ See generally Ford Global and International Information, available at <http://www.ford.com/about-ford/company-information/ford-international-websites> (last visited Nov. 9, 2008).

¹⁸⁹ See Egan, *supra* note 132 (internet update showing the need for the U.S. and Canada to open up the border).

¹⁹⁰ See generally Gabriele G. S. Suder, *Corporate Strategies Under International Terrorism and Adversity* 72 (2006).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See Bishop, Owen, *A "Secure" Package? Maritime Cargo Container Security after 9/11*, 29 *Transp. L.J.* 313 (2002) (reviewing the border process).

¹⁹⁴ Suder, Gabriele G. S., *Corporate Strategies Under International Terrorism and Adversity* 72 (2006) (explaining the different ways that companies helped create and deal with C-TPAT).

¹⁹⁵ See Supply Chain Security Best Practices Catalogue, CBP, available at http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_members/ctpat_best_practices.ctt/ctpat_best_practices.pdf (last visited Nov. 3, 2008) (description of border programs).

And now, back to Ford's 163,000 individual shipments coming across the border every year.¹⁹⁶ If you get Ford out of the way and maybe GM and Chrysler, you put roughly 300,000, 500,000 shipments all out of the way.¹⁹⁷ Now who is left? Probably the higher-risk shipments. Probably the bad guys. If you get all of these shipments and entries out of the way, does not Customs stand a better chance of actually seeing and interdicting the bad guys?¹⁹⁸ We think so.

Non-discriminatory methods are those that treat all shipments, all importers, and all shippers in the same way by simply saying everybody has to provide the same data at the same time.¹⁹⁹ Quite frankly, I do not see how anyone can handle the volume of information going back to it. That would mean that just from Canada alone, Ford will be filing complete sets of information for every single one of the 163,000 transactions, just with Canada.²⁰⁰ And remember, we have over 200,000.²⁰¹ And GM has a slightly greater volume, Chrysler has somewhat of a lesser volume, and then there are Toyota, Honda, Nissan, and this is just the automotive industry.²⁰² And we would suggest that it is not going to work I think is the simplest way and the most smart way to say it.

I would just like to close with a couple of personal reflections. I have been practicing Customs law for just over 20 years now. And when the events of 9/11 and the subsequent things, I actually have not spent, at least initially, a great deal of time on security. It is not what Customs law has traditionally been.²⁰³ Customs law traditionally has been issues of terror classification, valuation, and other actually relatively academic or intellectual exercises involved in the trade of goods.²⁰⁴

Recently by necessity, I have had to focus much more on this. I think that we are now having to address this issue. In the week following 9/11, the wait times coming into the United States; the border was actually virtually shut

¹⁹⁶ See generally Ford Motor Company, *About Ford: Annual Reports*, available at <http://www.ford.com/about-ford/investor-relations/company-reports/annual-reports> (last visited Nov. 9, 2008).

¹⁹⁷ *Id.*

¹⁹⁸ See Customs and Border Patrol, *Supply Chain Security Best Practices Catalogue*, http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_members/ctpat_best_practices.ctt/ctpat_best_practices.pdf (last visited Nov. 3, 2008) (describing border programs).

¹⁹⁹ See Suder, Gabriele G. S., *supra* note 194.

²⁰⁰ See generally Ford Motor Company, *supra* note 196.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Kranig, Jeff, *Five Things Every Lawyer Should Know About Customs & International Trade Law*, 18-APR CBA Rec. 37 (Apr. 2004) (introducing basic tenants of custom and trade law).

²⁰⁴ See generally *id.*

down.²⁰⁵ The wait times just coming into Michigan; were measured in terms of kilometers.²⁰⁶ The lines were 10 to 11 kilometers long on the Canadian side.²⁰⁷ And in the box where it said Number of Hours, the wait could not be estimated.²⁰⁸

We are very concerned. I am very concerned that what I am calling non-discriminatory assessment methods will result in the same thing.²⁰⁹ And I do not know that if the national economies can afford that; I certainly know that the Big Three cannot.²¹⁰ That may be one of the crippling blows.²¹¹

And in closing, I would suggest to you that we might want to think or remind ourselves of the effect of Smoot-Hawley in the 1930s.²¹² Measures that are being proposed now in the name of security could well be the 21st century post-9/11 equivalent of Smoot-Hawley.²¹³

So as I said, I am the prodigal son who has finally come home, and gee mom and dad, I have some kind of bad news to tell you. However I would like just to close and say that this kind of forum and this gathering of people is a huge step for us in the right direction. That is, if people start thinking about it and talking about it, we will come up with the right solution because that is the important part.

Security is at threat and we are at threat. We have to recognize that. But there has to be a reasonable practical solution in everyone's economic, social, and cultural interest. Everything has to be considered.

Thank you.

MR. TOMPKINS: Paul, thank you very much.

At this time we will take questions from the audience. I have a number of questions for my colleagues, but I will to defer to the audience.

²⁰⁵ See Natl. Comm. On Terrorist Attacks Upon the U.S., *The 9/11 Commission Report*, available at http://www.9-11commission.gov/hearings/hearing7/witness_bonner.htm (last visited Nov. 4, 2008) (The Deposition of Robert C. Bonner).

²⁰⁶ Robert Pear, *After the Attack: The Northern Border; Tightened Inspections Mean Delays from Maine to West*, N.Y. TIMES, Sep. 14, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9A06E7DD1E38F937A2575AC0A9679C8B63&sec=&spon=&pagewanted=all> (last visited Nov. 5, 2008) (detailing the difficulties faced at border crossings after 9/11).

²⁰⁷ See *id.*

²⁰⁸ See generally *id.*

²⁰⁹ Amador, Angelo, *Statement of the U.S. Chamber of Commerce*, Apr. 29, 2008, http://www.aaccla.org/NR/rdonlyres/est7pgeefndgb2voxq7xnenvbcriqjrlzgcgu5da347375vqjifzoxpb6mig2ogursq5kfdlu2dm7b66g4fz5ynyxce/080429amador_whiti.pdf (last visited Nov. 5, 2008) (discussing the WHTI and the harmful effects that it could have on the U.S. economy).

²¹⁰ See generally *id.*

²¹¹ See generally *id.*

²¹² Hudec, Robert E., "Circumventing" Democracy: *The Political Morality of Trade Negotiations*, 25 N.Y.U. J. Int'l. & Pol., 316 (1993) (discussing the harmful effects of Smoot-Hawley).

²¹³ See generally *id.*

DISCUSSION FOLLOWING THE REMARKS OF GARLAND CHOW
AND PAUL VANDEVERT

MR. GARLOCK: Good morning. I am Tom Garlock with the Niagara Falls Bridge Commission, and my question is for Paul Vandeventer.

Paul, has Ford Motor Company calculated the cost of compliance with security regulations since September of 2001? Do you have any kind of a handle on what it costs a company to comply?

MR. VANDEVERT: The answer is yes and no. However it is because truth be told, Ford has not had to, and I think this is generally true for the big automotive manufacturers, but not the smaller suppliers and not other industries. But one of the points that we have been making or have been trying to make to the customs authorities is our supply chains prior to 9/11 were very, very secure.²¹⁴ And, just-in-time manufacturing methods and quantities are a really big deal.²¹⁵

So we cannot afford to have a container that is supposed to have 15,000 parts in it and turn up with only say 14,000 because if there is only 14,000, that means the line shuts down because at least to date we have not distributed or sold our products with "Oh, we will get you the engine later." "We did not have it now, but we wanted to get it to you, so we just decided to, you know, send it." "We will ship it without the engine."

And that has been a difficult thing because we know that it has increased the cost, but it is also been something which as the Customs authorities keep telling us, well, you know, we know you have to spend some money on this. But we have been trying to tell them we had actually very secure supply chains before.²¹⁶ Take that. That is a good thing.

MR. TOMPKINS: Another question in the back.

MS. MATTHIESEN: Thank you. My first question is for Paul. I am Birgit Matthiesen from the Canadian Embassy, and you and I have spoken, Paul.

MR. VANDEVERT: Hi.

MS. MATTHIESEN: Paul, the two stats that you just quoted, and it is 163,000 shipments per year from Canada, \$8 billion of import value from Canada alone on here.²¹⁷ I am hoping it is not like the first question, but give me a sense of the percentage in either value or physical shipment over the border from Canada that is not a finished vehicle, that it is a vehicle somewhere in the process of being manufactured. And if I can have just one quick question for Garland.

²¹⁴ See generally Hoffman, *supra* note 7.

²¹⁵ See generally *id.*

²¹⁶ See generally *id.*

²¹⁷ See generally Canadian Logistics Industry, *supra* note 119.

Garland, the distribution center for Alco Ventures in Kent, Washington has been in operation for how long; when did they realize they needed to have a distribution center in Kent, Washington?

Those are my two questions. Thank you.

MR. VANDEVERT: As far as the values go, I was looking at that, and then I buried it. By numbers, there is a huge discrepancy. Our top supplier of parts by terms of transactions is number two, but by value of parts is number 147.²¹⁸ And what it is, it supplies things like plastic, probably plastic gaskets and things like that.²¹⁹ So the value of their goods is \$14 million.²²⁰ But the number of shipments for those parts, very low value, but in terms of border crossing, they are a high-volume shipper.²²¹

And for security we are trying not to measure by value. You just cannot measure security by value because the rhetorical question that is unanswerable is, what price security? So that is why I was concentrating on the volume of transactions because even if value does not make a difference, the number of transactions that a supplier has and the number of times and the amount of information that we have to report is a big deal.²²²

MR. TOMPKINS: Not to mention currency implications in value as well.

Garland, I think the other question was directed your way.

DR. CHOW: Yes. And the answer is I do not know the exact date. They did have to ensure that they had product easily accessible, but whether it was before or after 9/11, I do not know. That is something I better check on.

MR. TOMPKINS: Yes, two questions over here.

MR. OPLINGER: This is for Paul. I appreciated the sort of the 30,000-foot level viewpoint from Ford on trying to get your products back and forth. But since you mentioned C-TPAT, I am wondering if you can maybe speak more specifically about that as one the original seven founders of it. How is that working for Ford, and what are recommendations -- maybe in 30 seconds to a minute -- would you see as being able to improve that so that you could utilize it more efficiently?

MR. VANDEVERT: Well, as I said, in many respects, our lives did not change that much with C-TPAT because we already had a highly secure supply chain.²²³ That being said, being in C-TPAT and being the lowest risk status is incredibly important because the basic proposition of C-TPAT is not so much that there are actual benefits; I mean, CDP has acknowledged that

²¹⁸ See generally Ford Motor Company, *Company Information*, available at <http://www.ford.com/about-ford/company-information> (last visited on Oct. 15, 2008).

²¹⁹ See generally *id.*

²²⁰ See generally *id.*

²²¹ See generally *id.*

²²² See generally *id.*

²²³ See generally *id.*

today they cannot tell you there is an actual benefit, but the real benefit is in the next event as they are trying to sort out and open up the border who will get through first.²²⁴

What I was trying to say is that we think that C-TPAT is an excellent foundation and should be further developed and further enhanced. And it could actually address for Customs, not just -- and these are actually remarks that Ford has actually made publicly in testimony to Senate Finance Committee. We actually believe that C-TPAT lays the foundation for not just having a very effective security assessment and risk-based method, but they could actually expand customs efforts into such things as anti-counterfeiting. And we for example suggested what I call the Tier 4, that if we provided detailed data of our entire supply chain and our suppliers and our related importers, that if Customs could sort all those out, then counterfeited parts of which we are very concerned about could be more easily targeted and more effectively targeted.

So I see C-TPAT and Ford sees C-TPAT as a great foundation that we really would hope that Customs would look harder at, work on, and develop.

MR. TOMPKINS: For the last question at the top of the hour, our Chair, Dr. King.

DR. KING: Paul, I am intrigued by your risk-based approach toward Customs. First, I would be interested in how you implemented, and also, the question of whether other suppliers of other products are not going to coin discrimination in favor of the automotive industry. I notice our chairman said that he was concerned about the approach on chemicals.

So how do you escape out of these barriers, assuming it is a good approach? I think it is a good approach.

MR. VANDEVERT: Well, assume it is a good approach. Actually, when I say risk-based, it is Customs that would be doing it.²²⁵ And this is one of our points, C-TPAT is an enforcement method that Customs has designed and implemented, and the elements of C-TPAT, providing information and Customs validating them is not just for the automotive industry.²²⁶ It is for all industry sectors.²²⁷

So it is the ability of Customs to understand the differences of each of the industries that are participating. We are all in the supply chain, but there are differences.²²⁸ But that is better handled, and I genuinely believe when I said programmable, I think that a risk-based assessment is something that can

²²⁴ See generally Customs and Border Patrol, *C-TPAT Overview*, available at http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml (last visited on Oct. 13, 2008).

²²⁵ See generally *id.*

²²⁶ See generally *id.*

²²⁷ See generally *id.*

²²⁸ See generally Hoffman, *supra* note 7.

literally be put into a computer so that when shipments are coming across and data fields are provided, that a computer can run a program that can say this is low risk, this is medium risk, this is high risk. But that would require the program and Customs to understand what each of the industries, what the data they provide means.

I mean, if he is shipping chemicals that are highly combustible material, that does not mean it is a bomb, it just means it is highly combustible, but those are things that can be identified, and as I say, objectively programmed. Again, it is not for us to do the assessments, it is for Customs to do it.

MR. TOMPKINS: Paul, thank you. Garland, thank you very much for a terrific discussion. And we look forward to networking during the break or later on today and tomorrow.

That will conclude our panel. Thank you.
(Session concluded.)