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# Economic Recovery in the Canada-United States Relationship

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## ECONOMIC RECOVERY IN THE CANADA-UNITED STATES RELATIONSHIP

*Speaker – R. Richard Newcomb*

*Speaker – J. Michael Robinson*

*Moderator – David Crane*

*United States Speaker – Hon. James Blanchard*

*Canadian Speaker – Hon. James S. Peterson, P.C.*

### INTRODUCTION

*R. Richard Newcomb*

MR. UJCZO: In order to introduce our first speaker today it is my great pleasure to introduce Rick Newcomb of DLA Piper,<sup>1</sup> who will in turn introduce Governor Blanchard.

MR. NEWCOMB: Ladies and gentlemen, Governor Blanchard, Mr. Peterson, Mr. Crane, it is indeed my pleasure to be here and to have the great honor to introduce my partner, colleague, and friend Jim Blanchard. It is a particular pleasure for me, as an alumnus of the law school, that I was able to bring this fine gentleman together with this great institution, so it is truly a double pleasure. Jim Blanchard of Michigan has quite a distinguished career. He was a four-term member of the United States Congress, had two terms as governor in landslide elections, was United States ambassador to Canada, and did all this before he was fifty.<sup>2</sup> He then went to practice in Washington, D.C. He is a practice group leader and head of government affairs at DLA Piper, where he has a very active practice.<sup>3</sup> He is a board member of a number of companies, including Chrysler.<sup>4</sup> Jim was largely responsible for recruiting me to come to DLA Piper.

I have a great story to tell you. In making the decision to go to DLA Piper, I consulted one person, so help me God, this is true, Henry King. He offered two views. He first said you will be leaving a smaller, more intimate firm that has a Southeastern focus, and you will miss the charm and grace,

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<sup>1</sup> *Rick Newcomb*, DLA PIPER, [http://www.dlapiper.com/richard\\_newcomb/](http://www.dlapiper.com/richard_newcomb/) (last visited Sept. 26, 2010).

<sup>2</sup> *Jim Blanchard*, DLA PIPER, [http://www.dlapiper.com/james\\_blanchard/](http://www.dlapiper.com/james_blanchard/) (last visited Sept. 26, 2010).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

and you will be joining this behemoth. And then he said, the upside, however, is that you will get to work with Jim Blanchard.

When I asked Jim if he would be interested in participating in this body as being the co-head of the Canada-United States Law Institute, he was delighted, and he accepted immediately. It was a great pleasure for him to say yes.

We have a very active Canadian practice and it is growing. For example, Jim and I will be going to Montreal to participate in the Canadian Corporate Counsel Meeting. Jim has many clients in Canada, and we spend many days just talking about our Canadian business. It is with particular pleasure that Jim has joined us. Thank you, Jim, and we are glad to have you.

MR. BLANCHARD: Thank you.

## INTRODUCTION

*J. Michael Robinson*

MR. UJCZO: And, now, it is my privilege to introduce Michael Robinson of Fasken Martineau in Toronto,<sup>5</sup> who will introduce Minister Peterson.

MR. ROBINSON: Thank you, Dan. It is my pleasure to introduce Jim Peterson. I am not going to read you all of his many accomplishments, but the one that stands out always in my mind is that he is the second longest serving federal parliamentarian in Canadian history, twenty-three years.<sup>6</sup> Only Sir John A. Macdonald, the first prime minister of the country, was in Parliament longer.<sup>7</sup> Jim was the minister of international trade,<sup>8</sup> and he had a wonderful title called the secretary for international financial institutions,<sup>9</sup> which involved a lot more than that, too. Jim has always been a people person. He has always been open to new ideas, and I would like to give you just three personal anecdotes about that. There is one new idea, however, he has never been open to and that is abolishing the Wheat Board. We have in the audience Richard O. Cunningham, counsel for the Canadian Wheat Board for many, many years, who has successfully defended fourteen attacks on the legitimacy of that institution by the United States' Department of Com-

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<sup>5</sup> *Michael Robinson*, CANADIAN CHAMBER COM., <http://www.chamber.ca/images/uploads/Arbitrator-Profiles/JRobinson.pdf> (last visited Sept. 27, 2010).

<sup>6</sup> *James Peterson*, FASKEN MARTINEAU, <http://www.fasken.com/en/jim-peterson/> (last visited Sept. 26, 2010).

<sup>7</sup> *MACDONALD*, *The Right Hon. Sir John Alexander*, PARLIAMENT CAN., <http://www2.parl.gc.ca/parlinfo/Files/Parliamentarian.aspx?Item=59dd9d42-12e0-4d91-af20-4a5de0ea5e12&Language=E&Section=FederalExperience> (last visited Oct. 2, 2010).

<sup>8</sup> *James Peterson*, *supra* note 6.

<sup>9</sup> *Id.*

merce.<sup>10</sup> Jim Peterson was famed for having walked out on Bob Zelek in the Geneva Ministerial Meeting when Mr. Zelek demanded the abolition of the Wheat Board. That was a negotiation in the Doha Round—2005 I think it was, Jim. That shows you how long the Doha Round has been grinding on. That was one of the meetings where everything was supposed to get resolved.

My personal example shows what a fine people-person Jim is and how open he is to new ideas, and that is a good thing for the Canada-United States Law Institute as we move into this new era with Henry's demise. Jim was chair of the House of Commons Finance Committee,<sup>11</sup> by the way, which was not listed on his biography. That is one of the many committees he headed. When he was chair, I wrote him a letter and said that the Canadian Foreign Sovereignities Immunity Act, which was going for second reading, was seriously flawed. Jim did not have any problem with that. He said, well look, why not come up to Ottawa and appear as a Crown Witness and tell the House of Commons Committee what they have done wrong. I was amazed. So, I did. Not your average minister who would do that when some pernickety lawyer acting for a bunch of banks tells you what you are doing wrong, especially since we did not know each other at the time. I said your government has drafted this bill all wrong, and I can tell you what is wrong with it. Anyway, Jim was open to that.

Another occasion was when he was Secretary of State for International Financial Institutions.<sup>12</sup> I was sitting in a room full of Dutch bankers that I represented. There must have been twenty, and they were all getting ready to demand, or ask respectfully, I guess, for a ministerial consent under the Bank Act to do something. They were all sitting there twiddling their thumbs, waiting for the Minister to arrive. Jim walked in the room, saw me and said, "Hey, Michael, I did not know you were here. You acting for these people? Can they afford you?" It was one of the nicest things he had ever said. Helped me considerably with my account.

And there is one more story. During the Doha Round Ministerial, it may have been the same one in 2005 where he walked out on Zelek, Jim reluctantly agreed to "consider," putting the Canadian Agricultural—that is dairy, eggs, and chicken—Supply Management Protection System on the table for negotiations to try to induce concessions which had not then been forthcoming on agricultural subsidies from the United States and the European Union. As he said to me personally when I congratulated him for this, "I had no choice. It was 143 to 1." The denouement is that before the wheels hit the

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<sup>10</sup> *A History of U.S. Trade Challenges*, CAN. WHEAT BOARD, [http://www.cwb.ca/public/en/hot/trade/popups/trade\\_history.jsp](http://www.cwb.ca/public/en/hot/trade/popups/trade_history.jsp) (last visited Oct. 2, 2010).

<sup>11</sup> *James Peterson*, *supra* note 6.

<sup>12</sup> *Id.*

tarmac at Ottawa on his return flight, it had been suggested to him by the Prime Minister that he should recant that offer, and he did, and it has never appeared since. But there is another example of Jim being open to ideas, notwithstanding the federal government's position that he should not be. With that I will turn the time over to David. Thank you for your attention.

MODERATOR

*David Crane*

MR. CRANE: Well, welcome everybody to the start of what promises to be a very interesting, relevant, and challenging conference dealing with many issues that are opportunities or irritants between our two countries. Also, if some of these issues can be resolved, it may create opportunities for competitiveness for our industries. We are going to hear from your two new co-chairs; in their presentations, I think you will get a good sense of why it is of such advantage to the Canada-United States Law Institute that we have been able to attract individuals with prestige and intellect so that they can contribute to this organization.

Now, as was mentioned, Henry King himself is not here but the bell is. What I am going to do to start, because we only have about forty-five minutes, is to ask each of our two co-chairs to speak for about eight to ten minutes, whereupon I will ring the bell, and we will ask our distinguished panelists some questions. I have a couple of questions, and we will open it up to the floor. Then we will wind-up. The purpose of this evening is to get our neurons moving for the rest of the conference. Governor Jim, could we ask you to start now? One of the directorships that was not mentioned when you were introduced is Nortel. But, you were there I think when it was in good shape.

## UNITED STATES SPEAKER

*Hon. James Blanchard\**

MR. BLANCHARD: Yes. Largely, yes. I thank you, first of all, everyone. Dan, for your leadership. The two deans, Bob Rawson and Dean Holloway, Consul General Noble. We work hand-in-glove with George Costaris of the Consulate, who is here, on a lot of issues, and that is great. Rick, thank you. It is always good to be here.

Now, I must tell you that I served as governor of Michigan with Jim's younger brother when he was premier of Ontario.<sup>13</sup> He was the first Peterson that I knew. But I say very proudly that when I became ambassador to Canada, our very first guests to our home for dinner were Jim and Heather Peterson. Jim, it is wonderful to share this moment with you.

You will notice it takes at least two of us, probably more, to fill the shoes of Henry King. But, we are here. Let me just give you an overview, as I see it, from Washington. I made a few notes. You all follow politics. You follow it either in Canada or the United States, and you follow it in the news. For all the "fits and starts," it is actually a pretty good era of good feeling. I think way back to when James Monroe was president and there was an era called the "Era of Good Feeling."<sup>14</sup> In fact, everybody was in a good mood. There were not a lot of fights in Washington. Well, we have those now, but between President Obama and Prime Minister Harper, actually, and between

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\* Hon. James Blanchard has dedicated his life to public service and law, serving with distinction as governor of the State of Michigan, ambassador to Canada and a member of the U.S. Congress. During eight years as Michigan's chief executive (1983-91) Blanchard was named one of the best governors in America by *U.S. News and World Report* for returning the state to financial solvency and creating innovative new programs to meet the needs of its citizens. As ambassador (1993-96), Blanchard managed a broad range of issues between the U.S. and Canada, receiving the prestigious Foreign Affairs Award for Public Service for his work. In 1997, Blanchard authored *Behind the Embassy Door—Canada, Clinton and Quebec*, a book highlighting his experiences. Blanchard was an assistant attorney general of Michigan for five years and then served four terms as a member of Congress (1975-1983) leading the successful fight to save the Chrysler Corporation. Currently, he is co-chair of Government Affairs for the global law firm of DLA Piper and chairman of the Meridian International Center, a leading public diplomacy, non-profit center in Washington, D.C. He is also on the board of directors of several public and private organizations. Jim and Janet Blanchard reside in Beverly Hills, Michigan.

<sup>13</sup> See *David Robertson Peterson, MPP*, LEGIS. ASSEMBLY ONT., [http://www.ontla.on.ca/web/members/members\\_all\\_detail.do?locale=en&ID=447](http://www.ontla.on.ca/web/members/members_all_detail.do?locale=en&ID=447) (last visited Oct. 2, 2010).

<sup>14</sup> *James Monroe*, WHITE HOUSE, <http://www.whitehouse.gov/about/presidents/jamesmonroe> (last visited Oct. 2, 2010).

the various Cabinet members, relations are actually very, very strong, with a few hiccups.

You all know that President Obama had a fabulous first visit to Ottawa, and they launched the Clean Energy Dialogue as a result.<sup>15</sup> Even before that, Canadian Environmental Minister Jim Prentice met with Carol Browner in the White House to lay the foundation for trying to synchronize our efforts in dealing with climate change and energy.<sup>16</sup> We even take for granted that during the auto rescue Canada and the United States and Ontario worked, again, hand-in-glove, on helping General Motors and Chrysler.<sup>17</sup> Canada, by the way, has a board seat on both.<sup>18</sup> In fact, I have fun because I happen to be on the board of the new Chrysler Corporation. I am always telling the Canadian representative, George Gosbee, that I have a vote equal to all of Canada, so there. Anyway, it is a lot of fun; and by the way, Chrysler is going to surprise a lot of people.

Of course, you are all aware that Canada is serving heroically in Afghanistan.<sup>19</sup> That will probably come to an end in 2011, but there is an enormous amount of cooperation going on day after day on all the high-level issues. We also have two new ambassadors who get along famously, and I think they do a fabulous job. David Jacobson,<sup>20</sup> our ambassador in Ottawa, who was, I might add, finance chair for Barack Obama, a man near and dear to President Obama's heart. And many of you know Gary Doer,<sup>21</sup> the former premier of Manitoba, who had a great deal of experience in dealing with our governors. By the way, our governors and premiers got together in Washington recently, and they had a whole dialogue.<sup>22</sup> They claim it was the first time. The truth is the first time was when David Peterson and I hosted the

<sup>15</sup> J. Scott Childs, *Continental Cap-and-Trade: Canada, the United States, and Climate Change Partnership in North America*, 32 HOUS. J. INT'L L. 393, 426-27 (2010).

<sup>16</sup> Jim Prentice, Minister of the Env't, Address to the Orillia Business Community (Feb. 27, 2009).

<sup>17</sup> See News Release, Industry Can., The Governments of Canada and Ontario Reject Automakers' Restructuring Plans (Mar. 30, 2009), available at <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/04535.html>.

<sup>18</sup> See *id.*

<sup>19</sup> See *Harper Says 2011 'End Date' for Afghanistan Mission*, CBC NEWS (Sept. 10, 2008), <http://www.cbc.ca/news/canadavotes/story/2008/09/10/harper-afghanistan.html>.

<sup>20</sup> *Ambassador David Jacobson*, EMBASSY U.S., OTTAWA, CAN., [http://ottawa.usembassy.gov/content/content.asp?section=embconsul&document=amb\\_main](http://ottawa.usembassy.gov/content/content.asp?section=embconsul&document=amb_main) (last visited Sept. 24, 2010).

<sup>21</sup> *Ambassador Gary Doer*, GOV'T CAN., [http://www.canadainternational.gc.ca/washington/offices-bureaux/amb/doer.aspx?menu\\_id=3&menu=L](http://www.canadainternational.gc.ca/washington/offices-bureaux/amb/doer.aspx?menu_id=3&menu=L) (last updated Dec. 9, 2009).

<sup>22</sup> Press Release, Gov't. Newfoundland, Premiers and Governors Work Together to Address Common Goals and Challenges (Feb. 22, 2010), available at <http://www.releases.gov.nl.ca/releases/2010/exec/0222n06.htm>.

meeting in Traverse City in 1987,<sup>23</sup> but we were not foolish enough to let the press come in and film it. We had a more candid discussion. But, anyway, it is a good thing.

In regard to the Olympics, I know there was some critical coverage in the United Kingdom, but, of course, they have always viewed Canada as kind of a colony anyway, just as the United States is considered an outlier. The fact is that the Olympics was fabulous, a fabulous event. It was incredibly well received in the United States, and I am sure all the Canadians are very proud, including that last hockey game.<sup>24</sup> I forget what the score was. I know it went into overtime. Actually, my wife was really rooting for Canada. I do not know why. She said, “I do not want our friends to be depressed until the next Olympics.” I said, “I know, but we want to win.”

Anyway, generally speaking, things are going very well. We have had the Buy American dispute and that is kind of a warning.<sup>25</sup> And, there is also the country of origin labeling disputes.<sup>26</sup> Those are a warning that if we do not watch things or manage things which might look little at first, they can get out of hand. That is one of the things with trade: things can get out of hand quickly. They get in the newspapers and pretty soon you cannot get people to compromise or back off. I remember when “Buy American” was proposed. The idea came from the steel workers. A “Buy American” provision was going to be in the Stimulus Bill,<sup>27</sup> and it came from the Canadian head of the steel workers, who never thought it was going to apply to Canada. My friend Sandy Levin was Chairman of the Trade Subcommittee—I used to work for Sandy, and his sister worked for me. I called him up and said, “you need to watch that thing. You know you do not want to have it apply to Canada.” He says, “well, our staff says it will not. Do not worry about it. It is not going to apply to us where we have good faith trade agreements.” I said, “oh, good.”

Well, we forgot that the procurement agreement between the two countries allowed the provinces to opt out, because Ottawa did not want to have to arm wrestle all the provinces. Our states opted out, so all of a sudden we

<sup>23</sup> See Transcript of National Governors Association 79th Annual Meeting (1987), *available at* <http://www.nga.org/Files/pdf/1987NGAAnnualMeeting.pdf>.

<sup>24</sup> Bill Carter, *Olympic Hockey Finale Drew Huge Ratings*, N.Y. TIMES (Mar. 1, 2010, 3:17 PM), <http://mediadecoder.blogs.nytimes.com/2010/03/01/olympic-hockey-finale-drew-huge-ratings>.

<sup>25</sup> See Greg Quinn, *U.S., Canada Settle 'Buy American' Trade Dispute*, BLOOMBERG BUSINESSWEEK (Feb. 05, 2010, 2:15 PM), <http://www.businessweek.com/news/2010-02-05/u-s-canada-settle-buy-american-dispute-officials-says.html>.

<sup>26</sup> *United States – Certain Country of Origin Labeling Requirements*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds384\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm) (last visited Sept. 24, 2010).

<sup>27</sup> *'Buy American' rule in stimulus bill could cost Canada jobs*, CBC News (Jan. 29, 2009), <http://www.cbc.ca/world/story/2009/01/29/buy-american.html>.



ended up with a brew-ha that was unintended. To get to walk that back took us, what, about a year?

MR. PETERSON: Yes.

MR. BLANCHARD: I always felt administratively it could have been walked back within a couple of weeks, and it was not. I do not know whether it is because it got a lot of publicity as battle lines were drawn. But it is a good example of what I saw as ambassador. Canada can get side-swiped on issues, whether it is immigration or Buy America, unintentionally if we are not all careful, merely because the United States is just more insular, and these things happen. Our system works differently.

Let us hope Softwood Lumber will stay dormant for a while, because I think that the Softwood Lumber Agreement is working reasonably well.<sup>28</sup> You may have comments on that, Jim. All I know is that we do not want to let little things mushroom, because then they become pretty big. They hurt industry and jobs, and they are hard to solve.

Let me finish by saying that I do not know what is going to happen with the Energy Bill.<sup>29</sup> As a Democrat, I am very happy that President Obama was able to get the health care legislation through; without Nancy Pelosi, it would not have happened. I am really happy about that. Let me tell you, I know Nancy very well. We had mutual friends from college. She really did a heroic job helping out.

Now the focus will probably be on financial service reform and energy. It is critical that whatever we do on energy and the environment gets synchronized or harmonized with Canada. There is no way to have a policy that is not, basically, a North American policy. And, thus far, I might add, there has been no attempt to sabotage oil sands in Congress. There was an attempt a few years ago. We talked about the energy contribution, and what people do not realize is that the oil sands' greenhouse gas emissions are far fewer than coal and equivalent to heavy oil which exists in California, not to mention Mexico and Venezuela.<sup>30</sup> There are a lot of people that do not know that.

I am a little worried that we need to be vigilant to make sure that our two governments have a compatible regime on whatever is done. My guess is that there is not going to be any cap-and-trade legislation this year at all.<sup>31</sup> But, there may be a clean energy jobs bill before the election. And, with

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<sup>28</sup> Softwood Lumber Agreement Between the Government of Canada and the Government of the United States of America, U.S.-Can., May 29, 1996, 35 I.L.M.1195 (1996).

<sup>29</sup> American Clean Energy and Security Act of 2009, H.R. 2454, 110th Cong. §§ 761-768 (2009).

<sup>30</sup> CAN. ASS'N OF PETROLEUM PRODUCERS, ENVIRONMENTAL CHALLENGES AND PROGRESS IN CANADA'S OIL SANDS 4 (2008), available at <http://www.canadasoilsands.ca/library/misc/578ac899-8f8e-423d-9f7d-9611986b4ff0.pdf>.

<sup>31</sup> See generally *Cap and Trade*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/capandtrade/> (last visited Aug. 12, 2010).

regard to the election, generally speaking, whenever you have had back-to-back victories like we Democrats have had in 2006 and in 2008, where the Republicans are reduced to the bare minimum in Congress,<sup>32</sup> the pendulum will swing back. The question is not will the Republicans gain seats in Congress. They will. Will they gain governorships? They will. The only question is how many, and what impact that will have on going forward. That is the real issue. But I would tell you this, and I will tell you this right now: Barack Obama is going to get re-elected in three years. The only questions are what type of Congress is he going to be working with, who will be leading Canada, and will we have to revisit some of these issues unnecessarily?

Finally, the big issue I am working on is the new Detroit River International Crossing project (DRIC).<sup>33</sup> It is huge. I hope you ask some questions about it, because it is not only the busiest trade corridor in the world, but we need a second crossing. We need a second crossing that is publicly governed. We are all working on it: Canada, the United States, Michigan, Ontario, Windsor, and Detroit. By the way, when we construct the DRIC, it will mean 10,000 construction jobs on the Detroit side and 15,000 on the Windsor side, and that is not counting who we buy our steel or concrete from.<sup>34</sup> It is huge. It is the economic future of this region, and it is really important. You will hear more about it, but I would not want to end without mentioning that important project. David, I know I have done my time, so I will ring the bell and shut myself up. In honor of Henry.

MR. CRANE: Good self-discipline.

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<sup>32</sup> Michael M. Grynbaum and David M. Herszenhorn, *Democrats Pick Up at Least 5 Senate Seats*, N.Y. TIMES (Nov. 4, 2008), <http://www.nytimes.com/2008/11/05/us/politics/05cong.html>.

<sup>33</sup> *Detroit River International Crossing Project*, DETROIT INT'L CROSSING STUDY, <http://www.partnershipborderstudy.com> (last visited Oct. 18, 2008).

<sup>34</sup> *Id.*

## CANADIAN SPEAKER

*Hon. James S. Peterson, P.C.\**

MR. PETERSON: Well, I just want to say what an honor and privilege it is to be a co-chair of the Canada-United States Law Institute. It did not take me very long to say yes when I was asked to share this wonderful role with Jim. The reasons are very simple. First of all, the United States is Canada's closest neighbor. It is its closest friend. We have so much in common, but so much of an agenda to accomplish. I was so impressed by the distinguished directors from both sides, Canada and the United States. I can tell you this: the Canadian side represents the cream of our trade bar. The fact that we were so strongly supported by the two law schools means a great deal to me because of my academic background, and the fact that Jim Blanchard was going to be the co-chair was also very important.

Jim befriended us in Ottawa, and to my way of thinking, he was the most distinguished ambassador, and the most helpful to Canada, that I saw in my twenty-three years there. Let me just give you a very brief story. In 1995, we had the referendum in Canada.<sup>35</sup> The polls showed months before that we were going to lose that referendum to the Separatists. It is a rule of international diplomacy that one State does not interfere in the internal affairs of another State.<sup>36</sup> Jimmy Blanchard broke that rule. He invited Bill Clinton to speak before the House of Commons, and President Clinton said that the United States appreciated so much a strong, united Canada.<sup>37</sup> As a result, we

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\* Hon. James S. Peterson, P.C. has served in the government of Canada as minister of International Trade, secretary of state (International Financial Institutions) (1997-2002), and chair of the House of Commons Standing Committee on Finance (1993-97). As a former minister of International Trade (2003-06), he represented Canada at the World Trade Organization's Doha round of negotiations. He retired from the House of Commons in 2007 after twenty-three years of service as the member of Parliament for Willowdale (Toronto). Before entering public life, he had a distinguished career as both a legal scholar and teacher and as a practitioner of international tax and business law. He was also a consultant for the U.N. Industrial Development Organization. He was appointed head of negotiation for Ontario in its efforts to reduce barriers to trade, investment, and labor mobility, and to enhance economic cooperation with Quebec.

He is the author of numerous articles and studies for Canadian and foreign publications. He received a DCL (1970) from McGill University; an LLM (1967) from Columbia University; a Certificate d'Assistance (1966) from L'Académie de Droit International, The Hague; a Diplôme d'Etudes de Civilisation Française (1966) from La Sorbonne; and a BA (1963) and LLB (1964) from The University of Western Ontario.

<sup>35</sup> *1995 Quebec Referendum a Period of High Drama*, CTV NEWS (Oct. 31, 2005, 4:15 PM), [http://www.ctv.ca/CTVNews/Canada/20051030/1995\\_referendum\\_051030/](http://www.ctv.ca/CTVNews/Canada/20051030/1995_referendum_051030/).

<sup>36</sup> Vienna Convention on Diplomatic Relations, April 18, 1961, 500 U.N.T.S. 95, art. 41.

<sup>37</sup> *Mr. President Goes to Ottawa*, CBC DIGITAL ARCHIVES,

won that referendum by about 54,000 votes.<sup>38</sup> It was a cliffhanger, and that was Jimmy's diplomacy helping all of Canada, and we will always be grateful to him for it. And, Dan, I am delighted that you have finally solved the problem of calling us "Gov" and "Mint," because Jim always solved the problem by saying "Jim the good" and "Jim the bad." But, like Jim, I think that if Henry King were here tonight he could take great satisfaction from the fact that those who knew him best were the ones who determined that it would take more than one person to succeed him in this noble role.

I have several topics I would like to hit on very briefly. One is financial sector regulation. There are a lot of proposals around the world right now as to how we are going to do it. We will not end up with a global regulator, but we will end up with our national regulators having to meet global standards, and they will be tougher. One proposal coming out of Germany, and supported by France, is that there will be a tax on banks, about 1.2 billion euros.<sup>39</sup> I hope that we will be able to oppose that. Certainly, we will in Canada. We do not think that we will need it there, and I hope that will be our strong stance.

I worry about what we saw: the concept that everywhere our financial institutions were too big to fail. Now, we had to act, and I agree with that. But, what does that do in terms of moral hazard? And how do we make sure that banks realize they have to behave, even when they know that they might, or will probably, be bailed out if they do not? I would welcome very much the views of people here. Canada needs a single regulator, and if we can use the leverage of Case Western and this group to help us with that, terrific.

Jimmy talked about the borders and the Ambassador Bridge. Twenty-five percent of all our merchandise trade goes over that,<sup>40</sup> and as a trade minister it was one of my very biggest concerns, and that is why I asked the Prime Minister to create a Special Cabinet Committee on the bridge when it was stalling. Up to 10,000 trucks a-day cross that bridge,<sup>41</sup> and I refer to it as the aorta of our commercial body. It needs an operation; there is no doubt about it. We need this second crossing, and I am glad that it is not going to be where the present owner wanted it to be, if at all.

The border is still awfully thick. In regard to passports, we have to get that Windsor thing cleared up, because as you know, if a truck goes from

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[http://archives.cbc.ca/politics/international\\_politics/topics/676-3872/](http://archives.cbc.ca/politics/international_politics/topics/676-3872/) (last visited Jan. 22, 2011).

<sup>38</sup> See generally *1995 Quebec Referendum*, *supra* note 35.

<sup>39</sup> Matthew Saltmarsh, *France, Germany and U.K. Support Bank Tax*, N.Y. TIMES, June 22, 2010, at B4.

<sup>40</sup> Ray Koslowski, *Smart Borders, Virtual Borders or No Borders: Homeland Security Choices for the United States and Canada*, 11 L. & BUS. REV. AM. 527, 529 (2005).

<sup>41</sup> *Bridge Facts*, AMBASSADOR BRIDGE, <http://www.ambassadorbridge.com/IntlCrossing/BridgeFacts.aspx> (last visited Oct. 2, 2010).

Toronto to Miami it faces fifteen stoplights. Fourteen of them are in Windsor. We have a real problem in the United States in terms of balancing security with access at the border, and it goes right to the top. There have been top United States officials who have said that the September 11 suicide bombers came from Canada, and that Canada has as many problems with the Canadian border as we do with the Mexican border.<sup>42</sup> We have a lot of diplomacy and homework to do. A couple of weeks ago at our Liberal Thinkers Convention in Montreal, Derek Burney proposed that we should have a bilateral border commission.<sup>43</sup> I think it might be somewhat along the lines of the Industry Government Advisory Committee,<sup>44</sup> and I would like you to consider that possibility. It would be a forum where we could streamline customs and entry to be accessible to importers and exporters, harmonize many of the rates that are often talked about, and perhaps harmonize immigration and refugee policies. I do not think we should discount the possibility of a common external tariff in terms of thinning the border out.<sup>45</sup> It would certainly help with our rules of origin that Jimmy talked about. We will never get it to be immaculate. We know that. But we could use this to help intensify fire and police collaboration on security, drugs, organized crime, and weapons.

The third area is the World Trade Organization (WTO), which Michael referred to. And, no, I did not dare go against supply management of the WTO. Every meeting we had there, we had at least thirty supply-management people staying in the same hotel and insisting that they meet with us morning and night. We were very well policed, and our governments never faltered from the supposition that we had to support supply management. Particularly, and I believe this strongly, even though it does make us an outlier, when you look at the incredible agricultural subsidies that our agriculture producers face, globally they are about \$327 billion a year, which is six times the amount of all global foreign aid.<sup>46</sup> The United States subsi-

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<sup>42</sup> *McCain Defends Napolitano, Insists 9/11 Perpetrators Came From Canada*, CBC NEWS (Apr. 24, 2010, 6:04 PM), <http://www.cbc.ca/world/story/2009/04/24/mccain-border-canada-911.html>.

<sup>43</sup> Alison Crawford, *Burney Promotes U.S.-Canada Border Commission*, CBC NEWS (Mar. 28, 2010, 3:48 PM), <http://www.cbc.ca/politics/insidepolitics/2010/03/burney-promotes-us-canada-border-commission.html>.

<sup>44</sup> *See generally Canadian Traceability*, INDUS. GOV'T ADVISORY COMM., <http://www.ats-sea.agr.gc.ca/trac/ind-eng.htm> (last modified Apr. 20, 2010).

<sup>45</sup> *See generally* Danielle Goldfarb, *The Road to a Canada-US Customs Union: Step-by-Step or in a Single Bound?*, C.D. HOWE INST., No. 184, June 2003, at 2, *available at* [http://www.cdhowe.org/pdf/commentary\\_184.pdf](http://www.cdhowe.org/pdf/commentary_184.pdf).

<sup>46</sup> *Private Sector: Agricultural Trade Task Force*, FOOD AND AGRICULTURAL ORG. UNITED NATIONS, <http://www.fao.org/worldfoodsummit/sideevents/papers/WEF-en.htm#re> (last visited Dec. 31, 2010).

dies are about \$47 billion;<sup>47</sup> Japanese, \$48;<sup>48</sup> and the European Union, about \$134.<sup>49</sup> These subsidies in total cost at least \$500 billion of exports to the developing countries of the world. I believe passionately that we have to continue with the WTO, much more so than the spaghetti bowl that has occurred because of the bilaterals that were done, maybe out of desperation. But those bilaterals do not have the capacity to rein in the obscene level of agricultural subsidies which are so iniquitous to our farmers and our producers, and to the developing world.

MR. CRANE: Also, we cannot change anti-dumping procedures except through the WTO.

MR. PETERSON: You cannot. Right, David.

The fourth thing I would like to hit on is the deficit and the debt. We both face enormous problems here. Maybe ours is slightly less than the Americans, but cuts to programs are going to be necessary. We are also going to need tax increases, and the mythology in Canada today is that we cannot advocate tax increases. Well, I am glad that the business community has spoken out and academics are speaking out about how we will probably have to increase taxes to get rid of deficits and pay down debt. I commend Washington and Ontario for advocating against great political difficulty to harmonize consumption taxes. Quebec has stepped in and picked up two of the points that the federal government abandoned.<sup>50</sup> I condemn that abandonment, or that cut to the Goods and Services Tax by two percentage points, which costs us over ten billion dollars a year.<sup>51</sup> Let us look at the realities: we are going to need that money, and if we had it now we would be in a much stronger position.

The fifth point is climate change. This is absolutely critical. Jimmy touched on this. In the oil sands, we are not as bad of a polluter as so many people think. There are twenty-seven states in the United States that produce more greenhouse gas emissions than we produce in the oil sands.<sup>52</sup> We are the biggest consumers of oil in the world. We consume more in Canada as 35 million people, than at least 760 million people in all of Africa.<sup>53</sup> Conser-

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<sup>47</sup> See Marian L. Tupy, *Who Pays for Farm Subsidies?*, WASH. TIMES, Nov. 25, 2005, at A23.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *GST Cut*, GOV'T CAN., <http://www.gst.gc.ca/> (last visited Dec. 31 2010).

<sup>51</sup> *Id.*

<sup>52</sup> See generally *State and Local Climate and Energy Program*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/statelocalclimate/resources/index.html#a03> (last visited Dec. 27, 2010).

<sup>53</sup> See *International Energy Annual 2006*, U.S. ENERGY INFO. ADMIN., <http://www.eia.doe.gov/iea/> (follow World Apparent Consumption of Refined Petroleum Products, 2005 link to Table 35) (last visited Jan. 22, 2011).

vation is going to have to be part of our approach. Is a global accord possible? Is it going to be possible to get one with the United States? I am not terribly optimistic, although it is absolutely critical that we do. Public opinion in the United States with respect to climate change is going the wrong way. For those that felt it was a serious problem, it has fallen last year to thirty-five percent from the previous year of forty-four percent.<sup>54</sup> For those who think it is not a problem, it is now seventeen percent versus what was eleven percent.<sup>55</sup> I am worried about the politics. Twenty-five states produce coal,<sup>56</sup> and any one of these treaties, as I understand it (correct me if I am wrong), is going to require sixty-seven senators to support it.<sup>57</sup> Can we get that support to do the right thing and protect the world?

Now, the United States and others, including Canada, have said that we cannot have a deal unless we have the developing world on board, and by that I mean China and India. I disagree with that. The developing countries are not the ones who have put the carbon dioxide into the air, and they know it. They are telling us this, and they are saying, we are not the ones who created this mess, you are. You did it through your industrialization, and now we need our chance at industrialization. But we see how India and particularly China are trying to adopt greener economies in spite of incredible expansions. These pressures are going to get worse over the next thirty or forty years as our population globally expands from 6.3 billion to roughly 9.2 billion in forty years.<sup>58</sup> We have to start, and the only way we will be able to have the moral suasion with respect to the developing world is if we lead by example. Let us do the right thing, and then we can apply the pressure.

The sixth topic is global markets. The United States will always be the single biggest market for Canadian goods and services, and probably vice versa as well. Let us keep nurturing that relationship, but at the same time, we now see that Canada is doing a free trade agreement with Europe. Well, my priority would have been to focus on trade with India and China, and working to enhance it. After all, they have forty percent of the world population, and those economies are growing at over eight percent per year.<sup>59</sup>

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<sup>54</sup> See generally PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, *MODEST SUPPORT FOR CAP-AND-TRADE POLICY: FEWER AMERICANS SEE SOLID EVIDENCE OF GLOBAL WARMING 1* (2009), available at <http://people-press.org/reports/pdf/556.pdf>.

<sup>55</sup> *Id.*

<sup>56</sup> ENERGY INFO. ADMIN., U.S. DEP'T ENERGY, DOE/EIA-0584, *COAL INDUSTRY ANNUAL 2000*, at 6 (2000), available at <http://www.eia.doe.gov/cneaf/coal/cia/html/tb103p01p1.html>.

<sup>57</sup> See *Power & Procedures-Treaties*, UNITED STATES SENATE, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm> (last visited Dec. 31, 2010).

<sup>58</sup> Press Release, United Nations, *World Population Will Increase by 2.5 Billion by 2050* (Mar. 13, 2007), available at <http://www.un.org/News/Press/docs//2007/pop952.doc.htm>.

<sup>59</sup> *India Growth Rate Rises to 8.8%*, BBC NEWS (Aug. 31, 2010, 12:31 PM),

Lastly, the seventh point is productivity and people. I will just say one thing. Our single biggest challenge in both Canada and the United States is our demographic deficit. We are not reproducing in the way that we should. Ladies and gentlemen, I make a heartfelt plea to you as you fall into bed tonight and your head hits the pillow: consider what you personally might do for your country. Thank you very much.

MR. BLANCHARD: Spoken like Governor Mark Sanford.

MR. PETERSON: Thanks very much, anyway.

#### DISCUSSION FOLLOWING THE REMARKS OF JAMES BLANCHARD AND JAMES PETERSON

MR. CRANE: Our two speakers have set out quite an array of problems that our societies face: an aging society, climate change, adjustment to globalization, dealing with deficits, and many other things. I guess the question I would have for both of them is that we in the past have relied very much on our political institutions to sort out the big challenges. Yet, it seems today that our political institutions themselves are becoming dysfunctional, that the whole tone of discourse, such as it exists, is to demonize your opponent and engage in extreme negative advertising. My question to both of you is how are we going to reform the political system if we hope to deal successfully with any of these major problems, whether it is adjusting supply management, dealing with agricultural subsidies, getting an effective climate change program in effect, dealing with Social Security in the United States, or, in both countries, dealing with fiscal deficits? How are we to deal with any of these things if people are losing confidence in the political system, and the political system itself seems to be failing people? Looking at both countries, it seems we are moving in the wrong direction in terms of the political environment to solve difficult problems. I wonder how you both would respond?

MR. BLANCHARD: Well, I went to Congress in 1975,<sup>60</sup> and people got along better. There were more coalitions between Democrats and Republicans. There was less acrimony. It is true we did not have a twenty-four-hour news cycle. Politics was not as much entertainment as it is now. It is a different era, and I do not think we are going to go back to the old quieter, gentler era.

I will say, though, that is one reason why the victory for President Obama on healthcare was so important. The Democrats realized that they had more to lose by not getting it done than getting it done, no matter how the public perceived it. And, since the sky is not going to fall in and his plan will be

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<http://www.bbc.co.uk/news/business-11135197>.

<sup>60</sup> *Blanchard, supra* note 2.



phased in, it is going to give a lot more confidence, if not in the short run then in the long run, to the public that the government can do things.

I might also add working out arrangements between the United States and Canada, even though you have a Conservative minority government and a Democratic administration, seems to be a lot easier than working out agreements between the Senate and the House and between Republicans and Democrats. In fact, it is a lot easier. With regard to climate change, while it is not realistic to have 180 countries agree to a global regime, we here in North America need to come to some sort of an agreement for our own sake to engender confidence on an important issue for the future and for future generations. In addition, it would set an example for the rest of the world. If we are able to reach an agreement, ourselves, then we would have a lot more credibility when going to Brazil, India, or China and asking them to help out. I might add that we are beginning to develop different technologies in China, for example, technologies that use natural gas rather than coal.<sup>61</sup>

But I am more optimistic now than I was before that we are going to be able to solve some problems. I am much more optimistic about our two governments working together. That is why I said at least between the United States and Canada, there is a very good feeling. However, I do not know what we are going to do about the acrimony in Washington. I have been through this myself; the unemployment rate in Michigan is seventeen percent, and I raised taxes temporarily; I was the most unpopular person in North America. Once the economy begins to improve, the Tea Parties and the anger will start to dissipate. People get angry and blame whoever is in power when they are worried about the economy, their jobs, their kids' future, their houses, their retirement benefits, and their investments. I think that is what we are seeing now. Fortunately, for Canadians, the economy is not nearly as troublesome as it is in the United States.

MR. CRANE: You are not that worried about what is happening?

MR. BLANCHARD: In the early days in the United States we had duels. We had people caned in the United States Senate.<sup>62</sup> We fought a Civil War. I worry about it, yes. I am turned off by the twenty-four-hour news cycle and these talking heads. I am really turned off by it. But I think some of it will dissipate. Obviously, I am a big fan of President Obama succeeding, because I think that it will engender greater confidence in the United States and

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<sup>61</sup> See Mao Xianqiang and Guo Giurui, *Improving Air Quality in Chinese Cities by Substituting Natural Gas for Coal: Barriers and Incentive Policies*, ECON. AND ENV'T PROGRAM FOR SOUTHEAST ASIA, Oct. 2001, available at [http://www.idrc.ca/en/ev-8187-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-8187-201-1-DO_TOPIC.html).

<sup>62</sup> *The Caning of Senator Charles Sumner*, U.S. SENATE, [http://www.senate.gov/artandhistory/history/minute/The\\_Caning\\_of\\_Senator\\_Charles\\_Sumner.htm](http://www.senate.gov/artandhistory/history/minute/The_Caning_of_Senator_Charles_Sumner.htm) (last visited Jan. 13, 2011).

around the world; the world feels somewhat invested in Barack Obama, as well, and he appears to be very popular in Canada.

MR. CRANE: Jim, do you think Parliament is functioning?

MR. PETERSON: No. I have never seen it at such a low; it enhances the cynicism of the electorate when the House is adjourned to avoid discussion of detainees in Afghanistan or similar things, or when it is done for blatantly partisan political purposes. I am not saying that the current government is the only one guilty. We paid a huge price in the Liberal Party last September when we said that we were going to throw the government out regardless of what bill was passed;<sup>63</sup> we considered it to be a question of confidence. The public spoke loudly and clearly, and we experienced a fifteen-percentage-point drop below the current government.<sup>64</sup> We have now narrowed that gap: we are neck-and-neck. But I think the public wants us to behave better.

As a start, I would completely change the question period. We are the only legislature in the world, I think, that allows forty-five minutes, five days a week, of question and answer without any notice.<sup>65</sup> It just becomes a shouting match of acrimony. It is never designed to elicit information or shed any light on the subject. I would consider getting rid of it and going back to the British system, where you have to give notice but still have access to the ministers.

MR. BLANCHARD: For the United States, the dysfunction is really in the United States Senate. Instead of requiring a majority vote, they have decided to abuse a time-honored sixty vote requirement to break a filibuster.<sup>66</sup> All of a sudden, every bill can be filibustered. Therefore, you need sixty votes rather than fifty or fifty-one. The archaic Senate rules have been exposed by the twenty-four-hour news cycle, and every Senator is trying to hold up the process to get what they want. Some of that has backfired, so we will see what will happen. I think they have really cooked their own goose in terms of abusing their own rules.

MR. CRANE: I had some more questions, but we are running low on time, and I think it is important that the audience have an opportunity to ask questions. I would ask each person, when they ask a question, if they could just identify themselves for the benefit of the stenographer. Go ahead.

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<sup>63</sup> *Liberals Push For Fall Election*, CBC NEWS (Sept. 1, 2009, 9:53 PM), <http://www.cbc.ca/canada/story/2009/09/01/ignatieff-liberals090109.html>.

<sup>64</sup> ANGUS REID PUBLIC OPINION, CANADIAN PUBLIC OPINION POLL: CONSERVATIVES HAVE 15-POINT LEAD OVER LIBERALS IN CANADA I (2009).

<sup>65</sup> *Question Period*, PARLIAMENT CAN., [http://www.parl.gc.ca/compendium/web-content/c\\_d\\_questionperiod-e.htm](http://www.parl.gc.ca/compendium/web-content/c_d_questionperiod-e.htm) (last modified Mar. 2006).

<sup>66</sup> *Filibuster and Cloture*, U.S. SENATE, [http://www.senate.gov/artandhistory/history/common/briefing/Filibuster\\_Clature.htm](http://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Clature.htm) (last visited Jan. 13, 2011).

MR. CUNNINGHAM: I am Dick Cunningham. I am a member of the Executive Committee at the Canada-United States Law Institute, and I am a lawyer in Washington. I was going to ask Jim Blanchard whether he agreed with me that bringing dueling back to Congress might be a constructive development. Instead, I want to pose a question to Jim Peterson. Mr. Peterson, I agree with just about everything you said about the World Trade Organization (WTO), but are we stuck there? The developing world sees trade liberalization in many ways as harmful to their development interest, and in the developed world we are all scared of imports from low-wage, developing countries. However, there was a development recently that I think is very significant. Six of the heads of state, led by the heads of our two countries, sent a letter to the other heads of state at the G-20 saying that what we really have to do in the WTO is go after real increases in market access and real trade liberalization.<sup>67</sup> Now, here is the question I want to ask. The countries that were involved there were Japan, France, Korea, the United States, Canada, and the United Kingdom.<sup>68</sup> You may notice that all of the countries mentioned having substantial agricultural subsidies are in that list. The quid pro quo for getting market access, and the market access everybody wants to be involved in, is liberalization in agriculture. Are our countries willing to bite that bullet? Is the United States willing to cut back and really reduce its agricultural supports? And is Canada willing to do something about supply management?

MR. PETERSON: It is a very good question. The World Trade Organization is stalled, unfortunately. One of the reasons is India is not prepared to open its borders to agricultural goods. They have 650 million subsistence farms with less than two hectares of land to support their families. They are one of the world's biggest agricultural producers, but forty percent of what they produce gets wasted through rot before it gets to market. If we wanted them to open up their borders we would be asking that government to commit political suicide, and you cannot do that. However, you can arrange for asymmetrical solutions globally. We did this with softwood lumber. British Columbia got a tax proposed and Ontario and Quebec agreed to quotas. We were able to come up with solutions which might not have been uniform and neat, but they were ones which were pragmatic in the circumstances looking at the fundamental differences in the world. With the huge deficits our governments run up, they should be looking at ways to save money by cutting huge agricultural subsidies. It is an ideal time to consider it; if we did not have these subsidies, we would not need our supply management programs

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<sup>67</sup> Letter from G20 Steering Group Leaders to the G20 Member Governments, (Mar. 29, 2010), available at <http://www.whitehouse.gov/the-press-office/joint-letter-g20-leaders>.

<sup>68</sup> *Id.*

in Canada. Our farmers could compete with the best in the world on a level playing field.

MR. CRANE: I remember once hearing President Reagan speak at the International Monetary Fund annual meetings in Washington to a group of finance ministers. He said something to the effect, “Now, this is the real audience to talk to about agricultural subsidies.” By that he meant that the finance ministers had a deep interest in the size of agricultural subsidies, because they had to raise the money to pay for them and had the power to cut them. Related to that, many people are wondering what kind of trade policy the Obama Administration is going to come up with. It is criticized in some quarters for not being on the radar screen, and that this business of doubling exports in five years, is seen more as a protectionist policy than as a free trade policy. Could you give us any insight on what is going on in that regard?

MR. BLANCHARD: Well, not much is going on. That is the answer. There is good news and bad news. The good news is that there is no attempt, and no discussion, to roll back, modify, or repeal the North American Free Trade Agreement, even though that came up in the Ohio primary.<sup>69</sup> Let sleeping dogs lie. We should not run around and brag that he has not done it, because then people might say he should. But, there has not been any real articulation on trade policy. It is all about promoting exports. We are all for promoting exports.

Right now the President is trying to deal with a deep recession, huge deficits, the need for energy and environmental policies, financial reform, and getting through the election. He is not, I think, interested in raising new trade deals and aggravating the labor base and other Democrats. I do not see any of the Republicans championing this, either. During recessions, as all of you know, people are laid off. No one wants a new trade deal.

He has three agreements pending that are going to need to be finessed. There is the Colombia Free Trade Agreement,<sup>70</sup> and that is more important for foreign policy purposes than economic purposes. Colombia is actually the United States’ best ally in Latin America. We also have Panama and South Korea. South Korea will be the toughest by far. How those get finessed will tell you a lot about where we are heading. But I do not see a lot happening between now and the November election.

MR. CRANE: Let us have another question.

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<sup>69</sup> *Democrats Spar Over NAFTA in Ohio*, CBS NEWS, (Feb. 26, 2008), <http://www.cbsnews.com/stories/2008/02/26/politics/main3877111.shtml>.

<sup>70</sup> See James Pethokoukis, *Susan Schwab on the Colombian Trade Deal*, U.S. NEWS & WORLD REP. (Mar. 26, 2008), <http://www.usnews.com/news/world/articles/2008/03/26/susan-schwab-on-the-colombian-trade-deal>.

MR. HERMAN: Larry Herman from Toronto. I wonder if either Jim Peterson or Jim Blanchard would comment on this. A lot of ideas and common challenges were mentioned when you spoke, but I am a little bit concerned that there is no great Canada-United States project underway. There are a lot of working arrangements and exchanges. We have something called the Clean Energy Dialogue.<sup>71</sup> These are political declarations, but when you look at Canada-United States history there were many periods where the two countries were engaged in bold projects resulting in major treaties: the International Joint Commission,<sup>72</sup> the Permanent Joint Board on Defense,<sup>73</sup> the Colombia River Treaty,<sup>74</sup> North American Aerospace Defense Command,<sup>75</sup> the St. Lawrence Seaway Agreement,<sup>76</sup> the Acid Rain Treaty,<sup>77</sup> the Free Trade Agreement,<sup>78</sup> and the North American Free Trade Agreement.<sup>79</sup> But, for the last fifteen or twenty years, there is nothing bold or challenging that is engaging the two countries at the highest levels on a common endeavor. That is my perception. Maybe you disagree. I wondered if you could comment on what that means. Are we missing something? Are we missing opportunities to confront bold challenges at the highest levels?

MR. CRANE: Are we living in an era of benign neglect, I guess, is what you are asking?

MR. HERMAN: Yes.

MR. BLANCHARD: Well, I have always felt that if you are not working to move forward, you are going to fall back. By the way, you missed Open Skies,<sup>80</sup> which we did.

MR. HERMAN: Open Skies, yes.

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<sup>71</sup> Childs, *supra* note 15.

<sup>72</sup> Boundary Waters Treaty, U.S.-Gr. Brit. (for Canada), art. III, Jan. 11, 1909, 36 Stat. 2448; *see also id.*

<sup>73</sup> Declaration by the Prime Minister of Canada and the President of the United States of America Regarding the Establishing of a Permanent Joint Board on Defense, U.S.-Can., Aug. 18, 1940, Dep't St Bull., Vol. III, No. 61, Aug. 24, 1940 at 154.

<sup>74</sup> Treaty Relating to Cooperative Development of the Water Resources of the Columbia River Basin, U.S.-Can., Jan. 17, 1961, 15 U.S.T. 1555.

<sup>75</sup> Agreement Regarding the Organization and Operations of the North American Aerospace Defense Command (NORAD), U.S.-Can., Mar. 28, 1996, T.I.A.S No. 12740.

<sup>76</sup> Agreement Relating to the St. Lawrence Seaway Project for the Construction of Certain Navigation Facilities, U.S.-Can., Aug. 17, 1954, 5 U.S.T. 1784.

<sup>77</sup> Agreement Between the Government of the United States of America and the Government of Canada on Air Quality, U.S.-Can., Mar. 13, 1991, 30 I.L.M. 678 (1991).

<sup>78</sup> Free-Trade Agreement, U.S.-Can., Jan. 2, 1988, 27 I.L.M. 293 (1988) (suspended by NAFTA).

<sup>79</sup> North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).

<sup>80</sup> United States European Union Air Transport Agreement, U.S.-EC, Apr. 30, 2007, 46 I.L.M. 470 (2007).

MR. BLANCHARD: I wrote that down myself, and that was my idea. But, I will sit around people like Jim Peterson and ask whether there is a big idea that we can pursue. I do not have one, offhand. We have talked about synchronizing our regulation. We are going to talk about that a lot during this conference. I do not have a big one right now. However, we should not discount the cooperation on automobiles. We should not discount the need for a new crossing in Ontario. We should not discount the fact that our leaders know we have to synchronize or harmonize our energy and environmental agreements. We are going to have to do that. However, I do not have in my head an overarching proposal. I do like the idea of a bilateral border commission. That still would be viewed as more incremental than cosmic. But I do agree with the idea that one should always keep moving forward or things will slide backwards. It is an overworked phrase, and we take the relationship for granted, but it is true.

MR. CRANE: Jim, did you want to say anything?

MR. PETERSON: I think the huge project that we have before us and that we have to solve is global warming. We could show the world that there is a way to opt in, if we can solve that issue between the two of us on a bilateral basis.

We will have to work with national governments and with state and provincial governments. Do we need special envoys—this is Derek Burney's idea from Montreal—to go out and round up the political support at the provincial level to get this type of deal done?<sup>81</sup> Did we not do that in with Acid rain? I think that is one of the possibilities. I certainly also like the idea of a bilateral border commission that would have enhanced powers and operate much the way the Joint Commission does today.

MR. BLANCHARD: Larry, do you have an idea?

MR. HERMAN: No. It just struck me that for the last fifteen or twenty years, almost a generation, our two countries have not been engaged in a major project. There have been a lot of working arrangements, which is good, but there is no big, bold idea that we are seized with on a bilateral basis. In other words, there are no treaties that we are looking at to solidify these notions, similar to what we have done in the past with Acid Rain and Open Skies. Why is that?

MR. BLANCHARD: We are pretty busy around the world: Haiti, Afghanistan, a deep recession, financial regulatory challenges, Copenhagen. There is a lot going on, a lot of companies collapsing. There really is. You think about managing those things: trying to make sure the Middle East does not explode, that Russia cooperates instead of being treated as an enemy, and about China. There is a lot going on, and our two countries are working on

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<sup>81</sup> See generally Derek Burney, Remarks to Ottawa Economics Association, Canada-US Economic Relations: No Time for Complacency (June 23, 2010).

all these things. Jim Peterson, and I really am thrilled to be co-chair with him, knows more about the trade stuff than I do, but there is a lot going on. We are working together a heck of a lot better, as I said, than the Senate and the House in Washington.

MR. CRANE: That was a great treaty that the Americans and the Russians signed today on nuclear arms, which brought Russia back into the fold.<sup>82</sup>

We have two choices. We can have a long question from Michael or two shorter questions from Michael and from James. What is it going to be?

MR. ROBINSON: Mike Robinson from Fasken Martineau. Two words: customs union.

MR. CRANE: Is that a question or a statement?

MR. ROBINSON: It is a statement of the big issue that we should be working on without getting anybody upset. It would cure all kinds of problems. Everybody seems to be afraid to talk about it.

MR. CRANE: Well, each country could adopt the other country's lowest external tariffs. It might not be a bad idea.

MR. BLANCHARD: That is far more realistic to work on than a uniform currency, which professors like, but no one is going to do.

MR. ROBINSON: That is a big issue.

MR. PETERSON: I believe very strongly we should have a common tariff.

MR. CRANE: If the World Trade Organization succeeded, we could have no external tariff. Jim, you had a very short question or comment?

MR. MCILROY: Yes. I am Jim McIlroy from Toronto. It is really for the Governor, going back to your time in Congress. My sense is that there is a disconnect between the Obama Administration and Congress when it comes to negotiating trade treaties. For example, the Administration signed a deal with Mexico.<sup>83</sup> They said Mexican truckers could come into the United States, and then James Hoffa and the Teamsters said that is not a good idea.<sup>84</sup> The Mexicans are essentially saying, we signed a treaty with you but you are not honoring the treaty. In addition, you have the United States who signed the Uruguay Round<sup>85</sup> and made concessions regarding subsidies on cotton, but it has gone all the way up through the World Trade Organization dispute resolution procedures. Brazil has won every inch of the way and was going

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<sup>82</sup> Peter Baker, *Russia and U.S. Sign Nuclear Arms Reduction Pact*, N.Y. TIMES, Apr. 9, 2010, at A8.

<sup>83</sup> See generally Klint W. Alexander & Bryan J. Soukup, *Obama's First Trade War: The US-Mexico Cross-Border Trucking Dispute and the Implications of Strategic Cross-Sector Retaliation on U.S. Compliance Under NAFTA*, 28 BERKELEY J. INT'L L. 313 (2010).

<sup>84</sup> *Id.* at 317.

<sup>85</sup> General Agreement on Tariffs and Trade 1994, Dec. 15, 1993, 33 I.L.M. 29 (1994).

to retaliate, although I understand that they are not going to now. My question is that Congress does not seem to be all that excited about the administration going out and signing these free trade agreements when it comes time to actually allowing foreign access. My sense is that other countries are starting to understand this. They are starting to sense that if we sign a treaty with the United States it may not be honored. Not because the Administration acts in bad faith, but because the Congress does not think it is a good idea. Is that worse than it has been in the past? It seems to be worse now.

**MR. BLANCHARD:** I think it is currently worse because of the fact that we are in a serious recession in the United States, with huge amounts of joblessness. Whether it is the left of the Democrats or the isolationists of the Republicans, you would not be able to get the North American Free Trade Agreement passed today if there were a vote. There is no way that would happen.

What is interesting is that ever since Franklin Delano Roosevelt, every president of both parties has ultimately favored trade expansion and freer trade. I would never want to speak for Barack Obama, because I hardly know him. I am not his advisor on this. But I think Barack Obama is an internationalist. He sees America reaching out. You saw that in the campaign. However, he is coming up against the hard reality of the attitudes in Congress you outlined, and I think your criticisms are valid. I do not have much of an answer, because I think you are right. The fact is President Obama wants to reach out and work with the world. Hillary Clinton and Joe Biden also want to reach out internationally. You have three people that really believe in working with the world. They believe in trying to be a good partner with Canada. They believe in working with the United Nations, however imperfect. They also believe that we are going to have to craft new systems of cooperation (we quickly went from the G-7 to the G-20). And, if the United States can work better with Canada, it sets a good example for the world. Other countries will argue that if the Americans cannot convince the Canadians, if they cannot cooperate with them, why would we want to work with them? Canada has significant leverage with the United States in terms of affecting our credibility to the world.

**MR. CRANE:** That is like your point, Jim, on climate change.

**MR. PETERSON:** Yes. I will just add that, maybe, we are important to how the United States is perceived throughout the world. However, I also think that how much respect we get from the rest of the world depends largely on how good our relationship is with the United States. The better our relationship with the United States, the more respect we will get from abroad. We get a lot of our power from being the closest friend of the United States.

**MR. CRANE:** Well, I would like to thank both of our speakers. I think we have our neurons charged up now for a very productive next few days. It is interesting that most of the issues we have discussed ultimately have to be



resolved at the political level. I recall a former Luxembourg prime minister who once said, “We all know what we have to do, but how would we get re-elected?”<sup>86</sup> That is all we have. Thank you.

MR. BLANCHARD: Thank you.

MR. UJCZO: Again, I thank our co-chairs, as they not only started this conference, but also a new era for our Institute. Thank you again, gentlemen. Just as a programming note, we will start bright and early tomorrow. Well, not too early. At 9:00 a.m. the bell will toll, so to speak. Our first session will be with Meera Fickling from the Peterson Institute and Maureen Irish from the University of Windsor Faculty of Law.

We will see you in the morning; have a good and restful night in beautiful Cleveland, Ohio.

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<sup>86</sup> See *Staring into the Abyss*, THE ECONOMIST, July 8, 2010, <http://www.economist.com/node/16536898>.