



American Enterprise Institute

Does the US-Mexico-Canada Agreement fall short on free trade? A forum with  
Sen. Pat Toomey (R-PA)

Introduction:

**Robert Doar**, AEI

Remarks:

**Pat Toomey**, US Senate (R-PA)

Conversation:

**Pat Toomey**, US Senate (R-PA)

**Derek Scissors**, AEI

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**Robert Doar:** Good morning, everyone. I'm Robert Doar, president of AEI, and I want to welcome you to an important discussion of the United States–Mexico–Canada Agreement with Sen. Pat Toomey of Pennsylvania.

As many of you know, the USMCA, as it is known, was negotiated by the Trump administration to replace NAFTA and govern trade between North America's three largest economies. On Tuesday, the agreement passed through the House Ways and Means Committee, and it is now coming forward for a vote on the House floor.

While AEI takes no institutional positions on any particular piece of legislation, AEI scholars care deeply about preserving the fundamentals of a free market. Concerns about protecting free trade, an essential component of our economic system, are at the forefront of our work here at AEI. But we, above all else, we prioritize the competition of ideas and open discourse. And that's why we are honored to have Sen. Toomey here with us today to discuss the agreement.

Sen. Toomey has represented Pennsylvania in the United States Senate since 2011 and served in the House from 1997 to 2004. As a member of the Senate Banking, Budget, and Finance Committees, he is one of the authors of the 2017 Tax Cuts and Jobs Act. Throughout his service in Congress, he has been a proponent of deregulation and an advocate for ending bureaucratic overreach.

Sen. Toomey, a strong defender of free trade, will be laying out his thoughts on the current agreement today. And after his presentation, he will be joined for a conversation with AEI Resident Scholar Derek Scissors. Dr. Scissors, an expert on international finance and American economic relations with Asia, has written extensively on the USMCA and its impact on America's position in the world. Please join me in welcoming Sen. Toomey to the stage.

**Pat Toomey:** Thanks, Robert, for that kind introduction. And most of all, thanks to you and AEI and Derek for hosting this and giving me this chance to share my thoughts and have a conversation about what I think is an important topic. I appreciate it. I appreciate everybody who came out this morning as well.

I can tell you that I take seriously the advice that I get from my staff, and one of the messages I get repeatedly from my staff, they like to take me aside and say, "Pat, remember, just because you can't give a good speech doesn't mean you can't give a short speech." So I'll try to keep that advice in mind as I work my way through my remarks and then look forward to the exchange with Derek.

So let's talk about USMCA. I think when we talk about this, it's worth having as a starting point a question about NAFTA: Why was it that the administration felt it was necessary to renegotiate NAFTA? Because that obviously is the starting point for USMCA. So was it that NAFTA was an unfair imbalanced agreement? Was it that there was a lack of reciprocity? Was it that the tariffs that were left in NAFTA are too high, that they were unacceptable obstacle to trade? No, to all of those questions, right?

NAFTA is a free trade agreement. Zero tariffs on 100 percent of manufactured goods, zero tariffs on 97 percent of agricultural goods, and no quotas, no obstacles. It, to me, is the epitome of a free fair reciprocal trade agreement.

And since NAFTA was implemented, American exports to Mexico are up over 500 percent. Pennsylvania exports to Mexico have grown right along with that, over 500 percent.

I think you can make a case that since NAFTA was signed in 1993, a lot has changed in the economy since then. And so now we have this whole digital sector, we have this whole sector that just didn't even exist. And so modernizing certainly made sense. But that's not the reason the administration wanted to renegotiate NAFTA.

The reason, in my view, that the administration wanted to renegotiate NAFTA was because, despite the increase in our exports, imports from Mexico had grown even more, and we have a trade deficit with Mexico. Despite the fact that it's my view and I think the view of most economists who've done a lot of work in this space that a trade deficit with a country like Mexico is completely insignificant economically to the United States, despite that, that is not the view of the administration. And so they set out to at least significantly diminish, if not eliminate, the trade deficit with Mexico. And I would argue that was the central motivating factor. And that's why we've got a lot of bad outcomes because it was the wrong intent in the first place.

The actual purpose was to diminish trade with Mexico, and I'm afraid that that might happen. I don't think it's going to be severe, but on the margins, it's certainly going to cost us opportunity to exchange goods with Mexico, and therein lies the heart of my objection.

So let me walk through some of the specifics, or at least the way I think about the difference between USMCA and NAFTA. So I think that you could look at USMCA as NAFTA with two categories of changes. First category, I would consider the constructive modernizing changes. They're mostly modest, I think, but they're not unimportant. It's about digital trade, cross-border data transfers, IP protection for software data storage. Localization is not mandated. So mostly my understanding is that these items mostly now in the USMCA will be a codification of existing practices. So that's all right. That's good. Much of it was taken from TPP, so it wasn't terribly controversial or difficult to get there. And that's all fine. There's a very, very modest opening of some agricultural sector markets in Canada. In particular, Americans probably will be able to sell some more dairy products. Our back-of-the-envelope estimate is that that's on the order of a half of 1 percent of our dairy production, so not really large, but not a bad thing. So that's category one, what I think of as the constructive changes in the modernizing features.

Category two is where I have my objections, and these are changes that I think are protectionist in nature and are designed to inhibit trade. So the first big category is the auto sector. As you may know, the source of the big majority of our trade deficit with Mexico is in the auto sector, and so unsurprisingly, that is the focus of really completely unprecedented provisions for a trade agreement. It's really the end of free trade in autos between the United States and Mexico. Let's be clear about that. Right?

What the administration could have done is they could have had a straightforward limitation like a quota or tariffs. They, I guess, decided that would be maybe too obvious. And instead, they create this complicated but nevertheless onerous minimum-wage requirement that is designed to force wages on Mexican factories that are well above the prevailing rates of wages because Mexico is, of course, a developing country with a low cost of living and much lower wages. This is designed to make Mexican auto production less competitive and to raise

the cost. And the advocates for the agreement in the administration think that that is a good thing.

I don't think it's a good thing. I think imposing this minimum wage that's much higher than prevailing wages will make the North American automotive industry as a whole less competitive. It's an integrated supply chain, so raising the cost of components from one source are going to tend to show up as higher costs in many cars that are produced in the country. It certainly means higher prices for consumers.

Let's be clear: This is a tax that American consumers will pay on autos and auto parts that come across our border if the tariffs, which are the alternative to the higher minimum wage. Either one way or the other, it's going to be a higher cost by design, probably on the margin, increases pressure to shift to more automation or to just sourcing parts and cars in other countries all together. That means, I think, over time, fewer American jobs in this space, not more, and that's one of the typical consequences of protectionist policy. So that's the auto sector.

A second area that I find very troubling is there's an expiration date on this. We've never had an expiration date on a trade agreement or an investment agreement for the obvious reason that if you put an expiration date, you introduce uncertainty about what the world looks like after that date. In order to extend the expiration day, which is 16 years from the date of enactment or the date of signing — it's about 16 years out — the three parties have to simultaneously come together and agree to add, as they've designed it, six years at a time to the end of this.

Well, that might happen, but it might not. And so if somebody is contemplating a cross-border investment, they've gotta ask themselves, "Well, what is the trading environment going to look like when we no longer have a trade agreement that governs it?" Or at least we might not. So again, it has to be detrimental to economic growth and trade across the border because we are needlessly injecting a new level of uncertainty in these rules.

A third category that I find objectionable is the virtual elimination of the investor state dispute-settlement mechanism. So this is the mechanism by which really, let's be honest, it's American investors who make use of this. And it is because American investors — and it could be a multinational corporation headquartered in the United States. It could be a group of investors making a purchase in another country. It is sometimes the case that an American investor in a foreign country doesn't get a fair adjudication in a local court. That happens sometimes. Every country in the world has some level of protectionist tendencies, and in some places at some moments, local indigenous competitors will be able to influence the local adjudication process, the local courts, local regulators, to put the forerunner, in this case, the American investor at a competitive disadvantage.

So we know this is always a risk. And so we've created this investor state dispute-settlement mechanism where we and our trading partners can have confidence that there'll be a fair adjudication. And we almost always win. In fact, I think the record is we've won every case that we've brought to an investor state dispute-settlement mechanism.

We have 50 bilateral investments and trade agreements and free trade agreements that have this mechanism. In March of last year, 22 Republican senators sent a letter to the

administration saying, “This is really important that you not water down the investor state dispute-settlement mechanism.” And what happens? It’s gutted.

In Mexico, they cut it back so that there would only be five sectors that have access to the investor state dispute-settlement mechanism, and that was under pressure from members of Congress, frankly. And in Canada, it’s gone completely. It’s gone. There is no investor state dispute-settlement mechanism in Canada. So this probably makes the Canadians and Mexicans quite happy. They don’t, you know, they don’t have to deal with this.

And I think it reflects an underlying view in the administration, at least by some of the administration, that’s very, very misguided. It’s sort of a classic protectionist view that it’s a good idea to discourage direct, foreign direct investment by American investors. And introducing new risk, whether it’s by a sunset provision or whether it’s elimination of a dispute adjudication mechanism, that’s a good thing because under this mistaken view of the world, if overseas investment are less attractive, that money will then be invested in the United States instead.

I think that completely misses the reality of the vast majority of American foreign direct investment, most of which is made to serve local markets. And undermining that doesn’t make us richer, doesn’t create more opportunities. You know, the companies I know in Pennsylvania that have subsidiaries in other countries also have jobs in Pennsylvania, you know, serving and relating to those other, those subsidiaries overseas. Managerial, you know, private auditing, financial services, planning, administration, all kinds of services. So I completely reject the notion that we somehow ought to discourage American investors from investing overseas.

So, then let me get to the two things that changed late in the game because the provisions I just went through were early features of this agreement. But two things that changed late in the game, in my view, made this agreement even worse.

The first is the new set of labor provisions. And the way this began was with the US negotiators agreeing, deciding, that we’re going to force Mexico to adopt new labor laws. And we did that, and Mexico has passed these laws. And they have to do with facilitating the unionization of their factories generally. But we didn’t stop there, right? And on previous trade agreements, we’ve historically taken the view at least implicitly that a country’s labor laws is their business. Now, we’ve made it our business. And in the USMCA, we create this adjudicating body paid for by Americans, \$45 million-a-year expense for American taxpayers, to enforce Mexican labor laws in Mexico. Like, why is that our responsibility?

And not only that, but if you look at the details of this, the way it is designed, it’s designed such that an accusation of a violation of these Mexican labor laws in Mexico is presumptively deemed to have an adverse impact on trade and creates a process whereby — you guessed it — new tariffs, new obstacles to trade, including embargoes from the presumed to be offending factories, can be imposed.

The head of the AFL-CIO said, and I quote, “For the first time, there truly will be enforceable labor standards, including a process that allows for the inspections of factories and facilities that are not living up to their obligations.” There is an explicit mechanism for site inspections, on-site inspections. We’re going to have apparently five Americans living in

Mexico. This has not gone over very well with the Mexicans, by the way. And their job is going to be to do this enforcement.

But here's the thing. This agreement is reciprocal. It's fully reciprocal. Now, our trade agreement, our trade representative says that, "Don't worry, we've made sure that the Mexicans can't send folks to inspect American factories." We'll see how that works out when that gets litigated because this is supposed to be a reciprocal agreement, and it certainly allows Americans to inspect Mexican factories.

And I think it's worth asking the question: Why is it that organized labor felt so strongly about this provision? Why is it that the openly protectionist members of Congress felt so strongly about this provision? It could be that they just have this passionate concern about the well-being of Mexican workers, I suppose. But it could be that it serves their own economic interest as well. And specifically, of course, there's the obvious way that it serves their interest by forcing the unionization of these plants. You're going to make them less productive and less efficient and so they're less able to compete.

But I think there's more going on than that. I think there's a huge opportunity for mischief given that there are a lot of American companies that have subsidiaries in Mexico, and now there's a mechanism to accuse them of violating Mexican labor laws and a process by which they can then be punished for having done so with these tariffs and embargoes and such. I think that leads to some bad developments.

Last thing I want to mention in terms of the policy provisions of USMCA is the — and by the way, this category, this whole labor title, this whole approach is something that Bob Lighthizer, the US trade rep, is very proud of. He says, "This makes the agreement better." So I think that sheds a little light on how he thinks about this.

Now, the last provision I'm going to mention is one that he acknowledges makes the agreement worse. And that is he had negotiated 10 years of intellectual property protection for biologics, and at the insistence of Speaker Pelosi, that goes to zero. Now, in my view, this is a very, very exciting new category of medicines, biologics, really some stunning, breathtaking therapies that have, for illnesses that are very, very serious, and our US laws, 12 years of protection to create the incentive, the ability to recoup the massive investment in developing these new biologics. In Mexico and Canada, that goes to zero.

Two other things I want to touch on briefly. One is the ITC report. The International Trade Commission did a report in which they did an economic evaluation of this, and some of my colleagues and supporters of the agreement cite this as evidence that this is going to be really good for the economy. That's nonsense. So the data point that's most often cited is 176,000 new jobs created by USMCA. Well, first of all, if you believe that that number is true, it's a trivial number, right? We have been cranking out 200,000 roughly new jobs a month in this country. USMCA, according to this data point, is going to produce 176,000 new jobs over the next 72 months. So it's extremely small in scale, if you will even believe it to be true. And I don't.

US, the report, their argument that the trade restriction policies will diminish economic growth and cost us jobs, but it'll be offset by the added certainty of having codified the practices in digital trade that I referred to at the beginning. All right. Maybe that's how that works out, but they acknowledge that they don't even attempt to quantify the adverse impact



of the sunset clause because they don't know how to do it. Well, we know that's gotta be negative. It can't possibly be positive in my view. We just don't know exactly the magnitude, and there's been no analysis done whatsoever on these new provisions.

The whole labor sector was written after the ITC report was done, and the concession on biologics was likewise. Also, additional tightening and more a more restrictive rule of origin about steel and aluminum is in this as well, and the ITC acknowledged in their report that the more strict you make the country-specific rules of origin, the more you diminish growth. So again, directionally, we don't have a quantification of this, but directionally we know it's going to diminish growth in jobs.

So bottom line, I think it's very unlikely that this produces any net new jobs. And I think most likely, it's probably — it's very small, but probably a net negative to economic growth relative to where we are today.

Last point on substance here. We have a CBO score, came out this week. You may have seen it. It's relatively new. And CBO comes to the conclusion that the labor rules, I should say, the minimum wage rules on auto production in Mexico are — they cannot be complied with. And so they won't be complied with. And so the alternative under USMCA is that autos and auto parts that don't comply will be hit with a tariff. The CBO analysis says that that tariff will in fact go into effect. And of course, that's a tax on American consumers, and it's about \$3 billion. So on top of everything else, USMCA is a \$3 billion tax increase. Not that \$3 billion is not an enormous number, but it is what it is.

So let me just wrap up how I think about this. The way I look at this is we took a free trade agreement and added some constructive features taken largely from TPP, but then we slapped on an expiration date, we imposed costly new restrictions on a trading partner, we eliminated the dispute settlement mechanism for US investors, we dropped the intellectual property protection for the most innovative new medicines, and we gave a big gift to organized labor in the form of a process designed to allow protectionists to impose further restrictions down the road. We'll get little or no extra economic growth out of it, maybe a modest hit. So it shouldn't be terribly surprising that Speaker Pelosi, a lifetime protectionist, and other protectionists in Congress are spiking the football, that the AFL-CIO has endorsed this deal. It's been two decades since they have endorsed a trade deal.

And here's my final thought. This is almost certainly going to pass probably by a big margin in both houses. I just want to stress that this should not be a template for further future agreements. This should not be the way we approach trade in the future. We should not be looking to restrict trade. We should be looking to expand trade. Thank you very much.

**Derek Scissors:** This would be a great time for the 20-some people who are standing up to sit down if they want to. Otherwise, you're going to get a little tired, and I would love for you to have questions.

I also noticed that I'm to the left of Sen. Toomey as I'm sitting here, which is definitely not true. But, you know, we could — thank you for your remarks, and I could agree with them. We could spend the next 20 minutes agreeing with them. I agree with you on most trade, the general approach to trade. I agree with you on the intent of key people in the administration with regard to USMCA. I agree with you on intervening in Mexican or other foreign labor markets.

**Pat Toomey:** Kind of feel like there's a "but" coming.

**Derek Scissors:** Right? Oh, yeah. That's dull. Let's not talk about what we agree on. Let's talk about what we might disagree on, or at least disagree partly on. And I'll start with a key element of this for you, and I'm not sure it is for me.

As you probably know, the administration, the president originally wanted a much shorter review period. In fact, he wanted a review period in his second term so he could have the option of bailing out of USMCA while he was still president if he won reelection.

I don't find 16 years to be a problem. Trade agreements change in 16 years. We should have — be evaluating almost every trade agreement after a while to see, as you mentioned correctly with digital trade, you know the situation has changed. There are new technologies. There are new trade patterns. There are new issues to come up. And actually I find a review period at 16 years to be an excellent kind of enforcement. You know, don't start cheating because we will be looking at this 16 years later in this case, 16 years later, a lot better kind of enforcement than some of the other things you mentioned, which I would also object to.

So let me come back at you about the review mechanism and say 16 years isn't six years, which is where we started. It's a reasonable amount of time. Yeah, it creates some uncertainty at the end of the cycle, but there's going to be uncertainty anyway because the world changes, politics change in the participating countries. And I'd prefer to have a review mechanism that's general rather than some of the enforcement mechanisms that I know that you and I both have problems with in the agreement.

**Pat Toomey:** Yeah. So I would disagree with that, but look, the point about the fact that the world changes and you need to be able to reflect those changes in a trade agreement I think is a valid point. The way I think about it is you can always revisit a trade agreement any time you get the three parties together at any day of the week. Any year, you can revisit it for really any reason if you have a collective will to do so.

The question for me is: What's the presumption? You know, what is the default setting? Is the default setting that it all goes away unless and until you get all three to agree? Or is the default setting that will continue this, what I would hope would be a liberalized free trading environment and we'll make changes when we all agree on what those changes should be? So I think it's a question of what's the better default setting to have.

**Derek Scissors:** Do you — and this is a little bit of a nerdy question — but do you read this particular — so I agree with that. I think that's the right way to have a review mechanism. But do you think that this particular one with regard to USMCA is the default setting is to rip it up in the text, or do we feel like the default setting is to rip it up because there are protectionists both in the administration and the Congress who support it? So if they're still around in 16 years, their default is to rip it up. In other words, is that the agreement that's doing this wrong, or is it the political supporters of the agreement who are really thinking about the review mechanism in a harmful fashion?

**Pat Toomey:** I think it's both.

**Derek Scissors:** Okay.



**Pat Toomey:** I think it's both. Yeah, I think the administration would have taken this in an even more protectionist direction if they thought they could and still hold Republicans. So I think that's part of their motivation is to create an opportunity to do that. But yeah, but I think it's both. I think it's just — it's fundamentally a mistake to have it in there.

**Derek Scissors:** Second question. I am 100 percent with you on US intervention into foreign labor markets. You know, my instinct about investor state dispute settlement is that's US intervention into foreign judiciaries. You know, when I think of free trade, I don't think of giving extra protection to multinationals. You make the terms of the agreement, you have an enforcement of the agreement, you don't have a special clause for companies just like you don't have a special clause as was added unfortunately to USMCA for all this intervention and into labor.

So could you make — I understand that we win the cases. You're — completely agree with you. And I can see it being in to the benefit of American companies to have this provision. I don't really see it as a free trade provision. I see it as a it's to our advantage provision. Can — do you think you can make a pro-trade provision for this extra set of authority that has to do with protecting companies' legal rights in foreign countries?

**Pat Toomey:** So, I get that argument. But, but, you know, we've got a global infrastructure in the United States, right? We have a state department that is — sets up shop in every single country around the world. We patrol the oceans and keep the sea lanes open with a very expensive navy. We do things outside of our borders to — that part of which is designed to help facilitate commerce. So creating a mechanism to adjudicate a dispute in a place that can't be relied on necessarily to do it fairly strikes me as a modest step. It's eminently fair. I mean, I don't think it's a system that's designed to stack the deck in our favor but rather to get a fair outcome.

And by the way, most foreigners investing in the United States tend to feel like they'll get a fair shake in a US federal court, and so they don't opt for the ISDS mechanism as often as we might. I think it's a very reasonable provision. And I think of it differently from this taxpayer mechanism to enforce Mexican labor law. I think that's a creation to serve the US organized labor.

**Derek Scissors:** Let me ask you a specific question. Biologics are an important issue because we don't know — you know, it's a growing industry, and it can be very important to the American economy. But putting that aside — and I realize that's a big thing to put aside — what do you think of the IP protection in the agreement? IP is an area of American comparative advantage. It's very important both in this agreement and in future agreements to have good IP protection. I know, I'm not trying to minimize biologics. I just know that's a very controversial issue that you brought up. Other than biologics, do you think the IP provisions are pretty good?

**Pat Toomey:** Yes. So I haven't studied that as in as much depth as I've looked at some of the other things, in part because my sense is that that's all movement in the right direction. I do think there should be strong intellectual property protections, and I think that the administration — the — this agreement does improve them.

**Derek Scissors:** Okay. Let me ask you about — and I don't, you know, I'm happy to talk more about the agreement itself. And I — maybe we'll have more specific questions about the agreement. But a key point that you made at the end and at the beginning was you don't want this to be a template. And I have two questions about that.

One of them is, look, we have a template with Canada and Mexico already that was working well. I agree with you 100 percent. So, you know, going backwards towards protectionism, and that template seems like a bad idea. But what if we extended USMCA to countries we don't have a free trade agreement with? What if we extended it to the United Kingdom? What if we extended it to Taiwan? We already agree that we could do better. But I'm asking if we took the USMCA template, which is partly a step backwards with regard to NAFTA, but used it for countries where we don't have free trade agreements, would you still see that as a step backward or forward in global trade?

**Pat Toomey:** Yeah. Well, so the question, I think, the question you're asking, is this what we have to settle for?

**Derek Scissors:** Right.

**Pat Toomey:** Right? I mean, I think we have a huge moment, a huge opportunity with the UK right now. They need a free trade agreement with the United States. They need one with the European Union as well, but they're going to need one with the United States. And so I kind of like the prospects for getting a really good one. I wouldn't want to start with the assumption that this is the best we can.

You know, when — how many industries are we going to pick over there and impose some kind of restrictions, whether it's a minimum wage proxy or other forms, and are we going to have the expiration day, which you may not object to but, but, you know, but I would? And the underlying principle of it, you know. We've had administration officials come into a Republican senators' lunch and make the argument that we're better off if we diminish the competitiveness of our neighbors and other countries. We're better off if we can find a way to raise their cost of production because then they can't compete with us as well. That's just completely wrong. That is a complete misunderstanding of the merits and benefits of trade. So let's not accept that premise and use it to launch negotiations with countries like Japan and the UK where we have big opportunities to have really good trade agreements.

**Derek Scissors:** All right. My second is a question that I would try to duck. So I'm going to ask you because I get to ask the questions in this particular case.

**Pat Toomey:** Okay.

**Derek Scissors:** Let's say USMCA is the template going forward, but you can change one provision, only one. It's the template; you're stuck with it. We're going to be negotiating with Britain. We are going to be negotiating with Taiwan, whoever we are going to be negotiating with, and you can pull, you can say, "I want this part, one provision changed to a free trade provision." What's the provision?

**Pat Toomey:** Well, so I will interpret that question to mean: What do I find most objectionable? And I would say that the treatment of the auto sector is the most disturbing part of it. The willful systematic mechanism to take away the only competitive advantage

one of our neighboring countries and our counterpart has, to diminish their productivity, to raise the cost of their products to American consumers, that just so goes to the heart of this. That to me goes to the heart of the trade more than the expiration date does, more than the investor state dispute-settlement mechanism. So if I had to pick one thing, that would be the last thing I would want to see replicated to be that.

**Derek Scissors:** Okay. Well, I certainly, whenever governments pick out sectors and decide they deserve favoritism or punishment or whatever, that cuts against people who support open markets. So I'm with you. I do have — I want to open it up to the audience, not that I don't have more questions, but I want to follow up a little bit on that.

One of the key elements of the treatment of auto sector has to do with rules of origin, which you're very familiar with. I think most people here are familiar with because you're familiar with trade, but I'll just explain it. It basically is a rule on how much has to come from inside the trade agreement versus how much can come from outside the trade agreement. And there are advantages to loose rules of origin, which is more liberalizing. In my opinion, there are also advantages to tight rules of origin because it means people have more incentive to join a trade agreement if it were going to expand.

So on the auto side, or generally as you prefer, where do you see USMCA's rules of origin? They got tighter, and I said that I see an advantage to that if we're going to bring this to other countries who can also join, but there's also a disadvantage. Do you see that as a minor issue, a big issue?

**Pat Toomey:** I see that as a smaller issue than what is completely new in the rules of origin, which is country-specific rules of origin, right? This is a multilateral continental free trade agreement where previously we had rules of origin that pertained to requiring the origins from one of these three countries. I take your point. You can argue both ways. There's some merit to that, and there are some opportunities to kind of defeat the purpose of it if you don't have that. But this goes to a new level of rule of origin that makes it country-specific within the three countries.

Now, they don't name countries. Instead they use the wage rate as the proxy. But 40 percent of car parts have to be made in a country with wages that pay over \$16 an hour. That is meant to force the Mexican auto and auto parts makers to import from the United States and Canada for at least 40 percent of the content, and that is completely arbitrary, unnecessary. And it runs counter to the idea of a continental free trade agreement.

**Derek Scissors:** And I'll just say before I open for questions, I asked that question in particular because we may disagree on rules of origin, but we completely agree on that point. The idea of rules of origin is for them to be simple and easy to understand. Otherwise, you get a situation where you don't really have a free trade agreement because you don't know where you can make the product and under what rules it will qualify for the trade agreement. So you can have a reasonable debate as you can over many free trade issues where you can decide, "Oh no, I think this is ultimately good for open trade or not," but there are some parts of this agreement that are clearly just interventionist, and they are not meant to promote trade. As the senator has said so well, they're meant to restrict it.

I do have more questions, but I would love to hear from the audience. So, please. Yeah, I've got that center — that center table is making me very nervous. Claude, my colleague Claude Barfield, who is safer than these people right here.

**Q:** Claude Barfield, AEI. I want to switch to politics. Assuming for the moment that the — President Trump is not reelected. What will be the stance of the Republican Party in 2021 and after, do you think? Is Trumpism there permanently? Will the Republicans revert to a more free-trade, free-market position? Where do you think the party's going to be post-Trump?

**Pat Toomey:** It's a great question, and it's something that many of us are wondering and frankly trying to influence, right? So there has been a Republican consensus for free trade for a long time, but it's not universal among Republicans. There's always been some dissent among Republican voters about the merits of free trade, but the consensus has been in its favor.

The question had an opening caveat that's a very, very important one, right? And that is the outcome of the election. I think it has a huge impact on the direction that the party takes. A reelection will be seen as a validation and a political validation of all of the president's positions and on domestic policy and economic policy, most of which I agree with. I mean, the tax reform, I think, was very constructive. The rollback of excessive regulation I think has been very, very constructive. The judicial appointments and confirmations have been terrific. I disagree with the president on trade as a general matter.

I don't know the answer. I guess is — the short of the short answer is I don't know. But certainly if the president's reelected, that's — it's going to be a serious question about the Republican commitment to trade.

**Derek Scissors:** Let me, I'm going to ask one more question. Don't worry. We have 20 more minutes. Let me just follow up on that in a more pointed fashion, which is kind of my role. After Claude speaks, I ask the nastier version of his question.

The Democrats are very likely to win the House anyway. And so as we know, it's not just the presidency. We have — and I agree with you — Speaker Pelosi is a committed longtime protectionist. She turned on Trade Promotion Authority under President Obama. Right? It isn't a partisan behavior for her. She's a protectionist. When, you know, when do you think, when is it — you know, you're fighting, and that's what we do at AEI. We fight for causes that may not win for some years, but it's not just President Trump.

**Pat Toomey:** Right.

**Derek Scissors:** When do you think we're going to get a more pro-trade orientation? Do you see that as three years from now it could happen, or it's more like eight? And I don't mean to be depressing — because it's depressing for a lot of people in this room — but I would add to Claude's point, even if Republicans go back to a more pro-trade position, Democrats are very likely to control the House. And you're not going to get better trade agreements through Speaker Pelosi.

**Pat Toomey:** That's a problem. There's no doubt about it. So, right, if we look at it historically, the way we've passed free trade agreements has been very narrowly in the

House with mostly Republican support and very few Democrats, but then with a big vote in the Senate and invariably with the president supporting it, whether he's a Democrat or Republican. So we've always had pro-trade presidents. This is the first, you know, least pro-trade president in, I don't know, 100 years maybe.

Interestingly, because American politics is so partisan and polarized, support for trade is much higher among Democrats than it's ever been because Democrats see President Trump is anti-trade, so therefore trade must be good. Republicans have gone somewhat in the other direction. Maybe this is an opportunity to speak to some Democrats and to bring them on board.

But I think one of the fundamental challenges that we have is a trade is one of those things where the benefits are dispersed and the dislocations and the costs are concentrated, right? If we have a free trade agreement with another country and it enabled, and they have a competitive advantage in a particular industry and an American factory closes, that's an acute problem for everybody who works at that factory. It's on the front page of the paper in that community for an extended period of time. Everybody's aware of this really adverse outcome. And maybe every American gets to save 100 bucks or 1,000 bucks a year from lower costs and more choices. And on a net basis, that has a much bigger positive economic impact. But how do you point to it? How do you illustrate it? How do you demonstrate it? How do you prove it? It's just one of the challenges that we have.

**Derek Scissors:** Editorial comment. People may not be aware, but with all the discussion of how NAFTA caused factories to close, US manufacturing employment rose for five straight years after NAFTA. I'm not saying that's because of NAFTA. I'm saying that manufacturing employment rose for five straight years after NAFTA, and yet we have a lot of people around the country who will say, "This factory closed in our neighborhood."

**Pat Toomey:** And protectionist tariffs that this president has imposed has resulted in a modest manufacturing recession and job loss in manufacturing. It was supposed to be the exact opposite, but the fact is protectionism doesn't work well.

**Derek Scissors:** Please identify yourself.

**Q:** Yeah. Comment Senator. Thank you. So you've spoken a lot this morning about how this agreement shouldn't be a model for the future. I think I agree with you. I definitely agree with you. Can you speak about what this means for the future of authorities like Trade Promotion Authority?

And then the second part of the question is: The current TPA authority represents much of what occurred during the May 10 agreement in 2007 and how that kind of moved the needle from less protectionist trade agreements to more. Do you think this new agreement with Democrats could be the next May 10 agreement?

**Pat Toomey:** Well, here's one of my big concerns on the process because you're going to the process of how we adopt them. We're in the process of violating the process. TPA is pretty clear about some things, and one of them is that the administration is obligated when they have finalized an agreement to submit a draft of the implementing legislation. And let's keep in mind, I think we lose sight of this sometimes in Congress. This is our responsibility. The Constitution is very unambiguous about this. It assigns to Congress the responsibility to

regulate trade with other countries, to establish tariffs if we're going to. And we've delegated this to the executive, and we've delegated it to the point where we let them draft the law.

Like, isn't that kind of by definition what we're supposed to be doing? And then within TPA, the contemplation is that they send us the draft once they've got a completed agreement, then they have to give us 30 days for us to manifest our concerns, right? And that has usually in the Senate taking the form of a mock markup where we don't actually literally mark up the legislation, but we vote on amendments that would change the legislation. And the point of that exercise is that that's supposed to then inform the administration, which is exercising a delegated authority. And then they're supposed to come back and give us the final agreement, which is then subject to an up or down vote.

None of that's happening. None of that's happening. They reach their agreement, and the House is going to vote today. When did they reach their agreement? It was like last week. House is going to vote today? And then we're going to be stuck in the Senate with that.

This is, I think, is the big process problem. You know, we are dramatically undermining TPA in a way that further diminishes Congress' already limited ability to influence legislation, which is entirely our purview. So I would make the argument that given the violation of process, the trade, implanting legislation that comes over from the House shouldn't enjoy a privileged status in the Senate because the privileged status arises only through compliance with the TPA.

Now, that's an argument we'll have to have with a parliamentarian. I don't know how that gets resolved, and I don't know that it matters very much because I think they've got more than 60 votes for it. So even if they can't use TPA, there'll be able to pass it. But I'm really concerned about undermining, you know, just not following the law here and undermining a really important process and principle.

**Derek Scissors:** And I agree with that 100 percent. I'll add to it that if something goes wrong as perceived by us politics, anyone can decide that in 10 years something has gone wrong, we're going to hear from protectionists that we didn't follow TPA, even though it was protectionists who didn't want to follow TPA in this case. So when you move away from process, you open yourself up to criticism when any group in the United States has a legitimate or illegitimate grievance about the agreement. And so I, you know, for those of us who are pro-trade who want more trade agreements, and I'm — support USMCA, this is still a drawback because it's going to be turned against trade later. And we're just talking about when and how. Okay. Here. Yes, go ahead. Yeah. Here. Right here. Yes.

**Q:** Okay. Thank you. Kat Lucero, reporter with MLex. Non-NAFTA question. You have a policy rider right now to get the Section 232 car report out in the open. Can you explain a little bit more about that and whether that particular provision would hold up type of enactment from the president?

**Pat Toomey:** I doubt it will block the bill. So this is a reference to a provision that I put in one of the appropes bills. I think it's the defense appropes — no, it's the other one.

**Q:** In the CJS.



**Pat Toomey:** Right. CJS, which is rolled up with defense, right? So we've got two, what we call mini-buses. It's not a full omni, and so it's a mini-bus. So it's several of the appropriation bills, it's rolled up into a package.

And here's the thing. Existing law before and a president can impose the 232 tariffs requires that there be an investigation, a study to determine whether or not there is a threat to American national security, right? That's the criteria the administration has to meet in order to justify imposing tariffs under Section 232. Well, the Commerce Department did this analysis with respect to automobiles. The law requires that it be published and disclosed. The Commerce Department has refused to disclose it. They've told us that they've come to the conclusion that Volkswagens and Audis and BMWs are in fact a threat to American national security, but they refuse to show us how they've come to that conclusion and how they document it. Now, in fairness to them, the law that requires the disclosure doesn't put a date on it, because you have to disclose it, but it doesn't say by when, and so their answer has been, "Oh, we'll get to that." So what I did is I put in a provision that says 30 days from the enactment of this bill, you have to disclose the report.

So I don't think that's going to stop this omnibus appropriation bill from getting, from passing and from being signed into law. And so I think within 30 days we're likely to see this, and it should shed some light on the thought process that went into that conclusion.

**Derek Scissors:** USMCA question? Yes, thank you.

**Q:** Hi, Sen. Bill Morley with the Altrius Group. Absolutely appreciate your engagement on the issue and appreciate your comments on biologics on the TPA process, which there was no consultation and certainly no transparency when you go into a room with nine people and renegotiate the deal. My question is: If you're looking towards the future and you're looking for protection for biologics and innovation in some of the most exciting new technologies and medicines as you put it, what are your alternatives if you're not going to stand up for those agreements and for that IP in a trade agreement? Is your alternative the WTO where there's no effective appellate mechanism, where the president opposes the WTO and where even if you have a functioning WTO, things can take five, 10 years to take a fact, which is well beyond the life cycle of many of these innovations?

Is it a Section 301 process under US law? Look how effective that is with respect to China. We have a tariff war. Have we done anything on IP? When the administration announced some of the early provisions of this in May of what they were looking at to do an IP, they talked about taking a step back there on biologics. So what's our alternative, and what's our effective protection? And what are we saying to the rest of the world and the future FTAs if the administration saying, "Hey, this wasn't a bad deal on innovation because we're silent on biologics"? No. We went from 12 to 10 to as you put it, to zero years of additional protection. So what are we saying, and what can we expect? Thank you.

**Pat Toomey:** Yeah. Well I think the question kind of answers itself, right? I mean —

**Derek Scissors:** Shockingly.

**Pat Toomey:** No, this is a problem, right? But the problem we have is that the consensus on the Democratic side of the aisle is that US law should be zero also. So if that's your starting point, we're — we're miles apart. I mean, I'm kind of shocked that that's where they are, but

that is where they are. So no, this is very disturbing. I don't have an answer for this. This is part of why I thought it was really important to have it in the agreement.

**Derek Scissors:** Yeah. I'll just say, I don't like picking out biologics. I don't like picking out any subsector in any case. But innovation is the core American comparative advantage. And the arguments over should the world come all the way up to the US standard, is the US standard perfect, that misses the point of free trade agreements. The world is way below US standards. We can bring them up toward us and not bring them to our level and not have to settle what the exact right level is, and we'd be benefiting the United States.

And if we don't protect innovation in our trade agreements, we're giving away most of the benefit, which means ultimately the American people will say, "Why? What? What is the point of this?" Right? I mean, we didn't — we're not going to get gains out of it if we don't protect our own comparative advantage, which means people are going to say these trade agreements are a bad idea, and they're going to be right.

So I don't want to get hung up on biologics without arguing it's an important issue. I would say the across the board IP issue is the approach that says US law is wrong — is harming the United States in these trade agreements. And that's something we should be fighting going forward.

This side of the room, Sir, go ahead. Wait for the mic please. And please identify yourself.

**Q:** Yes. Senator, my name is Mark Bocchetti. I'm a reporter for Congressional Quarterly. You live in Allentown, and right down the street from you there's a Mack truck plant that's the UAW plant. And the heavy truck business like the auto business faces a lot of competitive pressure. That's just the modern world. The workers there fear low-wage competition from Mexico in part because effectively Mexican workers have no collective bargaining rights. I think you recognized yourself when you were talking about an investor state dispute settlement that sometimes in other countries the court processes and other processes don't really work the way they do in the United States. What would you say to workers in that Mack truck plant who fear the fact that Mexican workers work at much, much lower wages and effectively have no real opportunity to bargain with the company over wages because something bad could happen? Thank you.

**Pat Toomey:** Yeah. Well, first of all, I think that the level of wages is probably more a function of the economic status of the country than it is the prevalence of collective bargaining. I mean, this, Mexico is a developing country. It's a low cost of living. It is going to have low wages regardless of whether you have collective bargaining. Collective bargaining might increase wages. I acknowledge that.

But, hey, we have been able to compete. Remember we were told that when Japanese cars started coming to America, it was the end of American auto production. Well, not really. What American auto companies figured out how to do was to compete with a really tough new competitor that came in and required that we just upped our game. And so we became more productive, and we were more responsive to consumers. I don't accept the premise that we can't compete because Mexico has lower wages.

**Derek Scissors:** I'll just add, the inconsistency of the wage-driven argument with the bilateral deficit argument that the senator has focused on before. If the key thing about our

partners is their level of wages and Mexico has much lower wages, we can't possibly expect Mexicans to buy the same quantity of goods from the United States that we buy from Mexico. So you can't combine those two, which protectionists always do, which is to say, "Oh, wages are the key to trade, and bilateral deficits mean the other country is cheating." No. I mean, Mexico is not going to buy the same quantity and value of goods from the United States as we're going to buy from Mexico. There's going to be a bilateral deficit.

One of the reasons is Mexican wages are low is because they're a developing economy. So, if you want to focus on wages, you can't focus on deficits. And yet though, those are the two cornerstones of many protectionist arguments that we can't compete with countries with low wages and then we run these trade deficits because they're cheating. We run trade deficits — you know, we run trade deficits with most of these countries because they're poor and they cannot buy the same goods that we can. We're very lucky in the United States to have so much consumer buying power.

More questions? Yes. Go ahead sir. We have a couple more minutes. Please keep your questions brief.

**Q:** Hi, Lee Fang reporter with The Intercept. Senator, you've said repeatedly that you want a fair process as the impeachment moves to the Senate. Your leaders —

**Derek Scissors:** Sir, you have absolutely no obligation to answer this question. Go ahead.

**Q:** It's a news question. As the Senate moves forward, your leader, Sen. Mitch McConnell, has said that he's not going to be an impartial juror. He said that quote, "He's coordinating with" —

**Derek Scissors:** Ask the question please.

**Q:** — "the president's lawyers." How can you expect a fair process with leadership making these types of remarks?

**Derek Scissors:** And again, if you want to move on, I'd be happy to.

**Pat Toomey:** Yeah. I've talked about this a lot, but I like to focus on trade this morning.

**Derek Scissors:** Okay. Yeah, please, please. You know, it's a trade event. We had enough questions on trade. Talk about China if you want to. There's plenty of things to talk about on trade. Okay. Any more questions? Is this — go ahead, Doug. I understand that and —

**Q:** You ignored me the entire time.

**Derek Scissors:** I have ignored a number of people the entire time, but I'm glad that you think you're important. Please, move on.

**Q:** Doug Palmer with Politico. This may seem like an obvious — the answer may seem obvious, but, I mean, you're up here, you're making sort of the standard, what I think would be like a standard Republican critique of this agreement if it were presented to Congress by say the Obama administration. So why are you the only Republican that's speaking out and making this critique?

**Pat Toomey:** I think you'd have to ask my colleagues that. Okay.

**Derek Scissors:** Ma'am, if you have a trade question, I'll be happy to take it. Okay, please.

**Q:** Okay. My name is Jo Freeman. I am a member of the United Auto Workers Local 1981, otherwise known as the National Writers Union. What I want to know is why you didn't mention the US Chamber of Commerce and its position on this whole agreement, what it tried to change and what had failed.

**Pat Toomey:** So the US Chamber of Commerce I think has endorsed the agreement. I think they support the agreement. There's a lot of provisions. They probably would agree with much of my critique of the individual items that I've objected to, but on balance they've advocated for it.

I will just — I'm not going to say anything — I'm not going to attribute this to the Chamber of Commerce. But I will say I know for a fact that there are supporters of USMCA whose support is rooted in a concern that the underlying NAFTA could be destroyed in the absence of USMCA.

The president has said he will withdraw from NAFTA unilaterally if USMCA is not passed, and so it's not shocking that some people might think that's an alternative. I don't think that's the way we ought to look at this because I don't think the president has the legal authority to withdraw from NAFTA. NAFTA was implemented through laws that were passed by Congress and signed by a president, and no president can unilaterally withdraw any law. And that includes the implementing legislation of NAFTA. So I do know that there are some supporters who are significantly influenced by what they perceive as a risk that the underlying NAFTA could be advocated.

**Derek Scissors:** Thank you for that. Excellent question. And thank you for all the good questions on USMCA and trade. We are done. It's 9:59. I would ask everyone to sit, sit, and please let the senator walk out first. This is Washington, and the US senator is in fact more important than everyone else in the room.

**Pat Toomey:** That's not true.