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**NAFTA'S INVESTMENT CLIMATE:
AN OPEN DOOR?**

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I want to pick up where I left the question with President Calderon last night, because I think when you look at what's happened internationally in trade and investment, and you look at what's happening in our corner of the world, members of the Trilateral Commission ought to actually be very concerned.

We've seen the ability in Europe, despite what many in North America would view, I think, as a rather bloated European bureaucracy, with apologies to Ambassador Bruton, to continually move an agenda forward step by step. It's a dynamic situation. You've seen change in Asia very rapidly, and here in North America we have gone from NAFTA to some bilateral border arrangements between the United States and Canada and the United States and Mexico following 9/11, which have all been to the Security and Prosperity Partnership, which I think, if anyone watched the clips from Montebello, is pretty much stalled in its tracks. I don't think I heard from the President last night that he thinks there's a real prospect of getting that moving again.

I think we need to be concerned about this, and I'm going to put my comments on investment a little bit in the context of, as Gary Hufbauer said, some storm clouds, some warning signs that doors are not opening wider. In fact, they're beginning to narrow the opening.

First of all, there is an important investment component of NAFTA and that's Chapter 11, which is the investor's state dispute resolution system, and I think there are two things to say about Chapter 11. First, very few investors have had much success using Chapter 11. There have been a number of cases, and I would suspect that a lot of investors are being discouraged from using Chapter 11 if they read some of the decisions that have been rendered.

Just to give you an idea, there have been 42 notices to commence arbitration under Chapter 11 since 1994. Six were dismissed. In the end, so far, only five have been won by investors. Of the nine cases filed against Canada, only two have been won by investors and one was settled. The government has paid out since 1994 the grand total of \$21 million under Chapter 11 in contrast to the 900 million that was claimed. Of that, 15 million was a settlement paid to Ethyl Corporation in one of the more stupid moves that I witnessed in my years in cabinet that led to that arbitration being launched.

So on one hand you can say, these aren't very good results. You know, on the one hand you could say, well, as a tool, this is cold comfort to investors, because really, you're haven't had a lot of success. Metalclad vs. Mexico was successful. There have been a few successes, but overall not that great.

Put that now into a political context, and what you find is that in each of our countries, there is growing political opposition to the very existence of Chapter 11 and the suggestion that it is a limitation on sovereignty. There is a movement among legislators in each of the three countries in fact to shut down Chapter 11. So we have this important component of the investment open door in the NAFTA agreement

which, on the one hand, has been little used and less successful and, on the other hand, is a target for those who want to say that NAFTA is an imposition on national sovereignty.

I think we ought to be concerned about that. I want to move now to border security. I'm going to start with an Associated Press item that I picked up just before leaving the other day. It's dated September 27, and it says this, "American senators are demanding security upgrades at the Canadian border after U.S. Government report said it would be easy to smuggle dangerous material into the United States." You heard about this earlier. "The independent Government Accountability Office sent investigators to test how easily they could transfer large red duffle bags at four unguarded and unmonitored spots along the more than 8,000 kilometers, 5,000 miles, of the U.S./Canada border." And they delivered a 13-page report to Congress on Thursday that claims to show how easy it would be to bring in radioactive material and other contraband. "At a Capitol Hill hearing, U.S. Senator Ken Salazar from Colorado says that there's been far too much focus on the border with Mexico and not enough on the Canadian line. Mr. Salazar claims that there are more international terrorist organizations in Canada than anywhere else in the world." I think he includes the Liberal Party of Canada in that group, in which case, I'm right with him.

Well, first of all, red duffle bags in Canada are generally going to be assumed to contain hockey gear, and people wandering around the border in a remote location are probably thought to have consumed too much beer in the dressing room after their game, so they're not going to alarm anyone.

Secondly, how did these gentlemen get their red duffle bags into Canada in the first place and did they have the authority of the Canadian Government to carry out this little hoax? But more seriously, what we have seen is a tendency to move to stickier borders. I remember working with Tom Ridge on border issues when he called me because the lights had finally gone on for him about this. Tom was always very anxious to make sure that in dealing with his homeland security responsibilities, he didn't damage economic relations. But he'd come back from the Cadillac plant, I think in Flint, and say, "That was amazing." He said, "You know, we saw a chassis, and when that chassis starts on the assembly line at time zero, it's designated for a specific order and you know Ms. Smith in Phoenix is going to get that Cadillac. And she has specified the color. She's specified the kind of seats she wants, the color of leather on the seats." He said, "When that starts on the assembly line, an order electronically is sent to Woodstock, Ontario for the seats for Ms. Smith. At that instant in time, the seats do not exist. They are raw materials only. Five hours later, when that vehicle is at that right point on the assembly line, Ms. Smith's seats, the kind of seat and the color of seat that she wanted are put onto the chassis by a robot. They didn't exist when it started down the assembly line."

Now for a typical North American assembled automobile, parts come in from Mexico, Canada, and the United States to the ultimate assembly point. That vehicle, when it rolls off the assembly line, has crossed either the Canada/U.S. or the Mexico/U.S. border on average seven times. Now, we have auto assemblers that are trying to compete, for example, with the Koreans or the Japanese, who, of course, assemble a lot in North America. A Korean vehicle that rolls into North America crosses a border once.

Now, if we thicken the border, what we do is make our domestic industries less competitive, and I think that we need to be quite concerned that in order to get some false security related to terrorism, we mess up the efficiency of our North America economy. One of the efforts that we put into the Council on Foreign Relations report on this was to make the point that you citizens of the United States, you want to be secure. There's only one way for that to occur, and that is to build a good security partnership with your neighbors. You can send, as they're suggesting, another 2,000 individuals to the northern border. We'd welcome them. They won't be cross-border shopping anymore, because the dollar is not that strong, but if you want to send them, that's okay.

But it's a 5,000-mile border. It's not going to work. So we have to move ahead to the point that we say we've got to have an open border. It works. Imagine this report. Substitute France for the United States and the border of France/Germany, or even more ridiculous, make it a state senator in Illinois complaining about the Indiana border. Well, borders are not about security. Borders have been there historically in order to collect taxes. We don't even collect that many taxes any more. We're using them to enforce a wide array of regulatory matters which are having the effect of making our North American economy less competitive, and so I think it's an important storm cloud that we need to take into account.

I'll conclude with one final concern, and that is the concern on foreign takeovers. This has become very topical in my country. We've seen some iconic companies taken over. The oldest retailer on the planet, Hudson's Bay Company, which played a huge role in Canadian history opening up the west and north of Canada, was acquired by U.S. interests. Alcan, Stelco, Falconbridge, Dofasco, Algoma, Four Seasons Hotels, these have all been acquired in recent times, and the result is that a recent poll shows 72 percent of Canadians are concerned about foreign takeovers of Canadian firms and want the government to take action.

Now, we do have an instrument called the Investment Canada Act. As industry minister for seven years, I was responsible for the administration of that act. It gave us the ability to review foreign acquisitions above certain thresholds to see whether they would be of net benefit to Canada. In all of the applications that I reviewed, I never refused a single one. Now, that, in my mind, is not a bad thing. We did extract the odd undertaking from time to time, but we were looking at a very limited set of criteria in determining that benefit to Canada.

It's been proposed by serious legislators in Canada looking at CFIUS [Committee on Foreign Investment in the United States] that we need a national security test. We need a national interest test. Is the acquisition in Canada's national interest? All undefined. I point this out, because I think that it is another matter of concern. I think it's fundamentally clear that trade follows investment, that to the extent we begin to dampen investment across our borders or incoming, we do not enhance the prospect of trade flows. We do not enhance the efficiency of our economies.

I don't think that as a policy matter, and I'd argue this publicly in Canada and have done so, the answer to that is therefore more barriers to acquisitions. I think if the starting point is that we are concerned about building enterprises and national enterprises that are champions of our industry, the way to do that is to insure that you create domestic conditions that are most favorable to building large enterprises. Gary mentioned our tax regimes relative particularly to the Asians. There are other factors in terms of regulatory and other measures that we use to impede the ability of our firms to grow and then should not be particularly surprised when they are acquired in M&A transactions by enterprises that have found perhaps more favorable terrain to grow. But I put that in the context of the political discussion that is unfolding, certainly in Canada and likewise. I think Gary's slides show, in the United States and Mexico that intuitively our populations are saying, "Oh, this isn't good, we've got to stop this," as though when a company is acquired, those proceeds actually disappear somehow from the economy, and the prospect of jobs and ongoing investment disappear with it.

I conclude where I started. I don't see political champions emerging to say, "I'm prepared to spend some capital on this." This is hard. It's not intuitive for people to understand, but it's in our country's best interests that we advocate for open trade and investment regimes, and I'm going to do it, and I'm going to make the case, and I'm going to win the case.

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