TRANSCRIPT
The Trade Guys Podcast
“A Rare Bipartisan Feat”

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Transcript by Rev.com
I'm Scott.

I'm Bill.

And we're The Trade Guys.

And we're The Trade Guys.

You're listening to The Trade Guys, a podcast produced by CSIS, where we talk about trade in terms that everyone can understand. I'm H. Andrew Schwartz and I'm here with Scott Miller and Bill Reinsch, the CSIS Trade Guys. In this episode...

This is a day we've all been working to and working for on the path to yes.

We'll catch you up on everything USMCA. USMCA deal was finally reached, but not everyone's happy about the deal, so we'll find out from The Trade Guys, just what's going on there. And...

Well, I think it's clear that this is not something that is going to be solved before the Presidential race or perhaps for many years overall, but right now the markets are looking forward to something like a phase one trade deal.

As US China trade tensions ease, doesn't end the business uncertainty, we'll talk about that. Plus is the World Trade Organization's Appeals Court broken? We'll discuss all of that and much more on this episode of The Trade Guys.

Gentlemen, we have so much to talk about. We've got USMCA, we've got China, we've got Trump, we've got Lighthizer, we've got the Mexicans, we've got everything.

WTO, if we want to get there.

WTO if we can get to it.

If we have enough time.

But it is the most wonderful time of year to talk about trade.

Well certainly, we have lots to talk about there.

We got a lot to talk about.

There's no question.

And Bill was right.
Bill Reinsch: And I intend to remind everybody, because it doesn’t happen very often. And as I said before in the prediction business, usually people don’t remember when you’re wrong. But if you’re right, you remind them.

Andrew Schwartz: Yeah.

Bill Reinsch: So I’m reminding everybody I was right about this.

Andrew Schwartz: Okay, so tell us exactly what you were precisely right about.

Bill Reinsch: And I can tell you don’t believe me. What I’ve been predicting-

Andrew Schwartz: No, I’ve been here. We have this on tape.

Scott Miller: Yes.

Andrew Schwartz: Bill was right. Right, Scott?

Scott Miller: That’s correct.

Bill Reinsch: What I’ve been predicting for a year is that this was going to get through. I mean it hasn’t gotten through yet, but Lighthizer did, I thought, an exceptional job of doing exactly what he said he was going to do.

Andrew Schwartz: Right, and the reviews are in for Bob Lighthizer.

Bill Reinsch: Yes.

Andrew Schwartz: And they are good.

Bill Reinsch: He negotiated-

Andrew Schwartz: Scott’s nodding his head.

Bill Reinsch: He negotiated an agreement with the Democrats and with Republicans. The thing that intrigued me about it, partly because of what else happened the same day, is he kind of struck a blow for the center in politics, which we’ve lost the last 10 or so years.

Andrew Schwartz: Yeah, heaven forbid we have a center anymore. Right?

Bill Reinsch: Well, and what he did... Two things happened that day: One the House passed the defense bill, the annual defense authorization.

Scott Miller: Yes.
Bill Reinsch: And they did it by taking most of the provisions that the Progressives have put in and taken them out. And the result was that a bill that passed the House by a largely partisan vote the first time, the second time passed by 384 votes with 40 Progressives voting against it, because they got thrown under the bus by their leadership. At the same time, who is unhappy about USMCA? Senate Republicans who think A, that they didn't get enough attention paid to them. And B, that Lighthizer made too many compromises with the Democrats.

Scott Miller: Most importantly biologics. I mean, that was the one substantive area-

Bill Reinsch: Yes, that was the thing that bothers him.

Scott Miller: ... where the USMCA was a step backwards versus both NAFTA and the previously negotiated agreement.

Andrew Schwartz: Ans so you have Senator Pat Toomey, Republican of Pennsylvania, warning his fellow Republicans on Sunday that the bipartisan replacement to NAFTA, which we know to be USMCA, which we believe there's now a deal for, is not the real deal. What's Pat Toomey's problem?

Scott Miller: Well, he's had these concerns all along. Look Toomey despite representing, or maybe because he represents the State of Pennsylvania, he is a principle free trader.

Andrew Schwartz: Yeah.

Scott Miller: Keep in mind, before he was elected to the Senate, he was the President of the Club for Growth. So he has a-

Bill Reinsch: There are very few people in Pennsylvania that are principle free traders.

Scott Miller: He is one of them.

Bill Reinsch: I can attest to that.

Scott Miller: He is one of them. He's very consistent on this. As a member of the finance committee, he's made his concerns about USMCA known for a long time because it does move, while it does create some important new obligations, say in the digital economy, in many of the provisions, that were previously provisions that liberalized trade, have been turned into sort of managed trade operations. And so that's a consistent concern that I think Senator Toomey's been raising all along.

Bill Reinsch: But my point has been just in both cases, if the body moved to the center-

Andrew Schwartz: Yeah.
Scott Miller: Yeah,

Bill Reinsch: In one case they threw their left wing over the side. And the other case, the Republicans through the right wing over the side. I think for political reasons, this is a good thing. I think the Congress does its best work when it tries to govern from the center. And if parties are prepared to do that, I think it bodes well for the future. On the other hand, this could be one-off.

Scott Miller: Now look-

Bill Reinsch: Or two-off. And you will never see it again.

Scott Miller: Either way-

Bill Reinsch: But it was a good sign.

Scott Miller: ... here's a headline none of us expected to see written in 2019: President Trump Restores the Bipartisan Consensus On Trade.

Andrew Schwartz: That's right.

Scott Miller: Nobody expected that.

Andrew Schwartz: Didn't expect that.

Scott Miller: And that's kind of like the Spanish Inquisition.

Andrew Schwartz: Did not expect a vote on you, USMCA sandwiched between an impeachment vote in the House, and then only to be gone to the Senate after the impeachment trial, if the impeachment actually goes forward either.

Scott Miller: Well that's okay. Then the timetables are somewhat elastic. Look, this thing was signed by leaders over a year ago.

Andrew Schwartz: Yes.

Scott Miller: So it's been sitting around gathering dust, and one of the things I've learned about working with Congress, and working with the US government over the last 25 years is that they have no idea that there's a thing called opportunity cost. That if you're in business, you know that there's of course time value of money and opportunity cost is a real thing you've got to deal with, which is why speed's important. Never comes up with a Congress. Never comes up with anybody, very few people in the executive branch. I think the Treasury Department probably gets it, but nobody's ever in a hurry when they need to be, or when people would like them to be. But in this case, I think they'll have time to do it. I don't think the consensus falls apart, no matter what else gets voted on.
Bill Reinsch: The best quote I thought was from an unnamed Republican who said that Speaker Pelosi had flipped Lighthizer upside down and shook him until all the money came out.

Andrew Schwartz: Yeah, well-

Scott Miller: They did get his lunch money. There's no question about that.

Bill Reinsch: They did well. And his comment on yesterday, on I guess Face the Nation was-

Andrew Schwartz: He's not feeling like he got shaken up though.

Bill Reinsch: No. He said I tried to do exactly what the President wanted to do.

Andrew Schwartz: Yeah.

Bill Reinsch: Which is construct a bipartisan coalition on trade-

Scott Miller: Yeah.

Bill Reinsch: ... that addresses the concerns of workers.

Scott Miller: And he made the point-

Bill Reinsch: And that's what they did.

Scott Miller: We had an election. Democrats won the House, they were the majority. I had to deal with them.

Andrew Schwartz: And he said that.

Scott Miller: So it's very practical, and very good management on his part.

Andrew Schwartz: And there's some Repub-

Bill Reinsch: He said that on CBS yesterday to Margaret Brennan.

Scott Miller: Yeah.

Bill Reinsch: And that was a very clear point he made.

Scott Miller: Yeah, right.

Bill Reinsch: Well, Senator Grassley said the same thing.

Scott Miller: Right.
Bill Reinsch: And he's a Republican, Chairman of The Finance Committee, but he said, we had an election, the Democrats control the House, there has to be a compromise.

Scott Miller: Right. But we actually got one, which is the interesting part of all this. And one that looks like it's going... I mean we spent almost 20 years with trade votes on razor edge, best buy one, or two, or three votes. And if this is passed overwhelmingly, something is really different than the past, really since the original NAFTA fight in 1994, I guess it was.

Andrew Schwartz: Well, can you guys... So one of the things that Lighthizer told Margaret Brennan yesterday, was he said a Trump trade policy is going to get a lot of Democratic support. He said that. Explain why that is.

Bill Reinsch: Well, I'm not sure he's right about that. I think this may end up being a special case. I mean it's not going to be the case on China, I don't think.

Andrew Schwartz: We're going to talk about that in a minute.

Bill Reinsch: We'll talk about that in a few minutes.

Andrew Schwartz: Yeah.

Scott Miller: Look this is America first, and keep in mind President Trump's voter base and the 2016 election, included a lot of blue collar workers in the industrial Midwest. Okay, people who had traditionally voted Democrat, and in fact-

Andrew Schwartz: Many of whom voted for Obama.

Scott Miller: Probably voted for Obama twice. Okay. But we don't know enough about the individuals, but that was characteristic in that part of this country. And Trump had a special appeal to them, and frankly his trade negotiation philosophy, and the objectives he set, and what he pushed to get done in the USMCA was precisely trying to, basically, put America first when it comes to industrial jobs.

Bill Reinsch: Yeah, the only problem with that is what the Democrats would say, is that he didn't do a very good job of that and they had to fix it. And they followed the script that we had talked about-

Scott Miller: Yes.

Bill Reinsch: ... from the very beginning, which they began by saying, "Not good enough. You have to fix it." There was then a very long negotiation, and at the end they said, "All right, we made you fix it, and now it's okay." This is their a way to take credit. And one of the problems that they're going to have, which you see already, is a decent number of Democrats have said, "Why are we doing this? Because it gives the President of victory." Well, from my point of view, good
policy ends up being good politics and if they've done something good, I think the voters reward them.

Scott Miller: I imagine a lot of them will take credit for it, just as well as the President will.

Bill Reinsch: Public opinion about Congress goes down when they do nothing, it doesn't go down when they do something. And here they've done something, but there is this group who said, “We can't give him anything." This was a case where I think it was win-win. The Democrats can say, legitimately, from a worker point of view they made it better. They put in enforcement provisions, and they put in environmental and labor enforcement provisions that are going to strengthen the agreement and make it much more likely that Mexico will stick to its commitments. One can argue that with a new President of Mexico, not the one that negotiated it, but the new one, who is to the left of the person he succeeded, who wants to improve worker rights in Mexico, who wants to improve the state of the workers in Mexico. This was an easier negotiation, but there is still substantial skepticism that at the end of the day, the Mexican government will deliver on this. There's a lot of built in resistance from business in Mexico to anything that gives workers more rights or raises their wages. The Democrats can argue, I think truthfully, that this agreement takes several important steps in that direction.

Andrew Schwartz: Is there a hang-up in Mexico right now that we need to be watching? For this, for a final sign off in Mexico?

Bill Reinsch: Well, yeah sort of. I think Scott and I would argue it's kind of a blip. The administration is not wasting any time, formally submitted the bill on Friday. And of course you don't once the bill is formally submitted it can't be changed.

Scott Miller: Right.

Bill Reinsch: So there it is. And the Mexicans were looking through the bill and they discovered that it has some provisions in it that they didn't expect. One was that the United States is, The Department of Labor, is told to send five representatives to be posted at the Embassy in Mexico City. Then they will monitor what the Mexicans are doing in terms of honoring their commitments. And the Mexican said, "We never agreed to this. We don't know anything about it." I think the answer will be the United States gets to decide who it's sending to its mission, and it's perfectly unilateral. And the Mexicans, of course, can comment, and says, "Well, we decide who gets in the country, and if we don't want to let them in the country. We won't let them in the country." I mean, I think this goes away, but there's politics here. It was important for Lighthizer to say, "We're tough and we're taking steps to enforce it." I think the Mexicans that had said from the beginning, "We oppose inspections and we impose foreign inspectors." They needed to say that we didn't agree to that. And this is the way it turned out.
Scott Miller: It does have the optics of sort of a final indignity after basically determining that the United States was going to be the senior partner in this deal and Mexico and Canada were the junior partners and ordering them around really since the start of negotiations. It was kind of one last, "And by the way we're going to watch you like a hawk and check your work and we're going to have the naughty list ready to fill out." And so it was one more indignity that I think ultimately won't stop anything on either side. It's a reflection of the fact that this is the Trump America First trade policy in a nutshell. We make the rules our way and if you want to deal with us, you're going to do it our way.

Andrew Schwartz: And so the Mexicans will put up a little bit of resistance, but at the end they're going to sign the deal. It's going to go forward.

Bill Reinsch: Not only have they signed it, they've already passed it.

Scott Miller: They've already passed it.

Andrew Schwartz: So the Mexican hurdle is just procedural at this point?

Bill Reinsch: I think so.

Scott Miller: Well yeah, I don't think it is a showstopper under any circumstances. I would characterize it as they've suffered a lot of insults over this long process and this is just one more at the end of the game. But ultimately the Mexican economy needs the certainty associated with USMCA. That's really what business gets despite Senator Toomey's totally fair assessment of this being a step backward in some ways. What you now have is certainty and predictability has returned to the market. And so even if it's a little worse in some aspects, we're no longer facing them through threat of withdrawal and what we lived with during the negotiations. So I think that's good news for business everywhere in North America.

Andrew Schwartz: Call this a win for the Trump administration?

Scott Miller: Definitely is. Look, in another case, this is what candidate Trump said he would do and he did it.

Bill Reinsch: I think it's a win for both sides. I mean, I think the Democrats can legitimately say they made improvements that made it more appropriate for their voters. I also think that next November people won't be paying a lot of attention to this. We'll be talking about other things. I mean, I don't have much sympathy with the people who said, "My God, why are you doing this? You can't give Trump a victory." That's a short game. The long game here is they've done something that's good for workers. They've done something that's good for the economy, which everybody will benefit from, and they've done something that probably won't be a main topic of conversation next November.
Andrew Schwartz: So win for all.

Scott Miller: Looks like it at the moment, yes.

Bill Reinsch: I think so.

Andrew Schwartz: Okay. Let's talk about China.

Bill Reinsch: Not a win for all.

Andrew Schwartz: Not a win for all. Okay. So are we decoupling from China? Are we integrating?

Lighthizer said this weekend again on CBS' morning show, "The way to think about this deal with China is that we're trying to integrate two very different systems to the benefit of us both."

Scott Miller: Well this is the phase one deal we've been talking about for a couple months now. It appears to have been concluded. There are both market access and rules components. We've talked all along that the initial impetus, the investigation that was so-called 301 investigation, was about Chinese unfair practices and really focused, in many cases, on domestic regulation in the Chinese economy that were unfair and created disadvantages for American competitors. And so that's been the agenda all along, but there's also been a lot of market access frustration with American firms and certainly President Trump complaining about the trade deficits and all that.

Andrew Schwartz: Theft of IP.

Scott Miller: Right. Well, that's the rules side, no question. On the investigation side the IP theft and subsidies were a major problem, but there were also a desire for some improved market access for US exporters. It appears that the phase one deal has some of both. Specifically there's about $200 billion over two years of additional purchases by the Chinese government over and above. Now keep in mind-

Andrew Schwartz: Purchases of goods and services from the United States over the next two years.

Scott Miller: Yes, right. Our goods exports in 2017 were roughly $130 billion. So adding roughly a $100 billion a year would, it doesn't quite double our exports to China, but it's a sizable increase, 130 to basically just call it 230 by the time we get to the end of this.

Andrew Schwartz: Lighthizer put it this way. He said, "You can think of it as 80 to 100 million in new sales for agriculture over the course of the next few years." That's nothing to sneeze at. That's massive.

Scott Miller: Right. And so the market access side looks pretty good. We've also apparently made some improvements in intellectual property. We don't know what they
are yet. And we've made some improvements in corporate structure in terms of equity shares. Also in this, I think the ambassador called it a 68 page agreement, none of which-

Bill Reinsch: 86.

Andrew Schwartz: 68, 86, same thing.

Scott Miller: I can be dyslexic on a Monday morning and then still do my job well.

Andrew Schwartz: It's raining out too. I mean, come on.

Scott Miller: But we haven't seen the agreement in the text yet, so we're going to learn more but there are both components there, which is, I think, a good first step.

Bill Reinsch: I'm much more cynical about this.

Andrew Schwartz: Shocking.

Bill Reinsch: I think we were taken to the cleaners.

Andrew Schwartz: Really?

Bill Reinsch: Well, there's not much there. I mean it's hard to be definitive for the reasons Scott said. It not only is not public, but ambassador Lighthizer's indicated significant parts of it are never going to be public. The purchase commitments are not going to be public because he says they'll disrupt the market, which is an odd thing to say because trade agreements usually end up being public as far as those kinds of commitments.

Scott Miller: Yeah, people like predictability. Funny.

Bill Reinsch: Yeah, you like to know what it is but, if they buy 40 billion or 50 billion more per year of agricultural stuff, that is significant. The question is, there's two questions, one, can we grow that much stuff and how do our farmers feel about having a single customer? In 2017, which is the base year they're using for this, the combined total of all of our US sales of corn, wheat, pork, and soybeans and cotton, global sales of all those combined was $47.2 billion. So if we're going to sell an additional $40 billion on top of what we have been selling the Chinese before, that's almost our entire production.

Scott Miller: Well no, almost our entire export production and in commodities.

Bill Reinsch: Yes. Well.

Scott Miller: There's a ton of processed food. There's live animals. There's a tremendous number... I mean the beef and pork producers may be part of this deal as well.
Bill Reinsch: Well, I said pork is in there.

Scott Miller: Oh, pork's in there. I'm sorry.

Bill Reinsch: Pork's in there. The Chinese tend to buy more raw materials than processed foods. We'll see if we can make inroads there. But to me, the question is, A. Do we have that much stuff? But, B. How do our farmers feel about what will inevitably mean stiffing some other customers and selling to the Chinese going into a market where the Chinese government has a long history of arbitrarily restricting or increasing or decreasing purchases for political reasons? I mean it's a classic case of putting all your eggs in one basket, which I think may end up being a mistake for the farmers.

Scott Miller: Well, we'll see if that happens. It's a big diverse economy and there's lots of planting options that are going to be exercised and so.

Bill Reinsch: Then we will see. I mean, it would be nice to be wrong about this, but if you look at the IP stuff and the financial services stuff, if we ever see the fine print, I think the fine print will say an IP, "We're going to do what we told Obama we would do, except this time we mean it." And on financial services, it's going to be, "We're going to do what we told Obama we were going to do, but this time we'll actually do it." These are not huge additional commitments. They didn't fulfill their last commitments on the subject and I think maybe this time they will. I think on IP what they'll probably do promise to do is put their commitments into law, which is what the May talks broke down on.

Scott Miller: Correct.

Bill Reinsch: This has always baffled me. It's not rule of law state and I don't understand why putting them into law reassures us very much in the case of the Chinese, but maybe they'll do that and we'll be happy. But I'm not sure that there's going to be a material difference in the way they behave on any of these issues.

Andrew Schwartz: Well, one thing interesting to me was that Lighthizer said over the weekend that, "Ultimately whether this agreement works is going to be determined not by us but by the Chinese."

Scott Miller: That's right.

Andrew Schwartz: And he said that, "It'll depend on who's making the decisions in China, if the hardliners make the decisions in China we'll have one outcome and if the reformers are making decisions in China, which is what the administration hopes, we're going to get another outcome."

Scott Miller: Yeah, Bill's made this point a number of times. So we talked about China over the year, which is that many of the things that the United States would like to see happen are sort of pro-market, pro competitiveness reforms and the reform
economists, at least in China, I don't know how many policy officials that amounts to these days, but the reformers in China have always wanted something fairly similar to that. They know it would be good for them to accept some of these demands, but they're the ones who will give the prevailing advice is unclear.

Bill Reinsch: I think Bob's right about that. The problem is there's really only one decision maker in China and that's Xi Jinping and this is a conversation you could have with our other colleague Jude Blanchett, who's the Freeman chair here. I think he would say that he is more in the hardliner category on this stuff than the soft line category or the reform category.

Bill Reinsch: Not what people expected when he came in, but it's the way that it's turned out, so I'm not entirely optimistic that it's going to turn out the way that we hope. But he's right, it could.

Andrew Schwartz: Well, we are going to have to watch that really closely. What do we expect is next with China?

Bill Reinsch: A lengthy phase two, the president said phase two talks would start right away. Lighthizer did not say that yesterday. They don't plan to sign phase one until the first week of January apparently. So I don't see anything starting until after that. The president has said different things at different times. Most recently he's been saying that he thinks that he'll finish phase two after the election, which is convenient because then he doesn't have to fail before the election. He can fail after because that's what's going to happen. We've talked about that. The idea that the Chinese will give him the remaining stuff we want is unrealistic. He's picked a lot of low hanging fruit and negotiators that are professionals will tell you this is a mistake. If you pick all the low hanging fruit in the beginning you've got nothing to negotiate with later on except the really hard things that nobody wants to do. And so that's where were going to find ourselves now. It's not that they've got nothing left to give. They do, but not as much as they did this time.

So I think it's going to be a long negotiation. It may take until after the election. I think he would much prefer to have a deal that he could brag about next October, but I think if it doesn't look like he's going to be able to brag about it. Guaranteed it'll slip till after the election. The other wild card is he's not a patient guy. What happens in April or May when reporters start asking him, "What's the deal on China? Why haven't you gotten anything?" And he gets nervous and starts threatening tariffs, again.

Scott Miller: Could be, but keep in mind a lot of the tariffs stay in place. I mean what we've had is ... What didn't happen is the list 4B tariffs, which were supposed to go into effect on Sunday, did not. They were postponed, but there are, it's list one, two and three that are still in place and unchanged. List 4A which was facing 15% tariffs on roughly $120 billion of imports, roughly speaking. Goes from 15 to seven and a half. But those first three lists, which are all now at 25% tariffs. Are staying right where they are and there is no promise at least in phase one to
affect them at all. Now, once again, that gets you back to predictability, but it
does get you a different set of sort of terms of trade than existed before this
thing started.

Bill Reinsch: Well, and the agreement apparently has two semi contradictory provisions. In
one place, it says there won't be any new tariffs imposed while we're
negotiating phase two. Elsewhere, it says that if the Chinese don't comply with
phase one, we can snap back the old tariffs or we can impose new ones. So not
all of the uncertainty has been removed. It's been removed I think for a while
because we won't know if they're compliant or not for some months. I mean
you don't-

Andrew Schwartz: But we can clamp back down whenever we want.

Bill Reinsch: Apparently it says that. And of course that's going to be a while because if you
look at the soybean crop cycle. We're not going to be buying a lot of soybeans, I
don't think in February and March. That's the crop comes in later. So we won't
know if they're compliant or not in until well into the calendar year. But at some
point, if he decides they're cheating on any of this stuff, he can go back and
reimpose them. So business is still potentially on the hook.

Andrew Schwartz: But isn't a problem with this strategy, what you've always said Bill, is that you
can't just flip the switch on and off so easily.

Bill Reinsch: Well, right. And I mean, the farmers will be happy, but they're going to have to
rearrange their marketing. They're going to have to rearrange their markets.
Manufacturers are going to have to change things. I don't think either Scott or I
have ever felt that decoupling was going to be complete.

Scott Miller: No-.

Bill Reinsch: Some of it will continue and some of it won't.

Scott Miller: And look, one of the things that has happened in industry at least is
diversifications of supply chains. In other words, the logistics managers have
gotten the message that this can happen. And they were there leaning into that
already because labor costs were going up in China because of its development
trends. Okay. There were some reasons to evaluate how much of your supply
you had in China, on a going basis. But the tariff escalation that's happened over
the last 18 months has really sharpened those decisions. And so we're into a
diversification of those. But Bill's right. These are the two largest economies in
the world, and you can't decouple them entirely and no one would really ... It
wouldn't make sense to try. It'd be bad for the consumers and citizens of both
places.

Andrew Schwartz: Despite the posture that we've been putting up.
Scott Miller: Oh yeah.

Bill Reinsch: I think what people who watch company activity closely, I talked to somebody the other day, who works with a lot of these companies. What they see happening is that companies that have a significant presence there, will continue to have a significant presence there, in order to service their China market and their Asia market, where the tariffs don't matter because they're not coming back here. For companies whose business model is to manufacture in China and ship back to the United States, they’re the ones that are on the hook and they're the ones that I think in some cases they're going to be looking to alter their supply chains or to move out of China, but that’s been going on anyway. Partly for the reasons Scott mentioned. The Chinese wage rates have been going up for a number of years. It's not a new development.

Scott Miller: Yeah, the tariffs just escalated that thinking in a lot of places and made it more urgent.

Andrew Schwartz: Finally, one last thing that we're watching is the World Trade Organization and the appeals court. Is it broken? What's going on with the situation?

Scott Miller: Well, it's disabled. Dispute settlement happens in two stages at the WTO. The first stage is what's called a panel. On the panel is formed basically ad hoc and almost anyone can belong to it, but the appellate body had functioned as the appeal's organization that was a roster of people and I believe seven. A full roster was seven basically lawyers, mostly lawyers. They didn't have to be, but the appellate body members were there to basically correct legal errors in panel decisions. But the existence of the appellate body made for both authoritative interpretations of WTO law as it were, and it made binding results of the dispute settlement.

Scott Miller: So what happened is through a series of blocks, the appellate body membership went from seven to one as of last Tuesday of last week. So it takes three appellate body members to hear an appeal.

Andrew Schwartz: Right.

Scott Miller: So-

Andrew Schwartz: Not going to work.

Scott Miller: So the appellate body is basically disabled, which disables both the authoritative interpretation function of the body and it disables binding dispute settlement.

Bill Reinsch: There is some residual action. It turns out that the two members whose terms expired last week notified the secretariat that they're going to continue to work on cases, where the hearings were held but the real work wasn't finished. Which is one of the things the United States is objected to, but they're going to
do it anyway. And what I heard this morning was that there were four cases in that category, two on the same thing and two other cases, and that two of the four actually were finished before last Tuesday. They just haven't come out yet. That was one between Russia and Ukraine and one between Canada and the U.S. on something called super calendared paper.

The one remaining case that I think will be concluded. Actually is an important one kind of for the United States, but they're not a participant and that's on plain packaging of tobacco, which is really two cases because there's been two separate complaints. And that will have a big impact on a lot of countries. The countries that support plain packaging requirements. The Australians are the ones that are the defendants here. They won in the panel and then that was appealed by the countries that I think these days, mostly Central American countries that grow up tobacco, who brought the complaint. We'll see how it comes out, but that one I think will be finished.

I think the latest conversations I've had suggests that if this is going to get resolved, it'll get resolved at the next ministerial meeting, which is in Kazakhstan in June. That it would probably be fairly easy to reach agreement on specific changes about things that we don't like because there's a lot of countries that don't like them. Like the fact that the rules say you have to do the work in 90 days and they routinely take more than 90 days. But the fundamental issue is as one of my friends put it, is there's a cultural difference here. The United States has an originalist view of the WTO, that they shouldn't be interpreting. They should just be-

Scott Miller: Correcting legal errors.

Bill Reinsch: Correcting legal errors. And the EU in particular has whatever the opposite of an originalist view is. They think that this should be accord, it should be making new law, it should be filling in the gaps, flushing everything out. There's a fundamental difference of view and it's not clear that fixing specific little things like 90 days will satisfy the United States. As long as there are other parties that persist in having a fundamentally different view of what the organization is for.

So we may end up in a situation in which the United States will not take yes for an answer. That the other countries are going to come to them and say, "Here are the reforms we're prepared to make, which is everything we've complained about. But we're not prepared to say that the appellate body is something different from what we think it is."

Andrew Schwartz: Well, that's the last word for today, but not the last word for trade this season.

Scott Miller: Sorry it was such a long word.

Andrew Schwartz: No, no. Yeah. Well no, your words are gold. Bill was right.
Scott Miller: Yes.

Bill Reinsch: I will remind you every time that happens.

Andrew Schwartz: To our listeners, if you have a question for the Trade Guys, write us at tradeguys@csis.org. That's tradeguys@csis.org. We'll read some of your emails and have the Trade Guys react to it.

Andrew Schwartz: We're also now on Spotify, so you can find us there. When you're listening to the Rolling Stones or you're listening to Tom Petty or whatever you're listening to. Thank you, Trade Guys.

Scott Miller: Thank you.

Bill Reinsch: Thanks.

Andrew Schwartz: You've been listening to the Trade Guys. A CSIS podcast.