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## Are Trade Wars Easy to Win or Even Worth Having: A Debate on the Trump Administration's Trade Policy

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VISITING SCHOLARS LECTURE

ARE TRADE WARS “EASY TO WIN” OR EVEN WORTH HAVING?  
A DEBATE ON THE TRUMP ADMINISTRATION’S TRADE POLICY

Scholars: *Raj Bhala*<sup>\*</sup> & *Michael Stumo*<sup>\*\*</sup>

Moderator: *Julian Ku*<sup>\*\*\*</sup>

Maurice A. Deane School of Law

Thursday, October 4, 2018

MODERATOR:

Okay, uh welcome everyone. Alright, so welcome, welcome to the law school for those of you who aren’t uh law students. My name is Julian Ku, representing the law school here. I am very pleased to host this event which is part of the University’s Hofstra votes series of public events this fall semester and the run up to this November’s midterm congressional elections um just in case you want to know the date its, if you have something to do that day, Tuesday November 6, keep that on your calendar. Were having Hofstra University sponsor a series of public events of public issues related to the congressional elections. Just for your information, the next event in the series will occur on Tuesday evening 6:30, where a New York Times columnist and Nobel prize economist Paul Krugman, Paul Krugman will speak on the economy on the 2018 election. So, uh, and in addition to these programs, the University sponsoring voter registration drive aimed at younger voters. If you’re not registered, please consider registering. So getting to today’s program, I am very proud to host and moderate today’s event which is entitled “Are Trade Wars ‘Easy to Win’ or Even Worth Having?” Its on a topic near and dear to my heart, uh but one that until very recently would have bored almost everyone else uh including my own students uh but it is, I think a very important issue uh the topic is trade and policy. Uh In 2016, then candidate Donald Trump placed trade policy at the heart of his presidential campaign. Uh here’s a quote from his 2016 campaign who those of you that don’t remember, here’s a quote from President Trump “Hilary Clinton unleashed a trade war against the American worker when she supported one terrible trade deal after another from NAFTA to China to South Korea. A Trump administration will end that war by getting a fair

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deal for the American people. The era of American economic surrender will finally be over.” So that was candidate Trump in 2016 and in the past two years, President Trump has pursued very distinct and different U.S. trade policy that is different from the trade policy that probably would have been followed by Hilary Clinton and a war that was followed by prior presidents both republican and democratic. So, what I am gonna do is bear with me, introduce a little bit about the background and topic before we go to our speakers uh for today. So, President Trump has I think in my view has adopted four distinctive features to his trade policy that really marks a break with prior trade policy in the United States. First, since taking office, President Trump has made renegotiating existing trade agreements a top priority. So he launched renegotiations with a number of countries that the United States already had free trade agreements with. So, uh, the two most recently, he launched trade agreement, renegotiation was South Korea which was recently concluded and signed. And also, very recently he launched a renegotiation with Canada and Mexico over the North American free trade agreement which was actually an agreement he was most hostile to in some ways. Uh and just this past Sunday night, a few hours, a few minutes before midnight, the United States and Canada and Mexico announced that they have reached an agreement for a new version of the North American Free Trade Agreement called the United states, Mexico, Canada Agreement. Um, President Trump has also withdrew from the Trans-Pacific partnership uh which would have created an 11 country free trade zone across the Pacific. So, the renegotiations or changing trade agreements is a big part of his new policies. Second, he has experimented with the unilateral imposition of tariffs on national security grounds under U.S. law giving the President very broad discretionary powers in this front um used only a few times in the last 50 years, President Trump has employed this power to impose tariffs on steel and aluminum and on all countries, although on different levels and different ways, including countries such as Canada, Mexico and the European Union. He has also suggested he might use his power to open an investigation to use his power to impose tariffs on national security grounds on imported automobiles. So, go out and buy your Mercedes now before its too late. Uh third, President Trump has really focused tariffs on China. Um, for two reasons. One, national security like other countries but also with respect to China under section 301, uh which are citing violations of intellectual property committed by the Chinese government or Chinese companies against U.S. companies. U.S. law also allows the United States government to impose trade penalties for the theft of intellectual property or for the unfair or failure to protect

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intellectual property um but this power also has not been used in fact prior U.S. presidents have pledged not to use this power because it likely violates WTO agreements. And fourth, President Trump has launched less well-known but I think an important campaign to change and reform the World Trade Organization which is the organization the trade agreement that includes most of the world's countries, about 100 countries around the world. And most specifically kind of under the radar, he has blocked the appointment of new members of the World Trade Organization disputes settlement appellate body which is the most important mechanism in the WTO for uh resolving disputes between nations. So without a new member as the terms of the current members expire, the appellate body may not be able to function to resolve world trade disputes in the near future. And so, President Trump has also said in comments that he would like to reform and change the WTO as well. Okay, so all that is not why you're here, it's just background, that's to give a you a background for what we talk about President Trump and his trade policy what is different about it, those are some of the things that make his trade policy different. So, now I'll turn to the experts, our expert speakers today. We are very pleased to be able to bring these two experts on U.S. in international trade policy to Hofstra at this event. So, first we are going to hear from Professor Rai Bhala, I'll introduce him first. Uh and then we will hear from Mr. Michael Stumo. So, let me start with Professor Bhala. Professor Bhala is a Brenneisen Distinguished Professor of law at University of Kansas and he's a leading, one of the leading scholars, not the leading on international trade in United states and around the rest of the world. Um, he's written a treatise, Modern GATT Law which for trade nerds means it is the law for trade disputes around the world which is now in its second addition, an international trade law a textbook. He also written numerous articles especially on trade policy. He wrote eight major pieces on the doe ha round of multilateral trade negotiations which again you have to be kind of into this to write eight articles about the doe ha round but um there you go. Alright so there's a lot, so Professor Bhala is a leading expert on international trade law and international trade policy. Michael Stumo is a CEO of the Coalition for a Prosperous America, a national bipartisan organization including agriculture, manufacturing and organized labor and interest. CPA works for policies to balance U.S. trade, create jobs and achieve prosperity. He works regularly with administration officials on both democratic and republican side. He educates the political media and business leaders on trade and balances, trade enforcement

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and other issues related to currency misalignment and other issues related to trade and trade policy. In the past, Michael was also a lawyer and a litigator as well as general counsel for the organization for competitive markets. So, both speakers are very well versed in international trade policy in general but also in specifics with what is going on currently with the U.S. government and its current trade policies. So, we have a really great opportunity today here with them today. So I am going to ask each speaker to begin with an opening statement for about 15 minutes to discuss, defend or critique the features of the Trump trade policy I just described. Um and then I'm going to sort of exercise my prerogative to ask some of my questions and then we will have time to open it up to questions from you, the audience which is the most important thing. So, thanks and will begin by hearing from Professor Raj Bhala, so thank you.

RAJ BHALA ("BHALA"): Thank you to associate Dean Ku and my good friend. And thank you all for coming. Uh you have a remarkable tradition and I commend you all at Hofstra in doing international trade debates uh just before the first presidential debate back in September of 2016, uh thanks to your associate dean, Hofstra hosted a trade panel and that was very successful and its nice to see all of you or your predecessors at that time. So it is great to see you today. And the timing again is impeccable because as Julian said it was about 25 minutes before the midnight deadline on Sunday that NAFTA 2.0 was agreed. Uh, I am happy to be back also because I really regard myself as a fellow student of trade, just from the opening remarks you heard, uh its broad and deep agenda and there's always lots to learn. Let me start by trying to answer the question, um trade wars usually are not easy to win but sometimes, they may... (audio incomprehensible)....

BHALA: Let me start by trying to answer the question. Trade wars, are not easy to win but sometimes they may be worth fighting. Um, now, uh, the Associate Dean has challenged us to try and give an overall assessment, uh, sort of a midterm assessment, midterm exam season, midterm election season. So here it is: a C, a grade of a C, which is somewhere between an A and an F. What I'm going to do over the next few minutes is go through the four levels at which trade is engaged or trade is played. The multilateral level, the regional level, the bilateral level, and then, finally, the theory that permeates all of the first three levels and give you on the one hand and on the other hand and for each level I'll give you some bullet points as to why it looks like on the one hand that the trade policy in the United States is trending

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towards an A. And then, on the other hand, I'll give you some bullet points that suggest maybe it's trending towards an F. What I really hope to do more than anything is make a stylistic point that is not to engage in ad hominem argumentation about the President or about any of his advisors. We've had enough of that, not only in trade law and policy but throughout public life. I'm going to try as much as possible to just focus on the substance. I will say something about negotiating style towards the end because I think it does impinge on the administration's stated goals but, otherwise, I'm going to stay off of personalities. Starting with the multilateral level, that is the world trade organization and it's 164 members. On the one hand, I think the administration was smart to declare, in March 2018, that the United States no longer will participate in doha round negotiations. The doha round negotiations effectively died in December 2008. The Chilean President, in about 2012, said they were dead. Finally, the United States recognized that reality. I think, also, the administration made a good move in staying in the fishing negotiations. Now that may sound like a really obscure topic, fishing subsidies, but about 85% of the world's fishing stocks are depleted. They are a crucial source of protein for millions...hundreds of millions around the world, and they're also a crucial source of livelihood for small fisherman in India, for example. And we are staying in the, uh, the negotiations to deal with illegal, unreported, and unregulated, or IUU, fishing, um, uh, that's going on thanks partly to, uh, overfishing by the likes of China. On the other hand, the blockage of the appellate body candidates, uh, is potentially going to destroy what is well-regarded as the crown jewel of the dispute set - the multilateral level and that is the dispute settlement. And the blockage is really based on a false pretense. It's based on the idea that judges, whether they're at the Supreme Court level or whether they're at the WTO level, are basically mechanical robots that simply, uh, uh, just take a word and then they can apply it without any interpretation possible. And all of us, all three of us, can give you examples from the GATT-WTO text: "less than fair value", what's fair? Or "only if necessary," what's necessary? Where, the appellate body judges have to step in and do some interpretation to be sure it's reasonable to argue whether or not they overstep their bounds, but holding up the entire appellate body, when you've got many of the 164 countries deeply interested in seeing their disputes resolved, is a little bit far. The other thing I would say on the other hand, is, um, the resistance to dealing with special and differential treatment. Since, going back to a Haberler report in the 1950s, and, ultimately, a change in the GAAD in

1966, we have had a principal of special and differential treatment in the multilateral trading system to recognize developed from developing from least developed countries and that principle is really under attack principally by, um, the United States. And when 80% of the membership of the WTO is developing or at least developed, not sure that's going to get us very far. At the regional level, by which I mean free trade agreements, on the one hand, the NAFTA 2.0 completion is a substantive achievement. For example, the auto rules of origin, for the first time create, not only, the highest level of regional value content going from 62.5% to 75%, but they also, for the first time, have a minimum wage test that 40-45% of a vehicle has to be made with labor at \$16 an hour or more. And for people who are worried about, um, wage stagnation and people who are worried for middle-class and lower-middle-class families about, um, having enough, um, income, that might not be a bad move. Um, the administration also dropped it's opposition to the Chapter 19, uh, anti-dumping and countervailing duty, umm, panels, uh, dropped it's opposition, uh, to uh, dropped it's opposition to, dropped it's advocacy to a 5 year sunset rule, good moves. But I'll tell you a couple of others that have not gotten as much attention. Wher - which, to, to commend the administration. One is, um, they did concede to Prime Minister Trudeau the cultural industries exemption. Showed a bit of empathy that the Canadians do feel an onslaught from Hollywood, uhm, and other, uh, you know, entertainment and media entertainment, uh, industries in the United States. Uhm, and they wanna protect their francophone and First Nations people's culture. The other one which, um, unfortunately, has not gotten any attention, um, except in one, uh, interview I did for the Lawrence Journal World. If you look in, uh, NAFTA, the new NAFTA, you will see, for the first time, a provision that requires countries to implement policies to protect women, the lesbian, gay, bisexual, and transgender communities, um, and people who are, um, uh, questioning their - their gender identity from discrimination in the marketplace, from discrimination in employment. In other words, for the first time in a trade agreement that the U.S. has entered into, we have a provision that protects, or was designed to protect, women and the LGBTQ+ community from discrimination in the workplace. So, uh, that was not championed by the United States, that was championed by Prime Minister, uh, Trudeau, but the U.S. agreed to it. We also have a rule, um, dealing with China and entering into free trade agreements with non-market economies. Those are all on the one hand trending towards an A. On the other hand, as, um, the Associate Dean, as Julian has said, the withdrawal from TPP,

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in my humble opinion, was a catastrophic blunder. It stands to reason that an FTA with 3 countries versus an FTA with the same 3 countries, plus 9 others, including Japan, the - what, the 3rd or 4th largest economy in the world, including Vietnam, one of the most important emerging markets, th-that, that the 2nd FTA is going to be better economically in terms of classic Ricardian production and consumption benefits. Um, it further stands to reason, especially when the FTAs are rough, pretty broadly similar on terms, there's some differences at the margins but they're pretty broadly similar. Um, it also stands to reason that the TPP was better because it had a national security dimension which NAFTA cannot match and that was about containing China. No question about that. That that was an underlying impulse from the National Security Establishment about dealing with China's ostensibly peaceful rise in the Asia Pacific. And we've seen how ostensible it is. Just this week our warships, um, had a confrontation, again, uh, eh, in the Nine Dash Line Area. Um, and also on the other hand, the KORUS, the Korean - U.S. FTA, um, that really is so minor, the terms or renegotiate are so minor, that they're not even going to need approval from Congress. Extending by 20 years the duty-free entry of trucks and SUVs from Korea, you know, that's - that's not a huge deal, um, and likewise, I'm not even sure that, uh, it, raising the quota for American cars going into Korea that do not meet Korean environmental standards is good for the air that the Koreans breathe. Now coming to the bilateral level. On the one hand, uh, trending towards an A, section 301: this is a trade war worth fighting. And I'll give you just one, uh, anecdote to - to suggest why, personally, I think the reports that have come out from the USTR and the White House concerning (\* 20:00 min mark \*) China are spot on correct and they're well documented.

BHALA:

Personally, I think the reports that have come out from the USTR and the White House concerning China are spot on correct and well documented. Take a well-known company John Deere. John Deere went into China and they made tractors and harvesters, and this is going ten, fifteen years ago. And within a few months, a few blocks away from John Deere's factory, starts coming out from another assembly line, tractors, harvesters and they have the same green paint, green and yellow paint. It doesn't say John Deere, it's got mandarin characters. What had been done was John Deere's equipment was reverse engineered and then reproduced a few blocks away. Being a good corporate citizen in its locality, John Deere went to the courts in China and sued for IP infringement and it won, ten years later. Ten years later the



horse is out of the barn. They've lost the IP, they've lost the profits. Company after company, service industry after service industry can give you stories like that and that is before we even get into the issue of cyber-attacks. And this is a concern that's shared by the EU, by India. This is where we actually have a common bond with many of our friends and allies around the world. This is not a trade war that is going to end anytime soon because the two sides perceive each other as an existential threat. From the perception of the Americans, we are saying, rightly I think, that our future economic, indeed, national security depends on the protection of IP, which has a military dimension to it and we can't continue to see it compromised. That's where our growth, that's where our growth, that's where our strength is going to lie. From the Chinese perspective, their goal in their Made in China 2025 industrial policy is to get to an advanced manufacturing state by 2025. They have specific market share targets, for example back to John Deere, 90-95% of all farm equipment would have to be, those used by Chinese farmers, would be made domestically. Well to get there? You have to steal it. And that's a real problem. Remember this – the bargain that the Chinese Communist party has with the Chinese people. We will ensure that succeed economically. That you have the space to get rich but leave the politics to us. Now the way that bargain is implemented by the party is now infringing on our existentially important IP. So that's why I say this is going to go on for a while. That's on the one hand. On the other hand, the 232 investigations on steel and aluminum, look the defense department was against them. They said we only get about 4% of our steel from China. Our steel and aluminum come from a hundred different countries. Most of them are friends and allies. And yet the administration pushed ahead, notwithstanding the comments from the pentagon, from the secretary of defense indeed, saying were going to go forward with this. And now we are threatening tariffs, 232 tariffs, on autos and auto parts. The point is, if you look at the 232 statute, which is in our Trade Act of 1962, I'm not sure that the administration has made a good case that the imports of the steel, the aluminum, the autos, the auto parts, the uranium, are impairing our National Security. Because you can take the view that we have to do that domestically, or you can take the view that its actually the interdependence with our friends and allies that makes us more secure. On the other hand, at the bilateral level, Iran sanctions. November 5<sup>th</sup> midnight, November 6<sup>th</sup>, you'll see the final full range of Iran sanctions be put in place. We all know that the backdrop is the withdrawal from the nuclear deal. I'm happy to defend that deal if it comes up in questions and answers. It was a

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mistake to pull out of it and now we are isolating Iran further and making ourselves more OPEC dependent to ensure that OPEC continues to pump out oil and fill the supply gap that you're going to see in about a month. Finally, the forth level, the theory, on the one hand trending towards an A. I think the administration has made it very clear, and I think a lot of academics, I know a lot of academics, didn't really get this. That trade and national security are inextricably linked. They have been inextricably linked since Plutarch and Horas were debating trade thousands of years ago. And I think they've made a good case that the foundation of national security is a strong domestic economy and we've learned the lessons from the collapse of the Soviet Union, which had a weak core. On the other hand, and this is where we get into the style point without being ad hominem, the administration has alienated our closest friends and allies through its rhetoric and there is no need to do that. I was interested to see how mightily the Canadians were trying to respond politely to much of the rhetoric that was coming out. And then also, on the other hand, sort of trending downwards is, and this is where I am definitely handing this over to our next speaker, there has to be a clear case made about the effects of trade deficits and currency manipulation on how that undermines our domestic economy and therefore our national security. I'm not saying that case can't be made. I don't think it's been made clearly to the public yet. So overall, it's a C, it's just a midterm, things can get better as we all know, through the rest of the semester or the next two years. Thank you for the opportunity to give these remarks.

MODERATOR:

Thank you so much professor Bhala, we appreciate that. Now we will hear from Michael. Michael, thank you.

MICHAEL STUMO ("STUMO"): So, I did go to the University of Iowa Law School, which is the number two law school in the country. Second only to Hofstra. A little more on my organization, it'll help you understand where I'm coming from a bit. As Julian said, we are a coalition of agriculture, manufacturing, and organized labor. An odd case of characters. My board and my membership range from the very hard left to the hard right and to everything in between. Because trade doesn't cut cleanly down party lines in Washington or in the country. And so, during the Trump – Hillary campaign and the run up it was pretty interesting. We had our chairman who was helping Trump campaign, he's a former steel company executive. We had the ALFCIO who was helping Hillary. We had Bernie supporters before he was out in the like, still do. Our organization, we were founded in '07. We were

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concerned about US trade deficits, the de-industrialization of America, the moving of our industrial base and agricultural base to other countries and the job implications. We've been largely supportive of the Trump trade team. The Trade Ambassador Bob Lighthizer, the US Trade Representative – I know him I know his team, Wilber Ross the Secretary of Commerce – I'm acquainted with him, Peter Navarro the White House Advisor on Trade Manufacturing Policy – I know him as well, AFLCIO, Teamsters Union – they're largely supportive of the trade agenda, as well as our family farm and ranch groups. So that being said, pulling out of the TPP was an excellent decision. It was a silly agreement. In our view it had nothing to do with China. China wasn't even mentioned in it. It was all about providing other countries further access to the US market and therefore displacing US industry in our own market and we get insufficient export opportunities to offset it. The 201 tariffs, which were imposed in January on clothes washers and solar panels were about South Korean subsidized clothes washers. The Obama Administration had put tariffs on clothes washers subsidized, LG and Samsung clothes washers.

STUMO:

I actually owned LG clothes washer and dryer and it didn't work because they kept transshipping through other countries right, there is a major industry I get emails all the time, hey we got these tech from china, there's these tariffs but we know how to transship we can label and send through 3rd countries and we can get around it, solar panels massive subsidies, on solar panels, Obama administration put a lot of tariffs on country specific but its whack amole so you can't catch them so they did it against all the world to keep it from coming in from all countries, those are temporary. The 232 tariffs under section 232 1964 62 trade expansion act on steel and aluminum, tariff Armageddon was predicted. I on twitter a lot of the global trade press follows me, and I joust with them and I say where's the tariff Armageddon, 25% tariffs on incoming steel. So, among all the major china has made steel a national security issue part of one of their five year plans, it was going to succeed they're the source of overcapacity in the world, its massive you see the charts it's amazing what they've done what china decides to do somethings its big its bigger than when Germany does it, bigger than when Italy does, its massive and it's a flood. The EU is made steel a priority turkey brazil japan Korea all these countries made steel aluminum priority and among them all none of them had china's steel over capacity probably, Obama and bush put tariffs on china incoming steel for being subsidized but it was again whack amole you couldn't keep up, transship through Canada and the like, and

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so 232 tariffs were against all countries because the issue was that our steel industry was cratering, our aluminum industry was almost nearly gone and the view is this is the foundation of an industrial supply chain that is dual use military and economically important too, so we put up the reason of the allies say well what were your allies and you say national security, it was about if you were an ally or not but rather its about our national security and preserving a core industry that is a foundation for aerospace, automotive, for our defense manufacturing system. Now you can say well its not national defense its not national security because of what raj said, but what it is and we know from ww2 and a lot of my membership that manufactures, but dual use supply chain, you cannot have an industry that is viable that has the capacity and the scale to be a top tier cutting edge industry unless you have both civilian and military demand happening, so the soviet union already tried that and tried to build industry with defense and it failed. So you'll see the dual use nature is the core of the administrations case and were now seeing that industry come back and I have a lot of members that are concerned that are steel buyers but they're actually doing really quite well they're getting more business more hiring they're raising wages and the like and we did a study showing that despite the predictions of job losses which if you're in this field and I know I'm trying to not be so inside baseball cause I just love this stuff but there's 280,000 jobs predicted to be lost from tariffs that weren't, it didn't happen everyone predicted, you look at CNBC the economic models didn't happen, we've documented 541 jobs that were lost and 11500 that were created in an economy that produces 200,000 jobs a mount it was small beans but we didn't have a 288,000 loss so were see a lot of free trade models and theories proving that true and now we have the china tariffs coming under section 301 the 1974 trade act which gives the president authority to take action against other countries who are violating international laws in this case china was engaging in the most massive persistent state directed commercial espionage campaign in the world, you look at Bloomberg today there's a major story on Chinese subcontractor manufacturers putting mini microchips in motherboards that are going in defense in many many sectors, including defense and it's not like a worm or something where you could fish it out, its hardware and its really serious. So, Bloomberg today but the administration documented and nobody rebuts the democrats who oppose trump for all kinds of reasons they say yeah china is a problem, New York times agrees china isn't a problem well you shouldn't do this with tariffs and they don't have another solution, but so the 301 documented 36

methods patterns and practices that the communist party of china use to steal technology from the US, or otherwise acquire in gray area theft you cannot in many cases sell in china unless you manufacture there, that's there forced localization, think of the reciprocal if we impose this on incoming companies, you cannot manufacture there unless you join venture with the state all under state influence company, in some industries you cant join venture with a state influenced company unless you bring interesting technology, and unless you don't then we don't want you so and when you do get your joint venture and you get that far you then have to have a branch with the local communist party of china in the management in your company so imagine if we did that here, so its hard to see a settlement from it, I saw an NPR interview that Chinese ambassador to the WTO today if you look at NPR, odd that it was about 301 tariffs and never mentioned commercial espionage, they say when it will be settled, china has never although its unanimous opinion here that its established commercial espionage and the 301 tariffs are designed to change behavior like WTO authorized tariffs against unlawful subsidized are designed to change behaviors so in that sense its nothing new, again Obama bush did their own tariffs but they're more narrow on countries that didn't work because whackamole but they are all designed to change behavior, china has not said they are doing this commercial espionage that is a real bad thing and that we promise to stop, they never admitted its wrong and instead they retaliate against fairly traded good, so we started against 25% tariffs on 50 billion in Chinese imports and then recently to 200 after they failed to change so they're up and then retaliated against us so trump is upping it to 200 billion through a process first 10 percent now then up to 25 percent in January, now understand we import 505 billion from china and we export 130 billion so they tariffed a good part of the 130 and were about half of the 505 and they're running out of road and trump has ordered to go to the next 270 billion to basically cover with china so with the steel and aluminum tariffs as far as consumer in fact it has not happened there is no inflation, import prices are the same it just hasn't happened we have 3.9 unemployment we've got nearly 4 growth it hasn't happened well see is these china tariffs bite more what happens in terms of consumer price inflation and the like but we do know that other countries like china japan south Korea that has used tariffs to protect their industry Germany that has used currency devaluation to also protect their industry and to subsidize their exports and to use other industrial strategies to promote their own rather than cheap goods over seas those are the countries that have grown as we have declined from the 50percent of world economy to 22 percent of now, so trade wars

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are easy to win I give trump an A- right now maybe a b+ because really you're changing the nature of the game from the fiction of the game mindset that it doesn't and can't exist it's a pink unicorn that people like to write about but tariffs are less than ten percent of the issues you got exchange rates you got subsidies you got non tariffs barriers, you got macroeconomic differences such as wage levels such as interest rates such as consumption production trends and the like and tariffs are a small part of it so it cant exist unless you are free trade within the united states for example among the states we have a common labor market a common banking a common currency a common fiscal policy etc. but between countries you can't get it so. So, trade wars are also easy to win if you're the united states because were the biggest economy in the world.

STUMO:

Trade wars are also easy to win if you're the United States because we are the biggest economy in the world still; we are the consumer of last resort. No body fights really hard to get into Malaysia's market because they don't have enough money to be a big market for your goods. We are the buyer. In the last 40 years we have been the buyer of last resort, and be having that status gives you enormous market power which you can use to condition access to your market upon others playing by the rules. You can abuse that position or not but that is where the power lies. We as lawyers focus on the rule of law and what should be around it, but the rule of law follows where the market power goes. Ok. Now the US has a long history. Trump, is he a protectionist or an isolationist? Really the trade team is dominated by Hamiltonians, sort of modern day Alexander Hamilton. Hamilton was the father, the American system of economics, which rejected the cosmopolitan economists like Adam Smith. So the tariff and strategic trade, not fair trade, not free trade, strategic trade system of the American system of economics has a long history. It dominated the first 130 years of our economy. You probably know from the Constitution that Article 1 Section 8 gave Congress the right to collect tariffs, that's who has it. If the tariffs were horrible then we wouldn't have them in the Constitution. George Washington in his first address to Congress said, "A free people should promote such manufactories as to render them independent of others for essential, particularly military supplies." The second act of Congress, not the first, not the third, but the second, was a tariff bill which was necessary for the encouragement of protection of manufacturers. Now they could have said back in the day, "You know what we can get really cheap stuff from Europe why build

our own? It's really expensive to build our own. We can get the cheap stuff." But they were worried that the manufacturing super power of the day, Great Britain the workshop of the world, who they just had a long war for independence with, that they would be forever remain a banana republic, providing commodities to the industrial powers of Europe, including Great Britain so Britain's lead would then be entrenched. So they actually taxed consumption in the form of tariffs to build their own industry and that worked pretty well because by 1870 or 1880 they had gone from being a war torn agrarian nation to being the biggest economy in the world, deposing Great Britain. Germany did the same in the German Federation of 1830. Frederick List the German economist followed Alexander Hamilton. Germany was also worried about being forever relegated to colony status essentially, or banana republic status in relation to Great Britain. Instead they did free trade among the German States and strategic trade with Britain or with the rest of the world. Fast forward to Japan, they used tariffs, currency devaluation, and industrial subsidies to take that cold wind swept northern pacific island into ultimately becoming the second biggest economy in the world. South Korea did the same after the Korean War with tariffs, currency devaluation in the like. China did it starting in 1994 with tariffs, currency devaluation, and a series of 5 year plans to keep out other industries to build their own. They were pretty successful in dragging hundreds of millions out of poverty, more than we have ever seen in the entire history of the world, of course they did it off the back of the US consumer. The point is, that no country, every country in the world has gone from poor to rich has done so through some version of the American system of economics adapted to themselves. There are no countries that went from poor to rich through free trade. Now if you look at the imbalances this day the US is the biggest trade deficit country in the world. We have China over producing and under consuming, and they have over capacity to sell. Ditto Japan, ditto South Korea, ditto Germany and the EU. Who absorbs their over capacity because they produce more than they consume, employing their people with wages is a great gig if you can get it right? And then you really on foreign consumers for growth to absorb your over capacity, and we have been absorbing that for over 40 years, and we have been de-industrializing as a result and our wages have stagnated and our job quality has gone down. We are more in the gig economy now which sounds really cool until you start doing 15 or 18 dollar an hour jobs at 30 hours a week. Most of what you hear about trade is wrong in the press. There is a collective insanity. If you think of it in 3 tiers as to the effect of the tariffs and other things you hear. The top tier is

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global volume of trade, how much trade is happening in the world. That is purely a function as to whether countries are growing or shrinking. Are they producing things or not and they trade it. Tariffs make no difference on the global volume of trade. The balance of trade among countries tariffs make no difference either. I didn't believe that two years ago but I've been water boarded with the facts, and if you look at high and low tariffs around the world, you can find no relationship whether they have a surplus or a deficit. What matters is exchange rates, are you over valued or under. That's what China, Switzerland, Singapore, Taiwan, South Korea, Japan devalue their currency because it makes their exports a lot cheaper, it makes their imports more expensive protecting you industry, it is the mother of all tariffs, it is the mother of all subsidies, and exchange rates if you look at the economics text books are supposed to adjust in order to get to balanced trade because if you're in a surplus country you're growing fast your currency will go up making your exports more expensive, you'll sell less and you'll trend toward balance. That simply isn't happening but exchange rates are the big explainer there, and that is why one big critique I have of the administration is that they haven't gotten to the exchange rate adjustment mechanism which is driving our 42 year trade deficit the most. The third tier after volume of trade and balance of trade is composition of trade. What do you tend to produce or sell or buy? Turnips, potatoes, semi-conductors, automobiles in the like, that's where tariffs can make a difference. We have the steel and aluminum tariffs so we're going to get less steel and aluminum and we'll have more of something else. It's your god given ricardian sort of superiority comparative advantage given by god as Ricardo said, or as your technologically created comparative advantage or as your industrial subsidies or your other strategies in the like that are the composition of trade. So think of something called Dutch Disease where the Dutch discovered oil sometime back and you think 'wow they're gonna sell all this oil and have a trade surplus'. But they didn't. What happened, they sold the oil they brought in a lot of foreign currency, their currency went up and it made their manufacturing and agricultural goods less competitive. So it's a squeezing a balloon. So that's the balancing of trade issue. So that's where tariffs are going to happen, you see we are getting more and more tariffs this year. And we submitted a report to the administration last week, that look, you're seeing a trade deficit that increased from last year because of these tariffs and the dollar has depreciate by about 8% against the world currencies and it's sucking in more imported



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goods and making exports less competitive. And I told White House staff two weeks ago, I said at the end of the year your boss is going to say, "Hey we did this aggressive tariff action, which is more than we've seen in years and we have a trade deficit that is 8-10% higher. What's going on." I said the exchange rate issue explains it and he's going to have to decide whether to do something about it. Lastly, Europe is now the biggest over capacity economic zone in the world with a surplus of 442 billion that they are offloading on others, including us. Lastly, the US China game is true, and I've been to Germany twice, Germans call me over there and say 'explain Trump trade to us, we don't like it what's going on'. And I said do you know the imbalances but also the US China game is a game of great power because China has designs of being a regional and global superpower, they're a 3000 year old culture, we were born last week, they played the long game but they're gonna be the biggest economy in the world in 10-15 years.

MODERATOR:

... (audio incomprehensible).....and the United States has not been perhaps selfish enough in some ways in protecting its economic interest in trade, maybe that's mischaracterizing it, but isn't the theory that we need some sort of global mechanism to get these because every country acts in this narrow, self-interested way, wouldn't we then have less free trade and less overall economic growth, not thinking about it from the perspective of one country, but if, if the US adopts these policies that might benefit the United States, does the world as a whole benefit, or should we care about that?

MODERATOR:

And I'm curious actually what Raj thinks, but let me ask you first.

STUMO:

We've actually been thinking in our group a lot about what if we didn't have the WTO, what and you could say one problem with the WTO the imbalances are something that people poo-poo and the Germans say oh the imbalances don't matter and then I ask them well you got the 8 and a half percent surplus, why don't you try the 8 and a half percent deficit, well they didn't want to do that. And I asked them well you want the job of re-absorbing steel or the global audio is incomprehensible no they didn't want to do that so it matters when they would be faced with it. The WTO rules are blind to imbalances. The nirvana globally is relative balance of trade and Michael Pettis, he's a Professor of Economics, he's a Carnegie Fellow, he wrote the book *The Great Rebalancing* and he writes the best, he's really good. The WTO is blind to imbalances. There are technical rules and this is a

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subsidy or that subsidy or something, but they don't get into the imbalances. The IMF does, but they have no enforcement. The IMF duty is to avoid competitive devaluation of your currency to get to balance and how the exchange rate mechanisms work but there's no enforcement plus it's a consensus-based body and the wrongdoers block consensus. So you theoretically could, now let's say what would a world look like if we didn't have the global institutions and do some describe the game the great competition among nations is the competition for good jobs and industries and certainly Germany plays that game, certainly Japan, Korea, China, Singapore, Taiwan; a lot of these countries do that game they are not necessarily global humanitarian citizens, citizen of the world kind of a view of things at all or are expected to be that. And as I said tariffs really don't matter for audio is incomprehensible of trade or balance of trade it's more composition of trade and it's a hard lesson to unlearn. But even the Peterson Institute of International Economics, which is the great globalist think-tank of Washington, agrees with what I just said. That's not some weird protectionist position. So maybe it would just be some Nash equilibrium, some game-theory, Nash equilibrium that would result where the next move you make might be a move where you get another move back that you don't like so it's sort of a jousting so you get to some Nash equilibrium. I don't know that we've actually thought about that.

BHALA:

I think the WTO plays an indispensable role in each of its functions even today. The first is its negotiating function. It's a form for negotiations and it is as I mentioned proceeding with at least some mid-level, either multilateral or plurilateral deals. Its second function, while it's currently inhibited, dispute settlement. Again, there's no alternative in the trade world to that. The alternative is sort of a Melian dialogue, the strong will do what they do and the weak will suffer what they must. On its third function, trade-policy review, again we don't have a multi-lateral organization that reviews periodically every three-six years basically the WTO, the trade policies of each of the member countries. And then finally, I think it's an important source of research and statistics. It does produce useful studies. And I think from the business community's perspective, as you probably have heard the statistic ninety-five percent: ninety-five percent of the customers of American companies are outside the United States and if you look at the changing composition of where the most populous countries are in 1950 to 2050, they are all developing countries. The US engages or not with the developing world through the WTO so I think it's a very important forum.

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**MODERATOR:** I want to open this up to questions from the audience. So if anyone asks a question please raise your hand and try to speak loudly so we can hear. Thank you. Go ahead.

**AUDIENCE QUESTION:** When we began, Professor Ku told us that we should buy our Mercedes now. Well what about the person who needs to buy a refrigerator? So what I want to ask about is the effect of these tariffs on consumers and if consumers have a hard time because lots of things they want to buy and more expensive doesn't that have an effect not only on these individual consumers, but on our economy?

**MODERATOR:** You want to ... (audio incomprehensible)...

**AUDIENCE QUESTION:** Whoever... (audio incomprehensible)...

**BHALA:** Sure. You're absolutely right. So take the individual consumption decision first. The consumer when faced with rising prices of any good or service has the choice if they are willing and able to purchase to go for the purchase. That means they are on the demand curve, above the new equilibrium point basically. If they are not, the second alternative is they are knocked out of the market. They can't make that purchase. Or third, they may have to defer it. Or fourth, buy used. You can expect the used car market to do better in the future. And then as you point out also, in an aggregate sense, with an expected diminution of individual consumption, we would expect the aggregate demand curve to shift in because consumption is about 70% of overall GDP so you're absolutely right, I think that's an important point to think about, multiplied by higher fed interest rates.

**STUMO:** Right so across the economy, economists try to say "Oh the consumer price is going to rise." When they say that that's untrue in the full sense because each product has its own supply and demand curve, which means that in some cases there will be zero pass-through to the consumer. We've actually seen that with steel and aluminum. You cannot detect a pass-through price to the consumer. In other cases it could be passed on all the way. We haven't had a tariff yet that's done that. In most cases it will be in the middle. Gas prices have gone up much more than any other impact we've seen with tariffs this year. It's a much bigger impact on consumers and so were the interest rate hikes. In the past when we've seen those things happen, we haven't seen a crash in consumption. And I made the case earlier that Tariff Armageddon is going to be proven to be false and it has so far.

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The bigger test is going to be as we've seen more tariffs on finished goods that are coming from China. I know for my members, who are more intermediate goods suppliers have seen a lot of business coming back. So there could be one thing, the Chinese will just eat the tariffs or in some cases they pass them on. But in a lot of cases, there are other alternatives. They move to third countries that are not China; that's happening. And that means you won't have a full 10 or 25% pass-through. And in many cases they are moving back to the US. This is a whole mix. This is a big test now of how much pass-through there are. We've got the economic models and we're finding out that the models predict a pass-through to consumers that we are not actually seeing and we are trying to figure out how to hack these models to make them represent the reality. But again, as Professor Michael Pettis said—I mentioned his book before—the reason for trade intervention is that while you tax consumers to some extent, you get more benefit out of productive capacity and aggregate wages across the country than the tax. And that's the game that as I said China, Korea, Germany and the like have done. They've taxed their consumers and got a bigger benefit in the economy and why they are doing better than us on a trend line.

MODERATOR: Okay, next question. Yes sir.

AUDIENCE QUESTION: Would you all agree that China is indeed... (audio is incomprehensible)... actor?

MODERATOR: I am not sure that we all agree, but yes.

AUDIENCE QUESTION: (Audio is incomprehensible)... companies like GM, companies like Apple, companies like PepsiCo, audio is incomprehensible can go to China to sell their products and also have their products manufactured there cheaply and for less knowing that full well that the restrictions on them would be unfair to be placed on them, knowing that there is a possibility of intellectual property theft; all of a sudden now we're into this tariff mode, and the question becomes what kind of hurt is that going

AUDIENCE QUESTION: All of sudden now we enter this tariff mode, the question becomes, what kind of hurt is that going to do to these companies on a long term basis? If any?"

MODERATOR: Right. So this is just a variation of something. They went into China knowing, right, they didn't go in blind. So you know

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what's going to happen to them now that we're going to start this war with China this trade war with China. If we go and start, Raj.

BHALA:

It depends. I think it depends on the company and its position in the supply chain and a very detailed point, which we haven't spoken about. And that is whether or not if it needs it, it's getting an exclusion or an exemption from either the 232 or the 301 tariffs. There thousands of petitions now in front of the Commerce Department on the 232 tariffs in the U. S.T.R. on the 301 tariffs. Where companies are asking. I was just working on one last night with my firm Dentons. That they are going to lose half of their workforce in Texas. A family company, if they don't get the petition that they made to get exempt. So it's very case specific to, answer how it's going effect. Others are going to have the agility to move production facilities say to Vietnam or possibly even India and can no longer need to worry about supplying through China. It really depends on their market position.

STUMO:

Right? You're going to see a lot of move out of China. It depends on the industry, but other than that is going to move out of China. There was a group think that happened among corporate CEO's and procurement people, a procurement managers that the future is about China moving in offshore into China. Know there was these CEOS wanted to say in their quarterly reports to shareholders, hey, we're in China. We got access to this, you know, 1 point 3 or whatever billion potential consumers that's changing, is becoming very uncertain. This very unfriendly there. Businessmen themselves are saying it. The examples of the theft or harassment of that sort of thing. There just accumulating and the group think is changing. It's like steering a battleship, but that group think is changing. And plus the fact is they just don't get more than a three to five year runway to sell there before they run out by fact that their probably competition by state influence enterprises and the like and they're figuring out that it's really not, you know, a big nation of consumers. It's a big nation of producers. It's a glut of labor coming on board that produce more than they consume. And so the, you know, the phrase that we hear, 95 percent of consumers live outside of the US, well 95 percent of producers live outside of US too. 4 billion of them make less than \$10 a day. So the really, the nature of it is we've got global overcapacity of labor, of capital and production coming online and they're looking to the US to absorb that. And, you know, to provide her rising her living standards elsewhere.

MODERATOR:

Great. Thank you. Go ahead in the back. Yes.

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AUDIENCE QUESTION: So earlier you said that the trans pacific partnership was one biggest deals the US would be a part of. I just want to know your thoughts, and in defense of it, the gross allegations that the problems arising especially giving multinational corporations huge deal power to sue developing countries and hurt their progress or protect the environment or issues to public health?

BHALA: So the TPP wasn't a perfect agreement. A couple of points about that. First, at the time the US signed the TPP and in October, November of 2015, we had already had free trade agreements in existence with seven of the countries, Canada, Mexico, Singapore, Peru, Australia, Chile, and Brunei. And those had been in place for nearly a decade. Duty Free quota free treatment, pretty much across the board. When, what we didn't have was duty free quota free treatment into Japan, Vietnam, Malaysia, and New Zealand. With TPP and I'll just give you one anecdote. The Japanese on a highly protected, what they call sacred sector beef, agreed to lower their tariffs from 38 and a half percent down to 9 percent. Now, that deal is going forward to the benefit of the Australian and New Zealand beef and Canadian beef shippers and our ranchers in Kansas and Missouri are not happy about that because they're going to pay that 38 and a half percent versus 9 percent differential. And there are other examples, wheat, manufacturing services, etc. And in services, for example, Malaysia is an important market. It's a, you can't just think of Americans going and to visit Kota Kinabalu or other tourist sites in Malaysia, it's a very important destination for the Muslim world. They enjoy a lot of Muslim families from the gulf, from other parts of India, of Asia go to Malaysia and who wants to be there? Hyatt, Marriott. They want to expand their facilities, there. On environment, you're absolutely right. A key weakness of TPP. Was it a required to countries to join, Only one, I think of the seven multilateral environmental agreements and there were doubts about how enforceable those provisions were. And then there were several good news stories. One actually came from Buzzfeed, actually we talked about two years ago by Chris Hamby about the ISDS mechanism. Now, prime minister Jacinda Ardern of New Zealand, when she was elected prime minister, her first task was to go to the APEC summit in Vietnam and on the sidelines of that fix some of the provisions including ISDS at least from New Zealand's perspective to a side lip. So, I'm not saying it's a perfect agreement. Neither is NAFTA, two point Oh. But, you know, it's sort of stick to my guns on that, that it was, it was a mistake to pull out.

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**MODERATOR:** Okay. A couple more questions. Maybe two more questions go ahead.

**AUDIENCE QUESTION:** So, one of the most import aspects of the material is the disputes on the courts. And for instance the dumping cases and not saying environmental standard and cases we're looking at, but so why, what were Trump's reasons for blocking his appointments and why do you think that's correct? Not correct.

**STUMO:** So there Administration is, it's a sovereignty issue in that I think that's how they would answer the question in that the WTO appellate body have a whole list of examples. And actually the democratic minority staff or the ways and means committee is largely agreed in many cases with where the courts went beyond the scope of the texts of the WTO, and I'm sure you know, people can quibble about that, but their view is that the nation sign an agreement that said something in 1995 and now it's turning into something else that we didn't sign in many cases and they've gone so far outside the bounds of legitimate interpretation of the text. So that would be their argument. And I would supplement that answer by saying, when I met with Lighthizer a year ago. No, I didn't meet this was a meeting actually. He spoke before a group in Washington and he said the Europeans, they look at trade agreements as, as governance agreements and we don't look at them that way. We look at him as contracts. Contracts between countries and what does that mean? Governance agreements are alive. They can, they can go to, can be interpreted, they can change, you know, the living constitution, that sort of thing. Contracts need to be interpreted as to the four corners of the contract and so that's kind of the dichotomy I think that you're seeing with the administration's approach.

**MODERATOR:** Okay. Any more questions? Yes sir.

**AUDIENCE QUESTION:** Just a quick question to you Michael. You mentioned about the Indo, the United States and Chinese trade routes and if for some reason or any reason it goes down the tube, the relationship goes bad in the future between United States and China, do you think that there are alternative supply sources available? Countries like Vietnam, countries like Bangladesh, like Sri Lanka could be a new supply source for United States economy for the low-end manufacturing jobs? And at the same time if you can comment on India and the United States creating relationships because

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India is really doing a good thing for US economy in terms of providing low cost service. Just sort of comment on it.

MODERATOR: I'm sure that's not a quick answer, but maybe we'll take the first part then?

STUMO: Sure. We're not going to get (unsure what was said). So going back to the U.S. You know, think of it this way. If you changed the relative pricing, which really, you know, the trade flows are about relative pricing, is it largely cheaper to get it here or there and then you try to rejigger with that. Whether it's exchange rates or local advantages of something like that. But, let's say that we shifted the cost advantage to the U.S. 25 percent and away from China with the things that we buy. If we're out of the money by 50 percent, it's still not coming back. If we're out of the money by 8 percent, it might come back or maybe it will go to Vietnam or you know, a third country. And certainly, we're seeing a lot of the low end work move out of China right now. So, you know, certainly you're going to see third countries that have some opportunities now. You'll see some of them moved back to the U.S. where we are in the money and you got to take into account more than price. You got to take into account the headaches of dealing with the supply chain. It's on the other side of the world and you know the language and you can only do one email a day and you get a response the next day and then you know, blah blah blah. So that's been a headache (crowd laughs). So, I know, something like that is a major driver of what would or could happen

MODERATOR: Just since we're, since Raj is the expert on India and various ways. Maybe you could comment briefly on the India, U.S. relationship?

BHALA: Sure, I mean I think both India and the United States appreciate the geo-strategic nature of closer commercial ties. The problem for Prime Minister Modi, aside from the trillion dollars of investment he needs in infrastructure to realize at least comparative advantages in agriculture and manufacturing services, it's pretty much there, is he needs to reform the colossally high bound tariff rates that India has that impede US market access, a huge array of non-tariff barriers and of course corruption, that India under the previous prime minister had, previous prime ministers, had tackled those with, starting with the '91 reforms, but they petered out by the late 1990s. He sidetracked himself with demonetization Modi did and that was



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somewhat of a disaster. So, I think one plus point is, if the Prime Minister were to enter into FTA negotiations seriously with the U.S., it would create a lot of external pressure on India to do the necessary domestic reforms that I mentioned, which they've been needing to do for a long time and they have not been able to transcend their own domestic political opposition. So American, maybe American pressure would help.

**MODERATOR:** Okay. So, let's take the one last question. I know it's been, and we'll wrap it up. Is there one more question out there? Oh yes sir.

**AUDIENCE QUESTION:** I'll ask it. To what extent does and should trade policies take into account what the deficit is, meaning if we've got a deficit with countries where we're buying things that are arguably more important, like steel, aluminum, security interest, or industries that are, I think, more important than, for example, like shaving cream or selfie sticks meaning. If we're bringing in a lot of these items that aren't, I would argue very important. Although everybody else looks like they use them.

**MODERATOR:** Yeah, a lot of us like shaving cream (crowd laughs).

**AUDIENCE QUESTION:** To what extent does or should that play in how we interface with other countries?

**STUMO:** Yeah. You're really getting into a great question of industrial strategy. I mean, we've taken a real *laissez faire*, yeah, the macro economists say computer chips, potato chips, it doesn't matter, right? It doesn't matter. Well we know it does matter. We probably would be better off with dominating with computer chips than potato chips. So, actually one of my board members and advisory board members are trying to work on a book on industrial policy and china's industrial policy has moved from their five year plans. They started with basic industries, steel and aluminum and some other things, and then they move up and up and decided 20 to 25 is the next big iteration that they want to have locally. Want to move up the food chain to advanced manufacturing and indeed the US as a developed economy, we are a like a colony to Asian industrial policies and we tend to sell low end goods to them and buy advanced manufacturing goes back.

We have a big manufacturing deficit with China, I'm sorry, advanced manufacturing and advanced technology goods with China, so we're going the wrong way and we don't get good at that because we think, oh, we're going to pick winners and losers

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and we don't admit that every government decision is picking a winner and a loser and we're really bad at it because we don't admit that we even do it. So what does your organization is what you're really talking about, how you choose what industries of the future you want to be in, that produce the innovation, that can absorb lots of capital, that employ a bunch of people because Silicon Valley and the latest app is really cool, but it's got three to five people, right? It's not much in the scheme of things and one of the basic duties of a government is to provide a full or close to full or decent level of employment for its citizens because if you don't they'll go and find another government that can. And 66 percent of our workforce doesn't have a four year degree. You're not going to educate your way out of that. So you got to get your and economic makes right. That's not an answer and saying we've got to get good at it. And that's what composition of trade is important.

MODERATOR:

Okay. One last word...

BHALA:

Very quickly, I would say that, maybe foolishly, I'm still a believer in what macro, open economy macro economists called the J curve, which is if foreign exchange rates are flexible and allowed to correct for trade imbalances, the trade imbalances do correct over time. The second thing is I don't think that, trade policies should be driven by the structural imbalance issue more than our overall economic policy is about focusing on savings and investment rates because many economists would say, putting FX rates aside, the long run determinants of trading balances are really saving and investment rates. And then I would definitely echo what Michael just said. Really, the investment in human capital, which this country is woefully inadequately doing, is going to be a long run determinant of growth.

MODERATOR:

Okay. So there's an eager class outside of. I don't know why they're so excited about coming in, but thank you so much. Thank are speakers. Thank you.