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Panel Two Discussion Transcript

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PANEL II: DISCUSSION TRANSCRIPT

DAN SHAVIRO: First of all, just to spring to the defense of my economist friends here, if only lawyers know about fairness, why aren't there more economist jokes than there are lawyer jokes? But anyway, for the few friends I have in the room, I thought I would say that for them.

A couple of comments on the paper. What's the difference between a shark and an economist? You know you never hear that joke. Well, maybe we can work on that one and come up with a punch line tomorrow. Anyway, one thing in Michael's paper that baffled me a little bit, and I have said this to him before in another setting, I would agree that obviously, capital export neutrality and capital import neutrality don't sum up to the total of relative considerations. There seems to be a kind of empirical claim that it is really screwing things up. I know that if you read joint committee studies, and maybe in some of the United Treasury studies it comes up in the introduction, they talk about it. But one doesn't really see it in the political sector. The problem is Archer, or if the Democrats get back the House, Rangel. These guys are too much impressed by capital export neutrality or capital import neutrality. I don't quite see how these concepts, or the focus on these concepts, is responsible for actual problems in the rules that emerge. If you think about the sort of sophisticated academic economist—and Jack Mintz said that he doesn't really focus on these things as a dominant part of his research, and that's the experience I have had in talking to other international tax accountants as well. So, I think its a basic vital contribution, but in pointing out the multiplicity of concerns but I'm not sure why CEN or CIN have this role. In Peggy's work, they obviously do, but why are they being blamed in some way for the impasses that we face?

About equity, in the international setting, I think Larry is descriptively right—that this sort of CEN tracks very nicely with horizontal equity, defined in a certain way. I don't think horizontal equity is a very useful idea here, and even apart from the fundamental, there have been a lot of law professors writing articles about whether, as a normative matter, we should be worrying about horizontal equity—whether it is sufficiently well-grounded, and so forth. But, simply the point that Boris Bicker made a long time ago about taxed capitalization seems to be pretty significant here. If some U.S. individuals are investing in 20 percent tax countries, and we have an exempt system, and others are investing in 50 percent tax countries, one would think that the opportunity in world capital markets returns would kind of be completed down to completable levels. So, even if you have horizontal equity as having some normalitive weight, its hard to see how it really plays out here, and it is an important concern. That, of course, is Bicker's famous comment that equity problems turn into efficiency problems.

Vertical equity, that certainly is . . . you can think of it in a lot of ways—distribution, richer v. poorer—that obviously is a very important issue. I think, and maybe this is actually in support of Michael's saying that things have changed since 1963, and we have to rethink it. If you think of a large closed economy verses a small open economy, you might say that we have a lot of capital income in the U.S.; a lot of investment in the U.S. and you are either very large as compared to the world economy, or there is not very much capital flow across borders. You might say, well there is a little bit of this stuff that goes abroad. Does that really pose a vertical equity issue in terms of the overall tax being borne by wealthy people? And the analogy you might come up with is, to what extent do we have to think about vertical equity, when we are deciding what the depreciation rules for equipment should be? The answer is not very much. True, it will affect, to some extent, the overall taxation of business investment, but that is sort of going to be trivial and dwarfed by the inner asset effects on investment that it will have. Now once you start to get a very large portion of the investment sector, then it is very different.

So, if foreign investment is relatively a small piece, you might say, really *how* we tax is just going to affect inner assets—U.S. verses foreign investment choices. Its not really a big distribution issue. Its not really going to affect the overall tax rate people are facing very much.

U.S. economy is, in a sense, smaller because the rest of the world's economy have grown so much. More importantly, once it's more open, you have more capital flowing back and forth, and it certainly becomes true that you invest abroad, and you don't pay any tax anywhere. If that's the norm we get to, then it's certainly true that it becomes a distribution issue, not just an efficiency issue, because now its really affecting an overall rate of return that a class of people are getting, because its a large enough piece of the pie. So, I think that's kind of the change that maybe makes vertical equity more of a picture here than it was before.

I guess I have one other, small thing on horizontal equity. Again, you have heard me say this before: I do have a hard time with horizontal equity as between corporations. I know you're familiar with all the arguments, but again, I own 100 percent of two corporations, and when the U.S. Government decides to tax one more than the other, it doesn't sound—even if we didn't have taxed capitalization—like a very strong normalative concern that my left hand and my right hand are sort of being taxed at different rates, when they are both me. Of course, when corporations have different owners, then we once again have to go through the individuals. So, I am not sure why you have that concern in there, when I know you are quite familiar with the arguments against it.

A final point, just to sort of take half of each side in some of the discussion we have been having. A familiar point to many people in the room, but just in case not everyone, that Joe Slemrod wrote up recently is that, while free trade is, under some assumptions, worth pursuing, whether others reciprocate or not, there is a difference here. And I think Mike is quite right to point that promoting world-wide efficiency through foreign tax credits, for example, without, is not as automatically, particularly in our interests. The example could be, if we really want to promote world-wide efficiency, that if Singapore has a higher tax on champagne than on beer, we should run over to Singapore and give the beer manufacturers some money to equalize it. Obviously not, so there is a difference in the two. I do tend to think that the difference isn't that great, because, as David Hariton said, there is a strong element . . . a consent of what we do will be reciprocated. But Mike's quite right to point out that it is not exactly the same, because it is not ambiguously in our advantage without reciprocity.

LEO RASKIND: Let's see I have John Steines, and Gary, and Jack. Thank you.

JOHN STEINES: I know martini's are dancing before the eyes of many people, so I promise to keep this under sixty seconds. I just want to follow up, very briefly, on what Larry said, because I think its a decent transition to David's [Rosenbloom] paper tomorrow. I take the main point of Mike's [Graetz] paper to be, simply, that global efficiency is on the menu of things to consider, but it doesn't always have to be the main course. Sometimes it's consistent with being fair; sometimes it's consistent with being simple; and sometimes its not. If you don't wear it as a yoke, I guess you can consider things such as exemption systems, which are somewhat heretical to export neutrality. I guess you could consider things like giving people only deductions for foreign taxes, instead of credits, because maybe you think its simpler, or maybe you think the tax on portfolio income is not quite as legitimate as the tax on direct investment, I'm not sure, but at least it lets you think about it that way.

The one problem I have, and we will take it up tomorrow—I don't want to poach on tomorrow's time—I think if we're going to give credits for some foreign taxes and deductions for others, whether the split is between portfolio versus direct, or direct in an A-team country as opposed to a B-team country, it's incumbent on us to figure out why. I've yet to hear the reason why, but we'll leave that for tomorrow morning.

LEO RASKIND: Gary?

GARY HUFBAUER: Three points. Firstly, Peggy Musgrave enunciated a view which has even been endorsed by Jack and a few others: that there's a strong case for free trade, but the case for international investment is much weaker. There are big question marks about it, and on that I would make two submissions. One, the empirical research on free trade substantially demonstrating the benefits as opposed to a theoretical analysis. The reading is only about fifteen years old and it is extremely persuasive, and that same kind of empirical research is now being done on investment, and is coming up with similarly very persuasive benefit calculations. Secondly, if you go along with that idea that free trade is good, but direct investment has attached to it big question marks, from your stand point the train has left the station long ago, because the amount of production associated with investment is now much larger and is growing much faster than trade. And so, it's too late or you better get on a campaign of really trying to stop this awful animal because its growing very fast. However, I think its just a great animal.

My third point is the commonly said—and David Hariton repeated it—notion that the reason we don't do a national neutrality-type of taxation is because we're afraid of the copycat effect. I suggest that's just nonsense. The reason why we don't do national neutrality is that it would be very bad for us. If the copycat effect were as important as the reason for not having this kind of dreadful—as what I regard as dreadful—direct investment type of tax system, then you'd see Switzerland and the Netherlands having national neutrality systems. After all, who is going to copycat either of those countries? They are very small, they are very rich, and they do a lot of outward investment. So, I think the copycat is just over-exaggerated, and what Michael said about Adams, way back when we were so generous to everybody, well, we were basically generous to ourselves. We may not have known it then, but that's how it turned out. It wasn't that we were so generous to the world with this system.

So, just maybe one final point, and I think this just underscores some of the things Michael said on this whole CEN debate—and I agree with him. The U.S. position now is so reversed from when that debate took place. Our inward net investment is about two trillion. We have about five trillion abroad, these are books: seven trillion coming in, and probably that debate is so phrased in terms of the U.S. being the big capital exporter to the world, while it hasn't been so in ten years.

LEO RASKIND: Would you go to the microphone and state your name, for the tape being made, and then we will get your comments.

TANYA BENDER: Thank you. My name is Tanya Bender. I am a lecturer at Leiden University and also a tax lawyer at Loyeus & Loof, which is a Dutch law firm. The points that I'm missing so far is the distinction between active and passive; especially, as most of you probably know, the Netherlands is a typical exemption country, and we consider exemptions the prime method for avoidance of double taxation, and the deduction of foreign tax, which is, in fact, I am a little bit surprised to hear it, and also to have read it in Peggy Musgrave's paper. A sort of reasonable option, here we consider it an option whereby from whatever point of view you look at it, there is double taxation. And the distinction we use is that between active and passive investment, and to steal the comparison that Professor Kaufman made, that the guy on main street who is looking at his neighbor who has the same income and is taxed higher, or lower in a foreign country, and what he would or would not understand. I think he would understand that the tax rates, the tax pressure, was determined by the foreign country if it was active income, business income, active business income. He would not, if it would be a saving, savings accounts, in a Main Street bank or foreign bank. And I'm happy to hear from Professor Graetz that he considers that exemption for some situations the right method, but then only the situations in which the foreign tax rate is 75 percent or more of the U.S. tax rate. Do I understand you correctly?

MICHAEL GRAETZ: Yes, and it was only for active income.

TANYA BENDER: Okay, that's just what I wanted to say.

MICHAEL GRAETZ: The paper makes it clear that it is only active business income.

TANYA BENDER: Okay, and then there would be of course, a lot of issues about rates, as opposed to basis, because it would be very easy for a foreign country to have relatively high rates, that's a very small basis.

JACK MINTZ: May I make a very brief comment?

TANYA BENDER: No, go ahead.

JACK MINTZ: I would like to make one very brief comment about the specific proposal of Michael's. We have an exemption system in Canada for active business income, similar, although yours is actually more general than ours on the sources of income. We looked at the idea of actually having an exemption only for high tax countries. Now, you have kind of let the cat out of the bag, Michael, when you said you don't like cross crediting. But, effectively, an exemption system, only for high tax countries, effectively what you're doing is you're disallowing the cross crediting. [Interposing] Maybe that's something you want to do . . . [Interposing].

AUDIENCE MEMBERS: That's right.

JACK MINTZ: But it is certainly not as generous as a more general exemption system for active business income, and I would also suggest to you that there is absolutely no simplification at all, with your proposal, because you're still going to have to go through all of the calculations of surplus pots and everything else.

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MICHAEL GRAETZ (discussing David Bradford's paper from Panel II): This is not a tax that I've ever embraced and therefore refuse to accept David's invitation to spend the rest of my life thinking about all the problems, and solving all the problems with it, but let me explain why, and that is that I think that if the U.S. ever went to, and I have to say this is a big problem with my favorite business tax which is the Ceber proposal that Treasury proposed which is an income tax on businesses, not a consumption tax on businesses, but this problem is the same I'm afraid. And that is if the U.S. went to a situation where individuals are only taxing wages at the individual level, it's very hard for me to imagine that lasting very long. Now part of that is because I sat in the Congress in the Ways and Means Committee for months in 1969 when the committee tried to figure out how to tax Mrs. Dodge. Mrs. Dodge of the Chrysler origins had a million dollars in tax exempt interest and paid no tax and that exercise produced for us the entire minimum tax system that we now have and everybody can agree you know we have two income taxes, if you don't like this regular income tax you must really hate the other one, right?

Because we've got two, David, and so if you imagine not Mrs. Dodge, but just a whole host of people who are collecting interest, dividends and capital gains and no wages, with a lot of income, how quickly will it be before Congress at least does what's done in some of these European countries and enacts some schedule or low rate tax on them to begin financing government. Once that happens if you don't tax financial flows at the corporate level, the corporation becomes a shelter for that tax, whatever it is and you're in the suit, and so I mean you know an idea of that a value added tax of whatever sort but the normal sort, the flat tax sort, or the X tax sort is simpler than the income tax is not surprising. You know of course it's simpler when you go to emerging countries you don't tell them to start with the income tax, you tell them to start with a value added tax and so it's not surprising that it's simpler. I just don't believe it to be politically worthwhile, you know? This is not to say that it's not worth spending your life on. So . . .

VICTOR THURONYI: Ever generous, ever generous

LEO RASKIND: Victor?

VICTOR THURONYI: I've always thought I won't comment on this proposal because I haven't completely studied it, but one of the things that I find a little bit surprising in the presentation and the papers is that I always thought that one of the biggest problems with moving to any kind of a consumption tax in replacement of the income tax is the transition problem. You have existing stocks of tax paid wealth, existing housing stock and other consumer durables, so I think that these proponents of that sort of a change really need to focus there because I think some of the most serious problems are likely to be found there and I think that as a political matter it's very difficult to make such a change.

REUVEN AVI-YONAH: I guess I just want to echo what some other people have said. David is famous for turning our attention to the transition problem in the move from the income tax to the consumption tax. I mean that he has always said that without attention to transition, you can't possibly do anything, yet it seems to me that this paper kind of makes the jump, it doesn't say what is a transition problem internationally, which is this problem that has been referred to by Peggy Musgrave and Larry Lokken–namely, the fact that if we do this unilaterally we will have to be the only country in the world that has VAT, and everybody else has an income tax and what do you do about that. And there's obviously and maybe everybody else will adopt the X tax, but that will be a process that will take a long time and it will have some complicating effects and I think people have written about it. Davis Westbrook has one view, published another view, and other people have had their own views, but I don't think you can address an issue without writing about it. I don't think you can just leave that question out.

LEO RASKIND: Thank you. Yes, Jack.

JACK MINTZ: David handled all the responses to people getting worried about the consumption tax. Let me just raise kind of three issues that are related to your paper. First of all, on your question of the origin versus the destination basis, there is a question of economic grants. The two are not equivalent, at least in my view. I don't think they are equivalent in terms of taxation of economic grants but basically there is a good argument for moving to consumption tax in the sense that you would be able to tax economic grants reflected in the price of goods no matter where those economic grants are earned in the world because you're basically taxing the consumption of those economic grants and, on the other hand, an origin based tax would tax the economic grants within the jurisdiction. And those two things aren't necessarily the same in terms of the impact for each jurisdiction.

On the other hand, I would argue that in today's world, where economic grants are moving from what I would call origin based economic grants, in other words they're not as large, nor as important, as maybe knowledge-based assets within firms that makes maybe a stronger argument for countries switching over to consumption taxes in order to get some of the tax, some of the economic grants that are earned in the world.

The second point I want to raise is, I'm actually a bit surprised you're putting so much emphasis on the tourism. I mean one of the things we can learn is value added tax throughout the world and what issues are important. Tourism is an issue, but to me it serves second order compared to some of the other things. I mean, the electronic commerce this year is becoming important, but I don't think tourism is really the one that worries me. In terms of value added taxes I think the more important issues are often where the border problems arise. For example, the treatment of financial services versus non-financial activities, you know financial, most value added tax systems will exempt financial services and of course that leads to all sorts of issues in terms of drawing the border there. Under your X tax I would presume that you're not going to have a tax on banks because most of their income is financial, at least I'm not quite sure how you're handling financial institutions in your X tax proposal but I think that is an issue.

And then there's the question of non-profits in many countries and I would presume that's an important issue in the United States. Again, that creates border problems and they have to be dealt with in your kind of system. And I should mention that in Canada we went through basically a whole debate whether we should have a business transfer tax which is kind of a version of the X tax which is an accounts basis system versus moving to the value added tax. In the end we elected to go to the value added tax precisely because of all these border problems, and border issues. For example, it's not a matter of not allowing for the deduction of imports, but let's say if you buy goods or services from a non-profit and there's no tax on a non-profit then you have to disallow the deduction for the non-profit then you start having to keep track of the various transactions and you're soon into an input invoice system as a result. In fact, that's been the Japanese experience. They started with an accounts basis Japanese consumption tax and then they soon had to keep track of all the invoices, so they start moving into an invoice credit system under their accounts basis system, so that kind of gives me a question about why not just have a value added tax, there's lots of experience and why start with a completely different system.

And finally there's two interesting things I'd be interested in and maybe Philip West knows the answer to this. Recently there's a couple of countries that have been moving to the British ACE system where they're basically given an imputed deduction for equity and effectively it becomes equivalent to a cash flow tax. One of them is Italy, and also Italy's region tax is an origin based value added tax and the interesting thing is that the United States is given a foreign tax credit for the income portion of the IRAP in Italy at the regional level, which is the way the tax is calculated basically—the accounts basis revenue minus no deduction for payroll, no deduction for interest, but there is a deduction for depreciation of capital, not expense on the capital. It's the depreciation based on the corporate income tax rules. But there is a, part of that is given foreign tax credit. But the corporate level, the Italian system is now giving an imputed deduction for equity on new equity financing and I understand that's still getting a foreign tax credit which is kind of fascinating.

And then the other country that is very akin to your system is Croatia. Croatia has kind of the S based type of corporate income tax, very interesting system. It is really a rent tax on an origin basis. Interest dividends are exempt and capital gains exempt at the individual level, so it's just wages that are subject to tax. So Croatians have the system and it is my understanding that the U.S. gives them a foreign tax credit for it. So I would be kind of interested in seeing what is the policy in the United States because I don't understand it any more.

LEO RASKIND: We have about six minutes left. I'll split them between Philip West and Stanford Ross.

PHILIP WEST: I'll be very brief. Just to respond to Jack on the IRAP—the Italian regional tax—the economists in Treasury, and I'm not an expert in the area, but the economists in Treasury, I believe, rely on the depreciation deductions to distinguish the IRAP from the typical consumption tax and they cast it more as an income tax than a consumption tax and on that basis, you referred to it as a VAT yesterday, if that's accurate.

JACK MINTZ: There is a VAT on an income basis, there is a VAT on a consumption basis. There is an income basis VAT.

PHILIP WEST: I was going to say if it is indeed a consumption tax, we've got a problem because part of the reason that the congressional staffs have gotten comfortable with us granting credit and treaty is on the basis that it is an income base tax, and I believe, again, that's because of the deduction for depreciation. The only narrow point for David on the illusive inter-nation equity question, the point made in your paper, is that it seemed to you that inter-nation equity would be assured under an origin based X tax because the country's claim to revenue associated with income produced within its borders would be satisfied. But again, I harken back to the example of China and India. If markets are viewed as a legitimate basis on which to claim tax jurisdiction, I query whether an origin based—if every country went to an origin based X tax—whether that would satisfy this concept of inter-nation equity, if the existence of markets in a country is a legitimate basis on which to claim tax jurisdiction.

STANFORD ROSS: It's really a question for David Bradford that I don't know the answer to, but I wondered what his thinking was—and that is employment taxes really say they're roughly 30% across the OECD—I assume that your system just leaves all of that out because finances, pensions, and health care are sort of interwoven systems, and you're just replacing the general revenue taxes.

What about the incidences, though, of having all of this tax on consumption piled on top of this: 30% of employment taxes. There's something pragmatic about having a diversity of tax bases in terms of political acceptability. Just a pragmatic thought, and I think the one reason I'm really happy to be here is I'm learning a lot, but I also think that all of you who are really interested in looking at these problems holistically have to take account of, not only the size of the employment taxes, but, in most countries, they may double in the next 50 to 75 years. So if your 28% rate is so, and in the U.S., for example, you wind up with a 25 or 30% social security tax, I don't know. Does that seem like it's a good system? And in Michael's case yesterday, his great simplification of dropping all these individuals out—if there still needs to be what's held on for the social security taxes, and you start to introduce income tax like aspects in like Michael proposed in one article, how much simplification do you have? I'm just sort of asking questions about whether are you looking at this whole subject holistically enough from the standpoint of what's really going to be out there?

LEO RASKIND: David, at last you get to respond.

DAVID BRADFORD: What do you want to do Victor?

VICTOR ZONANA: Three minutes, and counting.

DAVID BRADFORD: Well a lot of great questions. I have a lot of answers, but not in three minutes. But I guess I'll start at the end with Stan. My broad cut is all taxes can basically fall on earnings and I think that's where they all fall on; so they all add up—almost all of them—add up to be taxes on earnings. So whatever the label may be, they're going to end up falling on earnings, so let me just leave it at that. We can push the point, thinking about detail so whatever you label it as, the incident is ultimately on earnings, in my view. Let me just leave it at that.

And I didn't understand Phil's question about inter-nation equity, and I don't understand the context to begin with, so let me duck that.

I was very interested in Jack's comments about the Italian system, and the Croatian system is indeed very close to what I've got in mind. Maybe I should make a bigger deal about that. I don't know any details and it may be full of quirkiness that I don't know about, but it's right on and I'm very interested that we credit it. That's great.

A lot of questions are not addressed in the paper and that I have, in many cases, addressed elsewhere. For example, Jack asked how am I going to think about financial institutions. I'll cite my own papers. I wrote a paper about how I think you should think about the taxation of financial institutions and it's published, and I'll send anyone the cite. I think those same ideas would carry over in the international context but I haven't thought that through.

I don't agree Jack—and this is a straight economics question that we should have a side bar on—that origin and destination systems, in principle, treat economic grants differently. I think they treat them the same, but I just don't agree with that.

Reuven, I didn't understand. Maybe you missed my comment about transition. I think transition is terribly important. I think step one is to decide whether the target is worth making a transition to. That's how I thought about this paper. It takes many books, of course, to get all these details worked through, but many of these things I've written and thought about quite a bit. Not much about this international sense, but the general problem of transition. Victor, this goes to you. I've got to give you a couple of papers to read because I've thought a lot about transition.

All I'm saying is let's go one step at a time. I didn't try to do everything in this paper: that's my only excuse. I think it's very important.

Larry, I really appreciate those helpful comments and thank you for pushing them in the direction that I think was more on the theme that I'm trying to push in this paper. Having said that, it would be intriguing to think about what would happen if we went unilaterally to an X tax. What about the politics? What would happen, what would flow, etcetera. How about those financial transactions. I haven't thought them through it. It would seem interesting to think it through. I think those would be serious and important issues. That's all I can say. I don't disagree with that. Although, again you remark many countries put in a 15% VAT somewhere along the way and somehow the world didn't end. They must have cut something else and are not doing those VATs. In other words, these kinds of transitions both can be made and have been made, and don't upset the whole world. The definition of business' permanent status—I love that question. I don't know the answer, and I'd like to think all those details through. I have written about it, by the way, in a comment and I'm sorry Vito didn't seem to know the paper. Charlie McClure did a paper for the Tax Law Review on taxing e-commerce, and I wrote a comment, of course, on it. It's in the Tax Law Review: about my thinking about how we would address these precisely, of course. I answered the question how to do it in this type of tax.

Many of the issues are the same in an income tax. I mean it's a matter of monitoring transactions—it's not that easy to do and you have to think it through but again, the fact that the timing is less important I think can be quite a bit of help.

Oh Larry, the other point—that you need a negative tax. Yes, I think you do. By the way, this is the same in an income tax. I think we basically agree on income tax conceptually and certainly think the business tax should be at a flat rate. It should be that you should get a deduction for losses and an inclusion for gains. That's conceptually right, but there are practical reasons that we don't allow that. There are sort of enforcement issues and you have to put some limit on vast cheating. If you can't, then the whole treasury is back into refund and it's political things going to Michael Graetz' plan. What can I say: if the politicians can't handle this, they can't handle it and that's an important thing to take into account in your design. It's hard for me to think that the existing system would really stack up and is worth it all, but maybe it would. Or maybe we're just going to end up with the existing system anyway because that's the only thing politicians can do.

I'll come back, and I'll finish on this, Victor, that to the extent my arguments are really taken on board, and I may be wrong, but I think if they're really taken on board, a lot of those "political problems" can really help a lot: when it becomes doctrine, a joint tax or at treasury tax in a policy, when it becomes doctrine—that this is the right way to think about things, a lot of things start changing happening, politically, and this discussion of the crediting the foreign tax is a great example. Is it okay with joint tax? Not to politicians. They don't know anything about it. The joint tax committee is really an intellectual issue, I think, and if we were to decide—intellectually, obviously we're not there—if we were to agree that this is the right thing to do, I think a lot of the political problems would be very, very different.

VICTOR ZONANA: Thank you David. Thank you Leo. It's clear that we have revisited the theory of international income taxation. We have solved all of the problems and we're ready now to turn to the next panel, which is going to address the issue of U.S. multinationals and the questions of competitiveness.