

**NOMINATIONS OF SEELEY G. LODWICK, SUSAN  
WITTENBERG LIEBELER, LYN M. SCHLITT, AND  
CHARLES E. CLAPP II**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

**NINETY-EIGHTH CONGRESS**

**FIRST SESSION**

**ON**

**NOMINATIONS OF**

**SEELEY G. LODWICK TO BE COMMISSIONER, UNITED STATES  
INTERNATIONAL TRADE COMMISSION**

**SUSAN LIEBELER TO BE COMMISSIONER,**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**LYN M. SCHLITT TO BE COMMISSIONER, UNITED STATES  
INTERNATIONAL TRADE COMMISSION**

**CHARLES E. CLAPP II TO BE JUDGE OF THE UNITED STATES  
TAX COURT**

—————  
**JUNE 14, 1983**  
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Printed for the use of the Committee on Finance



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**RODERICK A. DEARMENT, *Chief Counsel and Staff Director***

**MICHAEL STERN, *Minority Staff Director***

**(II)**

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# NOMINATIONS OF SEELEY G. LODWICK, SUSAN WIT- TENBERG LIEBELER, LYN M. SCHLITT, AND CHARLES E. CLAPP II

TUESDAY, JUNE 14, 1983

UNITED STATES SENATE,  
COMMITTEE ON FINANCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 3:17 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Robert Dole (chairman of the committee) presiding.

Present: Senators Dole, Danforth, Chafee, Heinz, Grassley, Bentsen, Bradley, and Mitchell.

[The press release announcing the hearing and the opening statements of Senators Dole and Durenberger follow:]

[Press Release No. 83-147]

## FINANCE COMMITTEE SETS HEARING ON ITC AND TAX COURT NOMINATIONS

Senator Robert J. Dole (R., Kansas), Chairman of the Committee on Finance, today announced that on June 14, 1983 the Committee will hear testimony on three nominees of President Reagan to become Commissioners of the International Trade Commission, and one nominee to become a judge of the U.S. Tax Court. Following the hearing, the Committee will consider the nominations in executive session.

The hearing will commence at 2:00 p.m. in Room SD-215 (formerly 2221) of the Dirksen Senate Office Building.

## INTERNATIONAL TRADE COMMISSION NOMINATIONS

The three nominees for ITC Commissioner are: Susan W. Liebeler, of California, Seeley G. Lodwick, of Iowa; and Lyn M. Schlitt, of Virginia.

Mrs. Liebeler since 1973 has been Professor of Law at Loyola Law School in Los Angeles. Prior to 1973 Mrs. Liebeler was engaged in the private practice of law, and also served as law clerk to Justice Gordon L. Files of the California Court of Appeals. She holds a B.A. in political science from the University of Michigan, and an LL.B. from UCLA Law School. In law school she was an editor of the law review and was elected to Order of the Coif. Mrs. Liebeler is being nominated as an Independent.

Mr. Lodwick until recently served as Undersecretary of Agriculture for International Affairs and Commodity Programs. He also has held the positions of secretary to the Commodity Credit Corporation, and Associate Administrator of the U.S. Department of Agriculture's Agricultural Stabilization and Conservation Service. A former Iowa State Senator, Mr. Lodwick also has farmed and managed livestock and grain farms, and farm supply and grain elevator businesses. Mr. Lodwick holds a degree in political science from Iowa State University. He is being nominated as a Republican.

Ms. Schlitt is an attorney with the Washington law firm of Covington & Burling, with which she has been associated since 1974. Her principal areas of practice have been international trade, antitrust, and trade regulation. She is a Phi Beta Kappa graduate of the University of Iowa, and holds a J.D. from the Georgetown University Law School where she was an editor of the Law Journal. Ms. Schlitt is being nominated as an Independent.

## TAX COURT NOMINATION

The nominee for the U.S. Tax Court is Charles E. Clapp II, of Rhode Island.

Mr. Clapp has been a partner in the Providence law firm of Edwards & Angell since 1959. He formerly was an associate of the firm and law clerk to Judge J. Edgar Murdoch of the U.S. Tax Court. Mr. Clapp holds an LL.B. from Harvard Law School and a B.A. from Williams College.

## OPENING STATEMENT OF SENATOR DOLE

I am pleased to welcome today Mr. Charles E. Clapp II, President Reagan's nominee to the U.S. Tax Court, and the President's three nominees to the International Trade Commission: Susan Wittenberg Liebeler, Seeley G. Lodwick, and Lyn M. Schlitt. All have fine records that qualify them for the positions for which they have been nominated.

Mr. Clapp has been a partner in the Providence law firm of Edwards & Angell since 1959. He formerly was an associate of the firm and law clerk to Judge J. Edgar Murdoch of the U.S. Tax Court. Mr. Clapp holds an LL.B. from Harvard law school and a B.A. from Williams College.

Mrs. Liebeler since 1973 has been professor of law at Loyola Law School in Los Angeles. Prior to 1973 Mrs. Liebeler was engaged in the private practice of law, also served as law clerk to Justice Gordon L. Files of the California Court of Appeals. She holds a B.A. in political science from the University of Michigan, and an LL.B. from UCLA Law School. In law school she was an editor of the Law Review and was elected to the Order of the Coif.

Mr. Lodwick until recently served as Undersecretary of Agriculture for International Affairs and Commodity Programs. He also has held the positions of Secretary to the Commodity Credit Corporation, and Associate Administrator of the U.S. Department of Agriculture's Stabilization and Conservation Service. A former Iowa State Senator, Mr. Lodwick also has farmed and managed livestock and grain farms, and farm supply and grain elevator businesses. Mr. Lodwick holds a degree in Political Science from Iowa State University. I am delighted that farmers will have Seeley to contribute his agricultural expertise to the Commission's work.

Ms. Schlitt is an attorney with the Washington law firm of Covington & Burling, with which she has been associated since 1974. Her principal areas of practice have been international trade, antitrust, and trade regulation. She is a Phi Beta Kappa graduate of the University of Iowa, and holds a J.D. from the Georgetown University Law School where she was an editor of the Law Journal.

All members of the committee have been provided with the biographical material on the nominees. We have reviewed the financial disclosure forms on each nominee, and the material they have filed with the Office of Government Ethics. In addition, Judge Tamm of the Judicial Ethics Commission has reviewed the filing of Mr. Clapp. I am satisfied that there are no problems in this area.

Also, the Director of the Office of Government Ethics has written to the committee approving the nominees' compliance with the Ethics in Government Act. The letters will be made a part of the record.

## STATEMENT OF SENATOR DAVE DURENBERGER BEFORE THE FINANCE COMMITTEE ON ITC NOMINATIONS

Mr. Chairman, I want to express my strong support for Seeley Lodwick's nomination to the International Trade Commission. I think it is highly important in both practical and symbolic terms to significantly raise the visibility of agriculture in our overall trade policy. Seeley Lodwick is just the person to perform that role as a member of the ITC.

Our farmers and subsequently, our entire economy have suffered from a lack of attention to agricultural policy in relation to trade policy. We have asked our farmers to fight tooth and nail for overseas markets but too often have allowed them to suffer from unfair import competition at home. We import \$17 billion of agricultural goods annually and the biggest importers into the U.S. are among our best allies and among our very best export markets. It is of the utmost importance that we be able to work closely and knowledgeably with these countries when agricultural trade questions or disputes arise.

With his broad and varied background Seeley Lodwick is an excellent nominee for the ITC and will help us reach our trade policy goals. He has hands-on, real world experience in agriculture and agriculture-related businesses. He knows what effects his decisions will have on the marketplace here in the U.S. As Under Secretary of Agriculture for International Affairs and Commodity Programs he has gained valuable experience about the workings of the international agricultural community.

While I have mentioned the importance of the ITC in our agricultural trade policy, any ITC nominee must have the ability to look at other issues as well. I think Seeley's experience as an elected office holder and as a businessman will serve him well as an ITC commissioner. Both of these positions required the kind of broad perspective that are so important to someone who would be an ITC commissioner.

The CHAIRMAN. I think what we may do is let all the nominees be introduced before we proceed to question them. We actually have four nominations, and I know some Senators want to introduce the nominees.

Senator Jepsen is here and would like to introduce one of the nominees for the ITC, Seeley G. Lodwick. Roger, why don't you go ahead and do that now, because I know Senator Pell and Senator Chafee are coming to introduce Mr. Clapp, and the Senators may not be able to stay if we have additional votes. So why don't you come on up with Seeley?

Mr. LODWICK. Thank you, Mr. Chairman.

The CHAIRMAN. Let me just say at the outset that Mr. Lodwick has served as Under Secretary of Agriculture for International Affairs and Commodity Programs, and I am certain this will be touched on by Senator Jepsen. I am delighted the farmers will have Seeley to contribute his agricultural expertise to the committee's work. That has been an interest of mine and I am certain other members of this committee.

I think all members of the committee have been provided with the biographical material of the nominees. We have reviewed the financial disclosure forms of the ITC nominees and the material they filed with the Office of Government Ethics, and I am satisfied there are no problems in this area.

Also, the Director of the Office of Government Ethics has written to the committee approving the nominees' compliance with the Government and Ethics Act and these have been made a part of the record. So we will be happy to hear from you, Senator Jepsen.

#### **STATEMENT OF HON. ROGER W. JEPSEN, U.S. SENATOR FROM IOWA**

Senator JEPSEN. Thank you, Mr. Chairman. It is a great honor to be able to introduce a fellow Iowan and a good friend, Seeley Lodwick, here on the Presidential nomination to the International Trade Commission.

Seeley has had a distinguished record of public service as well as having a wide background in agriculture and business. A former Iowa State Senator, Seeley served most recently as Under Secretary of Agriculture for International Affairs and the Commodity Programs. Seeley Lodwick is well known and respected among our Nation's farmers and in agriculture throughout the world.

At this time of irregular trade practices by competitors throughout the world, this appointment is important to Iowa and the entire Nation. As the number three man of the USDA, Seeley did a superb job in strengthening the farmer's position in world trade and in the climate of both real and rumored agricultural embargoes and sanctions Seeley distinguished himself as the most committed and articulate defender of the American farmer and his position in foreign markets.

I am delighted that Seeley has accepted another challenge in public service and I am especially delighted that President Reagan has nominated him to serve on the International Trade Commission. Among other things, Mr. Chairman, this panel rules on charges that foreign countries are sending subsidized exports to the United States with various unfair predatory subsidies being used by certain nations in connection with agricultural products. Seeley's nomination has come at a most opportune time for the farm community.

Finally, Mr. Chairman, the ITC is concerned with all trade issues. Seeley's superb qualifications will lend the Commission an experience and tested perspective from years of service to the agriculture community, to his State and to the Nation.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Jepsen. Do you have a statement to make, Mr. Lodwick?

#### **STATEMENT OF SEELEY G. LODWICK, COMMISSIONER-DESIGNATE OF THE INTERNATIONAL TRADE COMMISSION**

Mr. LODWICK. Mr. Chairman, I have no written statement. I would like to thank you, Mr. Chairman, and your associates for this opportunity and certainly I would thank the President for his nominating me to the Commission.

I would look forward, if I am approved, to assuming the responsibilities of working closely with you and your committee.

The CHAIRMAN. I think there may be questions from members who may not yet be present, but I want the record to indicate that you have the strong support, obviously, of Senator Jepsen, and also Senator Grassley, a member of this committee.

I would also like to submit for the record a letter from the master of the National Grange, Edward Anderson, and Mr. B. B. Sprattling, Jr., of the American Soybean Association, both of which strongly support your nomination. They will be made a part of the record.

[The information referred to follows:]

# national grange

1616 H STREET, N.W.

WASHINGTON, D. C. 20008

(202) 828-3507



Edward Andersen, Master

June 10, 1983

The Honorable Robert Dole  
 Chairman, Senate Finance Committee  
 SD-207 Dirksen Senate OB  
 Washington, D.C. 20510

Dear Mr. Chairman:

The National Grange has maintained a strong interest in international trade of agricultural commodities since our organization in 1867. We have continued that interest and concern down through the years, especially as it pertains to the agencies of government that oversee agriculture trade and determines trade policy.

The exports of agriculture commodities is of prime importance not only to the economic well-being of U.S. farmers, but to our general economy. Agriculture exports is one of the few bright spots in our total international trade picture, accounting for over \$28 billion in our current balance of trade.

It is therefore of the utmost importance that the agriculture industry be directly represented on the International Trade Commission (ITC) by a person knowledgeable in all aspects of agriculture production and marketing. Each decision made by the ITC can have a direct or indirect impact on the export of U.S. agricultural commodities. The Commission should have as one of its members, a person with the agricultural expertise to make the determination if any Commission recommendation or ruling will have a negative impact on the export of agricultural commodities.

We firmly believe that Seeley G. Lodwick fulfills these requirements. Mr. Lodwick has spent his lifetime in agriculture. Most recently as Under Secretary of Agriculture for international affairs and commodity programs. His responsibilities in that office will bring to the ITC full knowledge of U.S. farm programs and policy, plus experience of working with the production and export policies of competing nations.

We believe that he is uniquely qualified to be a member of International Trade Commission and strongly recommend his approval by the Senate Finance Committee and confirmation by the United States Senate.

Sincerely,

Edward Andersen, Master  
 The National Grange

EA:khv

cc: Full Committee on Finance  
 Dee Jepsen  
 John Block



**ASA Washington Office**

CAPITOL GALLERY BLDG.  
800 MARYLAND AVE., S.W.  
SUITE 510  
WASHINGTON, D.C. 20024  
PHONE (202) 654-7804

June 8, 1983

The Honorable Robert Dole, Chairman  
Committee on Finance  
U.S. Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The American Soybean Association takes this opportunity to offer its unqualified support for the nomination of Mr. Seeley Lodwick to be a Commissioner of the International Trade Commission (ITC).

The American Soybean Association has known and worked with Seeley Lodwick throughout his career as a soybean farmer in Iowa, a representative of the American Farm Bureau Federation, and as a government official. We have always found him to be conscientious, thoughtful and well informed on trade issues of importance to U.S. soybean producers. We are totally confident Mr. Lodwick will prove to be a valuable member of the ITC and capable of making the decisions necessary to carry out the mission of that important body.

We urge the Senate to expeditiously confirm Seeley Lodwick to be a Commissioner of the ITC.

Sincerely,

*B.B. Spratling, Jr.*  
B.B. Spratling, Jr.  
President

BBS:rc



The CHAIRMAN. I am wondering now, unless there is anything else that Senator Jepsen would like to add, if we might call up another nominee and then there may be questions, Mr. Lodwick, if you can just stand by.

Thank you, Senator Jepsen.

Senator Chafee, we are sort of jumping around here, but I know that you would now like to introduce Mr. Clapp, who has been nominated as a member of the U.S. Tax Court. While you are preparing, let me say that we are pleased to have Mr. Clapp before us today. He was formerly an associate and is now a partner in the firm of Edwards & Angell. Before joining the firm he served as law clerk to Judge Murdock of the U.S. Tax Court. He holds an LL.B. from Harvard Law School and a B.A. from Williams College.

All the members have been provided the biographical material for each nominee. We reviewed their financial disclosure forms, the material the ITC nominees filed with the Office of Government Ethics, and Judge Tanner of the Tax Court reviewed the material Mr. Clapp filed with the Judicial Ethics Commission. I am satisfied there are no problems in this area.

We have also been advised that the Director of the Office of Government Ethics has written our committee approving the nominees' compliance with the Ethics in Government Act and these letters will be made a part of the record.

The CHAIRMAN. Senator Chafee and Senator Pell—we are happy to have Senator Pell here also.

Senator CHAFEE. Thank you, Mr. Chairman. I appreciate your accommodation here because I do have to go immediately after my statement to chair a hearing at which EPA Administrator Ruckelshaus will be appearing upstairs, so I am very grateful to you for permitting us to go on right now.

I want to introduce to this committee, Mr. Chairman, Charles Clapp, who as you mentioned is a nominee to the U.S. Tax Court. I am familiar with Mr. Clapp over many years. We were in law school together. He subsequently went on to a very fine practice in Edwards & Angell, a firm that I later became associated with as a partner.

He has served public life as president of his town council in his community of Barrington, R.I. He is a member of the American Bar Association's tax section. He has served on the Committee on General Income Tax Problems. He has been chairman of the Rhode Island Bar Association's Tax Committee from 1966 to 1969 and from 1979 to the present. He has lectured extensively on taxation at colleges in Rhode Island and elsewhere.

He and his family have provided great service to our State and I consider this an outstanding nomination of the President for the U.S. Tax Court—that is, the nomination of Mr. Charles Clapp—and I highly endorse him and I thank this committee for its attention.

The CHAIRMAN. Senator Pell.

#### **STATEMENT OF HON. CLAIBORNE PELL, MEMBER OF THE U.S. SENATE FROM RHODE ISLAND**

Senator PELL. Thank you, Mr. Chairman. I want to second and fully support the nomination of Mr. Charles Clapp for the Tax Court.

He is a man of fine reputation, well regarded in his community, a graduate of Williams College and Harvard Law School, and it will be an appointment, I think, that will bring luster to the court and is one on which the administration and the President is to be complimented.

The CHAIRMAN. I want to thank both Senator Chafee, a member of this committee, and Senator Pell, the senior Senator from Rhode Island. We are very happy to have Mr. Clapp with us today.

Are there any members of your family here that you would like to introduce, Mr. Clapp?

Mr. CLAPP. My wife is here, Eleanor Clapp, and I would like to introduce her. Thank you, Senator.

Mr. CHAIRMAN. We are happy to have Mrs. Clapp here. I do have a few questions. I know the Senators may have other commitments and we may also have Senator Specter who would like to introduce one of the nominees, so we will excuse the Senators now. Thank you very much.

Senator PELL. Thank you very much.

The CHAIRMAN. Mr. Clapp, I think we might be able to complete your examination in just a few minutes. Do you have any statement you wish to make?

#### STATEMENT OF CHARLES E. CLAPP II, JUDGE-DESIGNATE OF THE U.S. TAX COURT

Mr. CLAPP. Just that I am honored to have been nominated by the President. I appreciate the support of Senators Chafee and Pell and I am pleased to be here today.

I am hopeful of confirmation and look forward to serving on the Tax Court.

The CHAIRMAN. Do you know of any possible conflicts, any possible conflicts of interest? I understand you had a discussion with the committee's chief counsel. Do you know of any problem that ought to be made a part of the record?

Mr. CLAPP. I know of none, sir.

The CHAIRMAN. Do you plan to move your primary residence to Washington?

Mr. CLAPP. I do.

The CHAIRMAN. I guess you will not have any difficulty spending most of the year here. We do not find it too hard; I mean, not too difficult.

Mr. CLAPP. I think there is plenty of work to be done over there, so we should be able to keep busy.

The CHAIRMAN. This committee tries to keep everybody confused. So far we have had a good record.

Do you have any suggestions on how you would be able to help reduce the backlog of Tax Court cases?

Mr. CLAPP. I wish I could come up with some magic answers to that. I feel it would be a little presumptuous on my part to try to make suggestions at this stage. There have been a number of excellent judges working on that problem over the years.

The only thought I might have would be if the court was a little tougher on continuances and made taxpayers and Internal Revenue Service go to trial. That might perhaps get more people onto the courthouse steps and force more settlements and get more cases resolved.

I am sure that the judges on the Tax Court have been working hard in that direction up to now, and I will only say that I will try to assist to make that happen and get cases decided as quickly as possible, and be on with it.

The CHAIRMAN. I guess it is fair to say we may have created additional work for the court. There have been criticisms of the pace and the frequency with which the Congress has enacted tax legislation over the last several years. We have had some major changes in the past 2½ years and I am certain that they are going to increase your work not because of bad tax policy, but I am certain it may create some more problems for the Tax Court.

We made a number of procedural changes to the tax laws in the past Congress—unified partnership tax audits, and new interest rules, among others. There may be other changes that we should make to improve the Tax Court's ability to handle tax cases. I will not ask you to go into detail now, but if there are any suggestions you might have either now or later, we would appreciate having that information, because I think we may be able to be of benefit to the court in some of the things that we do in the committee.

Mr. CLAPP. I will keep that request in mind and if I have any ideas I will be happy to pass them along and hope to be helpful.

The CHAIRMAN. Are there any questions of this nominee by either Mr. Mitchell or Mr. Heinz? I know of no other questions. We are very pleased to have you here. Mrs. Clapp, it is nice to see you. Thank you very much.

I am not certain when we will report out your nomination, but I have a feeling that you are probably in good shape.

Mr. CLAPP. Thank you for your consideration and I appreciate your time.

The CHAIRMAN. Now, I am pleased to have Senator Specter here today. Senator Specter is here to introduce Mrs. Liebeler. I would say, first of all, or I would repeat that we are pleased to have Mrs. Liebeler before us today. We have all been provided with biographical material of the nominee. We have reviewed the financial disclosure forms and we are satisfied there are no problems in this area. We have also had the letter from the Director of the Office of Government Ethics indicating compliance with the Ethics in Government Act, and that letter will be made a part of the record.

[The information referred to follows:]

Charles E. Clapp II  
 8 Holly Lane  
 Barrington, Rhode Island 02806  
 (401) 245-1836

Partner: Edwards & Angell  
 2700 Hospital Trust Tower  
 Providence, Rhode Island 02903  
 (401) 274-9200

Personal

Born Newton, Massachusetts Date: 12/25/23

Married Former Elinor L. Jones of Hingham, Massachusetts  
 Republican National Committeewoman for Rhode Island

Children Seven; Ages 29-17; two married

Education Harvard Law School, LLB - 1949  
 Williams College, B.A. - 1945  
 Deerfield Academy - 1941  
 Dedham High School - 1940

Business and Professional Activities

American Bar Association  
 Member of Tax Section  
 Committee on General Income Tax Problems; Committee  
 on Membership; Committee on Continuing Legal Education  
 Formerly - Committee on Employee Benefits; Committee  
 on Corporate Stockholder Relationships

Rhode Island Bar Association  
 Tax Committee, Chairman (1966-1969) (1979-1982)  
 Prepaid Legal Services Corporation, Director

Federal Tax Institute of New England  
 Lecturer  
 Executive Committee (1976- )

Federal Tax Forum of Rhode Island  
 Co-founder and Charter Member 1956  
 Board of Directors (1956-61) (1978-80)

University of Rhode Island Institute on Federal Taxation  
 Advisory Committee and Lecturer

IRS Providence District-Bryant College Institute on  
 Federal Taxation  
 Lecturer

Greater Providence Chamber of Commerce  
 National Legislation Committee

Rhode Island Chambers of Commerce Federation  
 Taxation and Public Spending Committee

Contributor to Tax Notes, American Bar Journal

Admitted to Practice

Commonwealth of Massachusetts	1949
State of Rhode Island	1956
State of Florida	1982
United States Supreme Court	1955
United States Court of Claims	1955
United States Tax Court	1955
Federal District Court of Massachusetts	1956
Federal District Court of Rhode Island	1956

Legal Background

Edwards & Angell (1955- ) Became partner 1959

- Law Clerk to Judge J. Edgar Murdock of United States Tax Court, Washington, D.C. (1952-55)

Richardson, Wolcott, Tyler & Fassett, Boston (1949-50)

Military Service

Lieutenant, U.S.N.R., Retired 1953

Korean War (1950-52)

Navigator on Staff of Commander Transport Division 24, Atlantic & Mediterranean (6th Fleet)

World War II (1943-46)

Commissioned 1944; CIC Officer & Navigator, U.S.S. Okanogan, APA 220, Pacific Theatre 1944-46

Political Activities

Barrington Town Council (1974-80)  
Council President (1976-78)

Barrington Republican Town Committee (1974- )  
Finance Chairman (1981- )

Barrington Charter Review Commission, Chairman (1981- )

Advisory Committee-REAGAN/BUSH Committee 1980

Fundraising-State Committee; Various State & Local Candida

Community Activities

United Way  
Narragansett Council, Boy Scouts of America  
Rhode Island Boy Scouts  
John Hope Settlement House  
St. Andrew's School, Barrington

United States of America  
**Office of  
Government Ethics**

Office of Personnel Management  
Washington, D.C. 20415

JUN 13 1983

Honorable Robert Dole  
Chairman, Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Susan Liebeler, who has been nominated by President Reagan for the position of Commissioner, International Trade Commission.

On December 2, 1983, we wrote to you that we had reviewed Ms. Liebeler's report in connection with her nomination to the ITC and had obtained advice from the Commission, and that based thereon we believed her to be in compliance with applicable laws and regulations governing conflicts of interest.

Ms. Liebeler has updated her report to reflect changes that have occurred since it was originally filed last fall. We have again reviewed the report, and we continue to believe that Ms. Liebeler is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,



- David R. Scott  
Acting Director

Enclosure

RESUME OF  
SUSAN WITTENBERG LIEBELER

---

**ADDRESS** 30373 Morning View Drive  
Malibu, California 90265  
(213) 457-2926 (Home)  
(213) 736-1097 (Office)

**EDUCATION** 1960-1963 University of Michigan  
B.A., Political Science, 1963

University of Michigan Law School  
1963-1964 (first year only)

1964-1966 UCLA Law School  
LL.B., June 1966  
Class Rank: 4th out of 214  
Senior Editor, Law Review  
Order of the Coif  
Stein Scholar

**EMPLOYMENT** August 1981 to July 1982  
Special Counsel to  
Honorable John S.R. Shad, Chairman  
Securities and Exchange Commission  
Washington, D.C. 20549

1973 to present  
Professor of Law  
Loyola Law School  
1441 West Olympic Blvd.  
Los Angeles, California 90015  
Courses taught: Corporations, Securities  
Regulation, Financial Institutions,  
Corporate Finance, Business and Tax  
Planning, Legal Ethics, advanced seminars  
in corporate and securities laws

Summer 1982  
Visiting Professor  
University of Texas Law School  
727 E. 26th Street  
Austin, Texas 78705

December 1980 to January 1981  
Consultant to Office of Policy Coordination  
Office of the President-Elect  
(As a consultant I participated in  
policy planning and evaluation for  
the independent regulatory agencies.)



**EMPLOYMENT  
(Continued)**

January 1975-August 1975  
Consultant to U.S. Railway Association  
Washington, D.C.

Fall 1974  
Consultant Environmental Protection Agency  
Washington, D.C.

1972-1973  
General Counsel  
Verit Industries  
Beverly Hills, California

Winter 1972  
Consultant to U.S. Price Commission  
Washington, D.C.

1971-1972  
Practiced law in Brattleboro, Vermont

1970-1971  
Associate General Counsel  
Republic Corporation  
Los Angeles, California

1968-1970  
Associate Attorney  
Greenberg, Bernhard, Weiss & Karma  
Los Angeles, California

1967-1968  
Associate Attorney  
Gang, Tyre & Brown  
Los Angeles, California

1966-1967  
Law Clerk to Hon. Gordon L. Files  
Presiding Justice  
California Court of Appeals  
Los Angeles, California

**BAR MEMBERSHIPS  
AND PROFESSIONAL  
ACTIVITIES**

Admitted to practice in California and  
Vermont. Member of State Bar of Cali-  
fornia; Los Angeles County Bar Association;  
Business and Corporation Section of Los  
Angeles County Bar Association; Women Lawyers  
Association of Los Angeles

**BAR MEMBERSHIPS**  
(Continued)

Summer 1977  
8th Annual Economics Institute for Law  
Professors at University of Miami Center  
for Law and Economics (three week economics  
course for law professors)

**PUBLICATIONS AND  
PAPERS**

Student Publications  
13 UCLA Law Review 167 (1966) A Charitable  
Armageddon: Commission v. Clay B. Brown

13 UCLA Law Review 503 (1966) Book Review,  
Jones, The Courts, the Public and the  
Law Explosion

Pensions and the Cost of Securities Law  
Protection -- The Implications of Daniel v.  
International Brotherhood of Teamsters, II  
Loyola Law Review 709 (1978)

August, 1979, presented paper, "The Effect of  
Government Regulation of Cash Takeovers" at  
a law and economics conference at the  
University of Chicago, sponsored by the  
Liberty Fund

April, 1982, presented paper "Regulation and  
Deregulation of Financial Markets" to the  
University of Rochester Graduate School of  
Management Executive Development Program in  
Washington, D.C.

A Proposal to Eliminate Shareholder Proposals  
(In progress)

Deregulation of Cash Tender Bids (In progress)

Book Review of Karmel, "Regulation by  
Prosecution" (In progress - to be published  
Texas Law Review)

**PERSONAL  
INFORMATION**

Born: July 3, 1942  
New Castle, Pennsylvania

Married: Wesley J. Liebeler  
Professor of Law  
UCLA Law School  
. Three Children

The CHAIRMAN. So we are very pleased at this time, Senator Specter, to have you before our committee.

**STATEMENT OF HON. ARLEN SPECTER, MEMBER OF THE U.S. SENATE FROM PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. I appreciate the opportunity to address the committee briefly this afternoon to introduce Mrs. Susan Wittenberg Liebeler, whom I have come to know through my association with her husband, Wesley James Liebeler.

I had occasion to meet Mrs. Liebeler perhaps about a year or year and a half ago when she had expressed an interest in public service. I reviewed her credentials and had a discussion with her at that time. As you can see from her résumé, she has had a very distinguished academic career, ranking fourth out of 214 at the UCLA Law School, from which she graduated in June 1966, was a senior editor of the Law Review, and Order of the Coif. Those are credentials, Mr. Chairman, which you recognize well from your days at law school.

And I know on the committee right now Senator Heinz recognizes well from his extensive contacts with the legal profession those are unique achievements. She has been a professor of law at Loyola Law School, as her résumé shows, for the past 10 years, specializing in corporations, securities regulation, and financial institutions.

The balance of her résumé shows a very outstanding career. She is being considered for the position of Commissioner of the International Trade Commission, a very important post, certainly, as it affects the entire country, especially as it affects States like Pennsylvania with the issues on steel and other imports.

I can say more about her husband, which is, I think, relevant to some extent on the qualifications of Mrs. Liebeler. Her husband and I were assistant counsels of the Warren Commission investigating the assassination of President Kennedy, and I considered it coincidental that some 19 years after working on that matter that I returned to Second Street to have a window backing out of the Hart Building overlooking the Veterans of Foreign Wars on the third floor, which is the same place that Professor Liebeler, who is now a very distinguished professor of law in the antitrust field, where he and I and others worked for many months on the investigation of the assassination of President Kennedy.

That was a unique experience because we worked day in and day out, morning, noon, and night for many, many months in a very, very close association. He is a man of very high intellect, very high integrity, very high credentials. And his qualifications, in conjunction with Mrs. Liebeler's résumé, that and the conversations I have had with her lead me to be very comfortable in presenting her to the committee today and urging her prompt recommendation for confirmation by the U.S. Senate.

The CHAIRMAN. Well, thank you very much, Senator Specter. We appreciate those words. I think there are questions of the nominees for the ITC and I know you have probably other commitments, but we appreciate your time and recommendation.

You know, if we do not get this mixed up, we may nominate the wrong people for the right job—well, we may have you on the Tax Court, but it will probably work out all right. There are enough vacancies.

Senator HEINZ. I agree with Senator Specter. I think she will be very good on the Tax Court.

The CHAIRMAN. What I would like now is to ask if you could just stand by, Mrs. Liebler, and if Senator Grassley could be brought in to say a few words about Mr. Lodwick—at least he told me he would. Otherwise I would not keep him back there.

And then Senator Warner is on his way.

The CHAIRMAN. Do not worry about it. It will work out.

Senator Grassley, Mr. Lodwick was introduced by Senator Jepsen. I indicated previously that he had Senator Jepsen's strong support and your strong support, and I understand that you would like to make a statement. I would appreciate it if the record would show the comments for Mr. Lodwick all in the same place.

Senator GRASSLEY. Well, Mr. Chairman, I would associate myself with the remarks of my senior colleague from Iowa. I also have my own statement. I will not take the time of the committee to read it, but my acquaintance with Seeley Lodwick goes back to the time when I had served, I think, 4 years already in the Iowa legislature when he was elected to the State senate in 1962, and I have known him to be a very dedicated public person besides being a person not only active in agriculture but also an advocate for agriculture, as well as being an operator itself. And then, of course, he has distinguished himself not only as a State legislator, but also in President Nixon's administration with the Department of Agriculture; also in this administration with the Department of Agriculture, and I think that he is going to go on to distinguish himself in somewhat a more independent role as a member of this International Trade Commission.

And I guess in every way, because of my 21 years of acquaintance with him, plus his demonstrated ability, I just fully endorse his nomination, and I want to thank the chairman and also my colleagues for their indulgence while I make these statements about a friend and a public servant.

So I will just endorse that nomination and ask that my statement be submitted for the record.

The CHAIRMAN. The statement will be made a part of the record. [The information referred to follows:]

#### PREPARED STATEMENT OF SENATOR CHARLES GRASSLEY

Mr. Chairman: I would like to urge all of my colleagues to support the nomination of a man I have known and respected for years, Seeley Lodwick, to the position of an International Trade Commissioner. He is an individual of proven character who has the experience and judgment to tackle the challenges which should come before the Commission in the years to come.

The International Trade Commission was established by Congress in 1917 to provide independent advice to the Congress and the President on trade issues. One important task undertaken by the Commission is to determine the economic effect of imports on different domestic industries. If a petitioner is seeking the imposition of countervailing duties or anti-dumping relief, the ITC must make a preliminary determination as to whether or not domestic injury has occurred.

Their final determination of domestic economic injury is an important step in obtaining relief from subsidized foreign products.

ITC commissioners are appointed for 9-year terms. There are six commissioners who establish the policy goals for the Commission. They determine what studies should be made of the economic effects of imports and they make critical decisions as to whether or not a domestic industry has suffered economic injury for countervailing duty or anti-dumping relief.

We are fortunate to have an individual as qualified as Seeley Lodwick nominated for this important post. Seeley served most recently as the Undersecretary of Agriculture for International Affairs and Commodity Programs for the Department of Agriculture. In that position, Seeley negotiated a 15 million ton grain sale to the Soviet Union which is estimated to earn American farmers \$3 billion. As undersecretary, he was responsible for spotting potential markets for U.S. exports and co-ordinating sales transactions with those buyers. Seeley has first-hand exposure to the business practices of foreign purchasers and the assistance provided to those purchasers by their governments. Furthermore, he knows the stiff challenges U.S. producers face in selling their products abroad, especially when the competition receives some form of government subsidy.

Seeley also served on the Reagan-Bush Committee as Director of the farm and food division. As the Iowa Administrator for my colleague Roger Jepsen, he developed valuable Congressional contacts which will be of continued assistance to him in his new position. He has served in the private sector as an agricultural consultant and as the Director of Governmental Relations for the American Farm Bureau, the nation's largest farm organization. His knowledge of agricultural policy and Congressional affairs have made him the choice of a variety of administrations for important positions. He has worked closely with legislative process for years and understands the importance of communication with Congress. The International Trade Commission was established to provide Congress with trade advice independent from the executive branch. As evidenced by his résumé, Seeley has the broad experience necessary to make an independent judgment on the merits of an issue.

His agricultural background should be a valuable asset to the ITC. It will be useful to the Commission when they are investigating violations under Section 22 of the Agricultural Adjustment Act. After the Secretary of Agriculture requests an investigation be undertaken, the ITC determines if the importation of an agricultural commodity threatens domestic support programs. Casein has been the focus of a recent Section 22 investigation. Also, Seeley's agricultural experience will be of assistance to the ITC because farm products have been one of America's primary exports. As all domestic industry searches for markets abroad, the challenges faced by agriculture will serve as lessons for industries to follow. Hopefully, Seeley's expertise will avoid so painful lessons of experience suffered by agricultural producers in establishing their world marketing position.

Consequently, I would like to strongly support Seeley Lodwick for this important position. As I have outlined, he possesses the requisite experience and judgment to make a valuable contribution to the deliberations of the Commission. He recognizes the importance of maintaining the independence of the International Trade Commission and the critical role of the ITC in the future of American trade.

The CHAIRMAN. I would also indicate that we received a letter from the Office of Government Ethics, which I think it should be noted publicly because certainly it is Mr. Lodwick's intent, that he has indicated he intends to resume his position as trustee of the William G. Lodwick estate, essentially a 1,200 acre family farm. 19 U.S.C. 1330(c) (5) prohibits a Commissioner from actively engaging in any business, vocation or employment other than serving as a Commissioner. Mr. Lodwick has stated to the Commission ethics officials that he will not actively participate in the management of the farm but rather be involved in decisions concerning long-term investments and improvements in the property. He will have some minor involvement in crop decisions, and I quote from the letter:

Based on this representation of his intended involvement with the farm, the Commission has determined that serving as a trustee of the estate farm would not violate 19 USC 1330(c)(5). Further, should a matter come before the Commission which involves a product produced on any of Mr. Lodwick's agricultural products, the Commission has indicated it will review the matter at that time to determine whether a waiver under 18 USC 208(b)(1) should be issued.

That is stated in the letter, and it will be made a part of the record. But because it was at some variance with the normal letter, I wanted to make certain everybody fully understood what it was all about.

[The information referred to follows:]

United States of America  
**Office of  
Government Ethics**

Office of Personnel Management  
Washington, D.C. 20415

JUN 1 1983

Honorable Robert Dole  
Chairman, Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Seeley G. Lodwick, who has been nominated by President Reagan for the position of Commissioner, International Trade Commission.

We have reviewed the report and have also obtained advice from the International Trade Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Mr. Lodwick has indicated that he intends to resume his position as trustee of the William G. Lodwick estate, essentially a 1200 acre family farm in Lee County, Iowa. 19 U.S.C. 1330(c)(5) prohibits a Commissioner from actively engaging in any business, vocation or employment other than serving as a Commissioner. Mr. Lodwick has stated to Commission ethics officials that he will not actively participate in the management of the farm but rather be involved in decisions concerning long term investments and improvements on the property. He will have some minor involvement in crop decisions. Based on this representation of his intended involvement with the farm, the Commission has determined that serving as a trustee of the estate (farm) would not violate 19 U.S.C. 1330(c)(5). Further, should a matter come before the Commission which involves a product produced on any of Mr. Lodwick's agricultural properties, the Commission has indicated it will review the matter at that time to determine whether a waiver under 18 U.S.C. 208(b)(1) should be issued.

Based on these commitments, we believe that Mr. Lodwick is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

*David R. Scott by h.s.*  
David R. Scott  
Acting Director

Enclosure

## SEELEY G. LODWICK

graduated Iowa State University 1942

served in First Marine Division 1942-45

farmed and managed livestock-grain farms in southern and southeastern Iowa

managed farm supply and grain elevator businesses

elected (1962) and re-elected (1966) to Iowa Senate

directed conservation activities and served as associate administrator, both in Agricultural Stabilization and Conservation Service of USDA during Nixon-Ford administrations

served as secretary of Commodity Credit Corporation

headed American Farm Bureau Federation's government relations activities in the Washington, DC office

organized and operated the six Iowa field offices for US Senator Roger W. Jepsen

chaired the Farm and Food Division, Reagan-Bush Campaign Committee

served as Under Secretary of Agriculture for International Affairs and Commodity Programs in Reagan Administration

received American Society of Farm Managers and Rural Appraisers distinguished service in agriculture award and American Society of Agricultural Consultants award in recognition of outstanding service to American agriculture.

married to Helen Barbre Lodwick and father of three married daughters.



The CHAIRMAN. Lyn, I wonder if you might come up. Senator Warner is on his way.

Lyn Schlitt's biographical material has been made available to all members of the committee. I will let Senator Warner indicate that you come from the outstanding law firm of Covington & Burling, with which you have been associated since 1974.

Here he is. We are happy to have Senator Warner.

**STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA**

Senator WARNER. Keep going, Mr. Chairman.

The CHAIRMAN. Lyn is a Phi Beta Kappa graduate from the University of Iowa, and holds a J.D. from the Georgetown University Law School.

I would just repeat for the record that we do have the biographical material. We have reviewed the financial disclosure forms of this nominee and the material she has filed with the Office of Government Ethics, and I am satisfied there are no problems in this area.

Also, the Director of the Office of Government Ethics has written to the committee approving the nominee's compliance with the Ethics in Government Act. And in this case also I would indicate that the nominee has agreed to recuse herself on any matter on which she has provided legal service to any party while in private practice. Further, she has agreed to consult with the General Counsel on a case-by-case basis concerning the advisability of her recusal on matters in which she had not been involved but which involve former clients of hers.

Based on that information, we believe the nominee is in compliance with all regulations. The information will be made a part of the record.

[The information referred to follows:]

United States of America  
**Office of  
Government Ethics**

Office of Personnel Management  
Washington, D.C. 20415

Honorable Robert Dole  
Chairman, Committee on Finance  
United States Senate  
Washington, D.C. 20510

JUN 3 1983

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Lyn M. Schlitt, who has been nominated by President Reagan for the position of Commissioner of the U.S. International Trade Commission.

We have reviewed the report and have also obtained advice from the International Trade Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Ms. Schlitt has agreed to recuse herself on any matter in which she had provided legal services to any party while in private practice. Further, she has agreed to consult with the General Counsel on a case-by-case basis concerning the advisability of her recusal on matters in which she had not been involved but which involve former clients of hers. Based thereon, we believe that Ms. Schlitt is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

*David R. Scott*  
David R. Scott  
Acting Director

Enclosure

## CURRICULUM VITAE

Lyn M. Schlitt

## PERSONAL:

2352 N. Vernon Street  
Arlington, Virginia 22207  
Office: 662-5338  
Home: 524-2152

Born: August 1, 1948  
Married: Richard E. Cohen,  
National Journal,  
congressional reporter  
No children

## EMPLOYMENT EXPERIENCE:

Associate, Covington & Burling, Washington, D.C.  
September 9, 1974 to present

## International Trade Practice

Broad international trade practice including representation before the International Trade Commission in various kinds of investigations conducted by the Commission, including investigations under the Escape Clause, Antidumping laws, Generalized System of Preferences, Section 203, Section 22 of the Agricultural Adjustment Act, Section 332, and others. Appearances before the United States Trade Representative concerning, inter alia, the Generalized System of Preferences, Section 301, and Section 22 of the Agricultural Adjustment Act. Advice and consultation concerning the General Agreement on Tariffs and Trade, including legal research and preparation of memoranda for use by ISAC committees in connection with Multilateral Trade Negotiations.

Participation in legislative efforts, including bill drafting, negotiation, preparation of testimony, and representation before Congressional committees, including the International Trade Subcommittees of the Senate Finance Committee and House Ways and Means Committee.

Customs practice before the Court of International Trade, U.S. Customs Service, the Office of Foreign Assets Control and the Treasury and Commerce Departments with respect to classification and valuation, entry procedures, import licensing, import restrictions, antidumping investigations, and the Steel Trigger Price Mechanism.

## Antitrust and Trade Regulation Practice

Advice, consultation and litigation with respect to anti-trust laws, including major antitrust class action litigation under the Sherman Act. Advice and consultation concerning distribution practices under the Sherman Act, Robinson-Patman Act, and the Federal Trade Commission Act. General trade regulation practice with emphasis on distribution practices, trade associations and international trade-related antitrust problems.

## EDUCATION:

Georgetown University Law Center, J.D., June 1974.

Editor, Georgetown University Law Journal.

Rank: Not officially provided, but reportedly upper  
3 percent of class.

University of Iowa, 1970.

Honors Majors in Classical Greek, Religion, English Literature.

Phi Beta Kappa, Magna Cum Laude.

President's Honors Award for Outstanding Scholarship.

President, Eta Sigma Phi, Classics Honorary.

## ORGANIZATIONS:

American Bar Association

Antitrust Section

Editorial Board, Antitrust Law Developments, 1977-81.

Responsible for, inter alia, international and EEC  
antitrust sections.

Member of Robinson-Patman Monograph Committee, 1978-82.

Member, International Antitrust Committee.

Administrative Law Section

Chairman, Antitrust and Trade Regulation Committee, 1980.

Vice-Chairman, Antitrust and Trade Regulation Committee, 1979.

Member, ABA Intersection Committee on Implementation of the  
Multilateral Trade Negotiations, 1979.

International Law Section, Member.

District of Columbia Bar Association

Steering Committee, Division XII, International Law and Trans-  
actions, 1977-79.

Vice-Chairman, Customs Tariff and Trade Committee, Division XII,  
1979-80.

Chairman, Antitrust Committee, Division II, Antitrust and  
Consumer Affairs, 1977-78.

The CHAIRMAN. Senator Warner, we are very pleased to have you with us today.

Senator WARNER. Thank you, Mr. Chairman. I shall not detain the Chair and other members of the committee. I have met privately with this distinguished American, and I am satisfied that she has not only the credentials, but indeed, an outstanding record to bring to this important position.

Accordingly, I would like to submit for the record my statement which contains many of the outstanding achievements which have been recited by the Chair, truly an extraordinary professional, and I think our Government is privileged to get these servants.

The CHAIRMAN. Thank you very much, Senator Warner, and your statement in support of the nominee will be made a part of the record. [The information referred to follows:]

**STATEMENT OF SENATOR JOHN WARNER ON THE NOMINATION OF LYN M. SCHLITT OF VIRGINIA TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1985**

Mr. Chairman, there are two kinds of people in Virginia: those who had the good fortune to be born there, and those who had the wisdom to move there.

Lyn Schlitt had the wisdom to move there; for that I am grateful.

Ms. Schlitt was nominated by the President to fill the remainder of the term on the United States International Trade Commission which expires December 16, 1983. She comes to this committee for confirmation with an outstanding record as an attorney with nine years of international trade, antitrust and trade regulation law practice experience.

She graduated with honors from the University of Iowa in 1970. Her undergraduate degree was in classical Greek, Religion and English, and she was a recipient of the President's honor award for outstanding scholarship, the Eta Sigma Phi classics honorary, and was elected to Phi Beta Kappa.

In 1974, Lyn Schlitt graduated from the Georgetown University Law School. During her law studies she brought credit to herself as a member of the Georgetown University Law Journal with a superior academic record.

She is presently associated with one of Washington's leading law firms. She is a member of the American Bar Association and the District of Columbia Bar Association, and is active in various sections and committees within each of these organizations dedicated to international and domestic trade law.

Mr. Chairman, I commend Lyn Schlitt to you for your favorable consideration, and urge her confirmation.

The CHAIRMAN. Now, I wonder if we might have all three of the ITC nominees come forward, and what I will do is ask a couple of general questions, and then I know other members of the panel would like to address questions to all or one or more of the nominees.

I will ask each nominee three questions, maybe starting with Ms. Liebler, and then go on across.

You have discussed possible conflicts of interest with the committee's chief counsel?

**STATEMENTS OF SEELEY G. LODWICK, NOMINEE TO BE COMMISSIONER OF THE INTERNATIONAL TRADE COMMISSION; SUSAN WITTENBERG LIEBELER, NOMINEE TO BE COMMISSIONER OF THE INTERNATIONAL TRADE COMMISSION; AND LYN M. SCHLITT, NOMINEE TO BE COMMISSIONER OF THE INTERNATIONAL TRADE COMMISSION**

Ms. LIEBELER. Yes.

The CHAIRMAN. And do you have any conflict? Do you know of any conflicts?

Ms. LIEBELER. There are none.

The CHAIRMAN. Lyn, the same question.

Ms. SCHLITT. Yes, Senator, I do have some potential conflicts with respect to my private law practice, and as indicated in the letter that you just read, it is my intention to recuse myself from any matter in which I am currently involved, and, on a case-by-case basis, to recuse myself from other cases involving former clients.

It is my intent, however, to the maximum extent that I am able, to participate fully in the Commission' activities.

The CHAIRMAN. Right. And that is why I read that portion of the record so the record would be clear that there are those two areas.

Mr. Lodwick, I know you have discussed possible conflicts of interest with the committee's chief counsel, Rod DeArment. Do you know of any possible conflicts or any reason that would preclude you from serving in this office to which you have been nominated?

Mr. LODWICK. None, Mr. Chairman, except those described in the letter.

The CHAIRMAN. Right. And again, I read that portion of the letter so there would be public indication in that one area that you will not be actively involved. You will be involved in some decisions with reference to crops and I think that is self-explanatory.

And I would just ask do you know of any other reason, Mrs. Liebeler, that you could not serve in the position for which you have been nominated?

Ms. LIEBELER. I know of none. There is none.

The CHAIRMAN. Ms. Schlitt, do you know of any reason?

Ms. SCHLITT. No, sir.

The CHAIRMAN. And I have just asked Mr. Lodwick.

Now, I think it is fair to say that this committee feels very strongly about the International Trade Commission, and I know that Senator Mitchell, Senator Danforth, Senator Heinz and others will express that in their questions, and the purpose of the questions is to make certain there is a clear understanding at this time between the nominees and the committee of primary jurisdiction.

There have been a number of areas that have come before this committee—Mrs. Liebeler will recall the hearing last year, and I know that some of those questions may be raised by some of the members.

I would at this time yield to Senator Heinz, following the early bird rule, for perhaps maybe 10 minutes of questions, and then Senator Mitchell for 10 minutes, then Senator Danforth for 10 minutes and so on.

Will that be satisfactory, gentlemen?

Senator HEINZ. Mr. Chairman, thank you very much.

Because time is short, I will try to ask questions of each, but I want to ask Mrs. Liebeler one question first, and that is this:

Ms. Liebeler, it is my understanding that the last two people appointed to the ITC will not be eligible to serve as chairman due to the way it works, and it is my understanding that were your papers to be signed first, of these three nominees, you would therefore be the next Chairman of the ITC.

My question is, Is it your understanding that your papers will be signed first?

Ms. LIEBELER. That is something that I have discussed with the White House, and that is something that I do expect to occur.

Senator HEINZ. So you have discussed that with the White House.

Ms. LIEBELER. Yes.

Senator HEINZ. And they said they will sign your papers first, so you will be the next Chairman of the ITC, assuming that the committee reports your nomination and the Senate acts favorably.

Ms. LIEBELER. I believe that the President would sign my papers first. If I am confirmed, I would be eligible for the chairmanship if my papers are signed first. It does not occur automatically. It is up to the President.

Senator HEINZ. Although the way the Commission has worked in the past, it is—while nothing in this world is automatic, nonetheless, that is near automaticity, as I think we all know.

I wanted to establish that because clearly as a prospective Chairman of the U.S. International Trade Commission, you will be called upon to speak out on matters of overall trade policy and you will be called upon to do more than other members of the Commission.

Now, generally speaking, what kinds of trends do you see developing internationally in terms of world trade? Do you think that the world is becoming more protectionist or less protectionist?

Ms. LIEBELER. Senator, it is my understanding that in the position as a Commissioner of the ITC, if confirmed, or if I should be chosen as chairman once I am a Commissioner, I would not be involved in trade policy issues, and I would be disinclined to express any opinion on trade policy matters.

Senator HEINZ. Well, do you think that the world is becoming more protectionist? Are we becoming more protectionist?

Ms. LIEBELER. I have read articles in the press which make that suggestion. On the other hand, you see countervailing views. I do not think it would be appropriate for me to express an opinion.

Senator HEINZ. You do not think it would be appropriate to express an opinion for what reason?

Ms. LIEBELER. Because I view my prospective appointment to the Commission as not involving trade policy. I think—

Senator HEINZ. But you are going to be making judgments about trade policy.

Ms. LIEBELER. I do not see the role of a Commissioner in quite that way. I think Congress has been fairly explicit in defining the Commission's role as a quasijudicial role, and—

Senator HEINZ. Well, let me give you an example of a kind of judgment that is at the heart of trade policy that you will have to make.

If you read the Trade Act carefully, it says that there are a lot of things the ITC must consider in determining either injury or a threat of injury with respect to escape clause, section 201 cases, and those things include idling of capacity, unemployment or underemployment in the industry, the inability of a significant number of firms in the industry to operate at a reasonable level of profits and so on.

For the threat of injury, the ITC considers decline in sales, downward trends in production, profits, employment and an increase in imports.

Now, let's take an industry that in fact both Senator Danforth and I know a little bit about, the domestic shoe industry. St. Louis used to be, if I get this right, first in shoes, first in booze, and last in the National League.

Senator DANFORTH. American League. [General laughter.]

Senator HEINZ. The American League.

As a Pittsburgh Pirate fan, in the National League, we always hope for the best.

In any event, the American shoe industry has lost half of the firms and workers in the last decade and has received two unanimous findings of injury from the ITC in the last 8 years.

What if the 15 largest firms in the shoe industry, who account for about 50 percent of production, are doing pretty well, they are making a reasonable amount of money, but the hundreds of smaller firms who produce the other 50 percent of the shoes are not making much money, just barely hanging on? Would you consider that industry being injured by imports?

Ms. LIEBELER. I would attempt to apply the statute as Congress—

Senator HEINZ. I just read you the statute.

Ms. LIEBELER. That is right. I understand that. I am a very careful lawyer. I would really, before I made a judgment on that, Senator, have to look at a record, have to see the specific numbers and the specific facts. I would have the benefit of briefs on both sides before I would reach a determination. I would be very wary of making—

Senator HEINZ. Do you have—what we have got is a case that calls for judgment. You have got half the firms doing OK, half the firms are not, and the question is, irrespective of the industry—let's make it a hypothetical industry to make it easier on you—is that injury or not?

If half the firms are on the brink of going out of business and half are not, is the industry being injured?

Ms. LIEBELER. I would have to know, Senator, I would have to look at the various factors that you just kindly read to me and apply each of those factors, see where the numbers came out to make a judgment.

Senator HEINZ. Well, let's assume that half the firms are filing for bankruptcy and half are mounting successful takeover bids for General Motors, all right? [General laughter.]

Senator HEINZ. That half are doing extraordinarily well and half are strangling. By half, I mean firms accounting for half of production.

Now, is that—now, we have tried to make it very clearcut so it is not a numbers issue. It is an issue issue. How do you begin to analyze that?

Ms. LIEBELER. I have your drift, and the first question that occurs to me is the causation question. Because you have told me that half the firms in the industry are doing well, I would want to know what the cause of the injury to the half that were not doing well is. Somehow you have got to connect it with imports.

Senator HEINZ. Let us assume for the purposes of argument that the cause of this injury, the largest single cause of this injury is imports, that is to say, it is larger than any other cause, which gets it over the causation hurdle. You know, let's assume that because it is a legitimate question. Your condition is a legitimate condition.



Ms. LIEBELER. And in applying—

Senator HEINZ. And now the question is are they being injured? We have established, because we—

Ms. LIEBELER. Well, you have just gotten me over my hurdle.

Senator HEINZ. No; all we have done is establish the cause. We have established the cause of injury of half the firms. The other half are not being injured. They are making money.

Ms. Schlitt, do you want to take a crack at this?

Ms. SCHLITT. I agree with Ms. Liebeler that in this hypothetical industry we would have to have a variety of facts about the various indicia of injury. Profitability is the one that you have given us, and profitability is only one of the relevant facts that would establish whether serious injury existed.

If you asked me if, were there other indicia of injury sufficient to constitute serious injury, is it possible with this 50-50 split that the industry is seriously injured, I would say yes; there is a possibility that industry is seriously injured. But, profitability alone would be not sufficient to tell me that.

Senator HEINZ. I think that is correct because the statute as I read it said there are a number of factors such as trends in production, trends in employment, and so forth.

Do you have a response to that, Seeley?

Mr. LODWICK. Senator, no, except that obviously there are many factors, as you indicate, that have to be taken into consideration, and as a prospective member of the ITC, I would certainly want to look at all of the factors that are enumerated before making a judgment.

Senator HEINZ. Well, my time has expired. Thank you very much.

The CHAIRMAN. Thank you, Senator Heinz.

I am wondering, before I go to Senator Mitchell, if there are any members of your families any of you would like to introduce?

Mr. LODWICK. Mr. Chairman, my wife is in the back of the room. May I introduce her?

The CHAIRMAN. Surely. Thank you.

Ms. SCHLITT. Mr. Chairman, sitting right behind me here is my husband, Richard Cohen.

The CHAIRMAN. I thought I recognized him as your husband.

Ms. LIEBELER. My family is in California.

The CHAIRMAN. Thank you.

Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

As you know, ladies and Mr. Lodwick, the law governing ITC membership states that not more than three of the Commissioners shall be members of the same political party.

Therefore I would like to get it clear on the record and ask each of you, beginning with Ms. Liebeler, are you now a member of a political party?

Ms. LIEBELER. I am registered in California as an Independent, and I have been registered as an Independent since the age of 21.

Senator MITCHELL. So you have not ever been registered as a member of a political party.

Ms. LIEBELER. No, sir.

Senator MITCHELL. All right.

Mr. Lodwick, are you now a member of a political party?

Mr. LODWICK. Yes, I am Senator. I am a member of the Republican Political Party.

Senator MITCHELL. Thank you.

Ms. Schlitt, are you a member of a political party?

Ms. SCHLITT. No, Senator, I have never registered with a party. I have always been an Independent.

Senator MITCHELL. You have been since the time you registered to vote first.

Thank you very much.

Ms. Liebeler, I understood your answer to Senator Heinz's question regarding the chairmanship that you have had discussions with representatives in the White House and you have been assured that you will be designated as Chairman of the Commission?

Ms. LIEBELER. No, sir. What I meant to say was that I have been told that I will be eligible for the chairmanship. That decision does not have to be made by the President until next year.

Senator MITCHELL. Have you been assured of anything beyond that other than the fact that you would be eligible?

Ms. LIEBELER. We have had—I have had discussions about the chairmanship, but I would not view our discussions as a promise of the chairmanship. I have not been promised the chairmanship.

Senator MITCHELL. Well, if you had discussions about it but you have not been promised it, what have been those discussions?

Ms. LIEBELER. The tenor of those discussions focused on the statute. We talked about the terms of the statute and the fact that the most junior non-Republican will not be eligible for the chairmanship. That is why my papers would be signed first, so that I would be eligible for the chairmanship.

Senator HEINZ. Would Senator Mitchell yield?

Just to clarify the previous discussion, what I asked Ms. Liebeler about was whether there was a representation that she had gotten from the White House that her papers would be signed first, and she said, as I understood her answer, yes, there was a representation that her papers would be signed first.

I did not ask her whether she had been promised the chairmanship.

Senator MITCHELL. Well, that is what I am asking.

Senator HEINZ. But given the ground rules, which is that they are not going to appoint the Democratic member, it amounts to the same thing.

Senator MITCHELL. Right.

The only purpose for the order of signing would be indeed to designate you as Chairman, correct?

Ms. LIEBELER. Yes.

Senator MITCHELL. And is it not fair to say that you expect to be designated?

Ms. LIEBELER. That I hope to be Chairman, yes.

Senator MITCHELL. And that neither Ms. Schlitt nor Mr. Lodwick have any such expectation, is that correct, Ms. Schlitt?

Ms. SCHLITT. That is correct.

Senator MITCHELL. Mr. Lodwick.

Mr. LODWICK. Senator, no expectations and no conversations.

Senator MITCHELL. Now, I would like to discuss briefly the status of the Commission as an independent agency.

Ms. Liebeler, I understand you have been questioned about that previously before this committee.

Although not a member of a political party, did you serve as a consultant to the present administration transition team?

Ms. LIEBELER. Yes, I did.

Senator MITCHELL. And how long did you work in that capacity?

Ms. LIEBELER. I was a consultant for approximately 30 days, during my Christmas break from teaching.

Senator MITCHELL. Can you explain to us how it is that you who are not a Republican and a person who has been independent throughout your career happened to serve as a member of the transition team for a President-elect?

Ms. LIEBELER. Yes, sir. I was asked to, because of my expertise in securities regulation, to evaluate the transition report on the Securities and Exchange Commission, which I did. That was my primary function.

Senator MITCHELL. I will ask each of you, in order, to comment briefly on your understanding of the status of the International Trade Commission, whether you regard it, its independence. Is it part of the administration? Is it an independent agency? How do you view it?

Yes, we will start with you, Ms. Liebeler, and we might as well go in alphabetical order, Mr. Lodwick and then Ms. Schlitt.

Ms. LIEBELER. It is my clear understanding that the ITC is an independent regulatory agency, independent of the executive branch.

Senator MITCHELL. Mr. Lodwick.

Mr. LODWICK. I understand it is an independent agency, Senator, independent of the executive branch. Obviously, there are several evidences of that, not the least of which is that the budget goes directly to the Congress as compared to going through the Office of Management and Budget.

Senator MITCHELL. Ms. Schlitt.

Ms. SCHLITT. Yes, I understand that it is an independent agency, although upon occasion the Commission may respond to requests for information from specific committees of Congress, or the Executive. It is independent, especially in any of its quasi-judicial actions.

Senator MITCHELL. Mr. Lodwick, according to the materials provided us by the committee staff, you are quoted as saying as recently as a couple of months ago when your nomination was announced in Iowa, and I quote—I want you first to tell me if this is an accurate quote appearing in the Iowa newspapers by you—“The Commission is an important cog in the President’s program of increased emphasis on foreign trade.”

First, did you make that statement?

Mr. LODWICK. If I recall correctly, Senator, I did make it, yes.

Senator MITCHELL. Could you tell me how you reconcile that statement with your statement you just made regarding the independence of the ITC?

Mr. LODWICK. Yes.

Senator, I view the International Trade Commission as an independent agency, and it is one of several elements in our whole Gov-

ernment that has to do with trade. Certainly the executive branch has to do with trade, and Congress most certainly has to do with trade. So I view this as one of the instruments of Government in the matter of trade.

Senator MITCHELL. Well, of course, being an instrument of Government and being a cog in the President's program are two rather different things, and I merely raised the question to point out our deep concern for the independence of the ITC, not as part of an administration's program. And I hope you will view it in that manner.

Mr. LODWICK. Yes, I certainly view it in the manner in which you describe.

Senator MITCHELL. In 1980, during the presidential campaign, President Carter asked the International Trade Commission to speed up its deliberation on the automobile escape clause case. The ITC at that time had as its chairman a Democrat. He turned down the President's request.

Would any of you have any hesitation in turning down a similar attempt of President Reagan to influence the ITC's activity?

Ms. Liebeler?

Ms. LIEBELER. No.

Senator MITCHELL. Do you feel your prior service as a member of the Reagan transition team would make it difficult for you to turn down a request?

Ms. LIEBELER. Not at all, sir.

Senator MITCHELL. Mr. Lodwick?

Mr. LODWICK. No, it would not pose any problem at all. I view the International Trade Commission as an independent agency, and if confirmed by the Senate, the responsibility of a Commissioner is to that Commission, and certainly to keep the agency independent.

Senator MITCHELL. Ms. Schlitt?

Ms. SCHLITT. My understanding is that under section 201, the Commission has a responsibility, to the extent it is able, to expedite investigations, and I believe that a request to expedite is not improper.

However, I would certainly have no compunction whatsoever about turning down such a request from the administration if it appeared that the full statutory time was needed in order to obtain a complete record, to have a correct decision on the merits.

Senator MITCHELL. Thank you.

I would like to ask each of you again in alphabetical order, generally the ITC investigates industries on a national basis. However, under some circumstances the Commission may examine the impact of imports on a regional basis.

For many industries facing competition from imports in regionally isolated markets, this is an important provision of the law.

Can you explain to me how you would approach the question of determining injury to a regional industry if you were to become an ITC Commissioner?

Ms. Liebeler?

Ms. LIEBELER. Fortunately, I have guidance from Congress which, in the statute, sets forth factors to be considered in determining the presence of a regional industry: First, if producers within the particular region sell all or almost all of their production in the region;

second, that the demand in the region is not supplied to any substantial extent by a domestic producer outside the region; and the last factor is if the producers of all or substantially all of the production in the region are materially injured or threatened with material injury. Therefore you define a regional industry, even if the total domestic industry was not injured.

Senator MITCHELL. Thank you, Ms. Liebeler.

Mr. Lodwick.

Mr. LODWICK. Senator, I am not as familiar with this particular provision as I should be. I would assure you, Senator, that if I am confirmed, I would be familiar with it before making judgment.

I would add that as far as guidelines go, Senator, that there are three to which I would look. One would be the law; another would be the legislative history; and certainly, the last one would be the history of ITC cases.

Senator MITCHELL. I thank you, Mr. Lodwick, and I hope you will familiarize yourself with this. This is a matter of critical importance to many industries. You are personally familiar with the problem regarding Maine potatoes, and that is one aspect of the situation which is of deep concern to us and many others. I hope you will familiarize yourself with that aspect.

Ms. Schlitt.

Ms. SCHLITT. As far as the factors that Mrs. Liebeler set forth, I believe they are correct. Although not listed with those factors, a bit further down in the statute I think that it also points out that it is relevant if the subsidized or LTFV imports are concentrated heavily in the region which has been identified.

Senator MITCHELL. I just want to say, Mr. Chairman, my time is up. I have several other questions which I will submit in writing to the nominees, and I would ask to get a complete written statement as soon as possible in response to those questions.

Senator HEINZ. Thank you, Senator Mitchell.

Senator Danforth.

Senator BRADLEY. Mr. Chairman, since we do have a vote, will the nominees remain for at least time for us to go over and vote and come back?

Senator HEINZ. Yes.

Senator DANFORTH. That makes sense, Mr. Chairman. I do not have very many questions to ask, but since we only have 6 or 7 minutes left.

Senator HEINZ. The Chair will declare a recess not to exceed the amount of time it takes for us to get back.

[A brief recess was taken.]

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Most people, I guess everyone who has spent any time at all in the trade field, develops a bias, a philosophical position, and my guess is that you would be no exception. My question is whether you hold any general views on international trade which you believe would bias your work on the ITC?

Ms. LIEBELER. I have no bias or preconception of trade policy at all. I do not believe I would be at all biased in serving as a commissioner.

Ms. SCHLITT. I have represented both domestic industries and importers throughout my career, and I believe I understand the prob-

lems of each. But I do not believe it is appropriate for a commissioner to bring her own philosophical biases, if any, to the Commission's deliberations. Rather, the purpose that Congress intended, as I understand it is, to the best of the Commissioner's ability, to apply the law to the facts in the case.

Mr. LODWICK. Senator, I think this needs to be approached on a case-by-case basis, certainly looking for guidance from the law and from the legislative history and certainly recognizing the past cases in the ITC. No; Senator, I do not have any bias at this time.

Senator DANFORTH. Ms. Liebeler, with respect to the line of questions asked by Senator Mitchell and whether or not the law is complied with on no more than two members of the same political party, you have held several Government positions during your career. Have any of these positions required any kind of political clearance?

Ms. LIEBELER. Senator, if "political clearance" is a word of art, I do not recognize the word, so I do not want to stumble on something I do not understand.

Senator DANFORTH. Have any of them been schedule C appointments?

Ms. LIEBELER. Not to my knowledge.

Senator DANFORTH. So in your work for the SEC and the EPA and so forth, these were not in any sense political jobs. They were professional jobs.

Ms. LIEBELER. They were professional jobs. The word "schedule C" does not mean much to me. To the best of my knowledge, I was not a schedule C appointment at the Securities and Exchange Commission. But I must tell you, I am not sure what a schedule C is. But it was not a political appointment to my understanding.

Senator DANFORTH. That would be other than civil service. That is, it would be a job that is not covered by civil service, but is more of a political-type job.

Ms. LIEBELER. I do not believe my job at the SEC was that at all.

Senator DANFORTH. And you have not been required or asked to work for any particular political cause as part of your employment?

Ms. LIEBELER. No, sir.

Senator DANFORTH. Or as ancillary to your employment?

Ms. LIEBELER. No. I have never worked for any political cause, nor have I been asked.

Senator DANFORTH. You never worked for a political party.

Thank you very much.

The CHAIRMAN. I know there is some concern among some of my Democratic colleagues with two of the nominees being nominated as independents, because if the three are confirmed the Commission will be composed of three Republicans, two Independents, and one Democrat. By law no more than three commissioners can be from the same party.

Further, neither the 2-year Commission chairmanship nor vice chairmanship can be held for consecutive terms by persons of the same party, and the Chairman and the Vice Chairman cannot be of the same party. So there is some complaint that, first, that the Democrats will have only one of their party on the Commission. I think this is a concern that is properly raised.

But I would point out that from 1965 to 1968 the Commission had three Democrats, two Independents, and one Republican, as a result of appointments by Presidents Kennedy and Johnson. More recently, President Carter appointed Michael Calhoun as an independent to one of the three non-Democratic slots.

So I do not quarrel with anybody raising the issue. I think it is something that should be raised. But I just note that it is not unprecedented.

Senator BENTSEN. If I might comment on it, since the chairman raised the point, it is a matter of some concern, of course, and he cites very correctly what happened previously. But I do not believe any of those independents served on the Carter transition team, and in this situation some of these independents served on the Reagan transition team. So they may well be independent, but there may well be some tilt.

The CHAIRMAN. I think it is a legitimate question. But I think there are a lot of independents in this country and they cannot be totally excluded from the political process, even the transition. But they must be truly independent, and I think that is the question that you raise and others raise. It was raised in the hearing last year. I think the record is clear, but if we have missed something, we should clarify the facts.

I think particularly, Ms. Liebeler, you must clarify the question whether you are an independent or whether you are a closet Republican—I do not know what a closet Republican is, but it is someone I do not like—no, that came from the back of the room. But I think that question will be examined and should be examined. I certainly have no quarrel with doing so.

Your know, we have a lot of interest in the ITC. As I indicated at the outset, we are rather jealous of our prerogatives of having jurisdiction over that Commission. We approve the budget. Just recently, members of this committee visited the ITC, and I hope we can improve the living conditions, if nothing else, in that building.

But these questions of affiliation are not asked with any other design than to make certain that the Commission will be independent. Whether appointments are by a Republican President or a Democratic President is not really the matter before us. It is whether the Commission, and the nominees to it, are independent of the executive branch. Thank you.

I think Senator Bradley was next.

Senator BRADLEY. Mr. Chairman, thank you very much.

Let me say, really what is at issue here is perhaps this question of independent, Democrat, Republican, but the larger issue is the integrity and credibility of the International Trade Commission during a time of some very serious trade problems worldwide.

Now, a number of members of this committee, I among them, look to the possibility of some changes in the trade law to insure that it works more quickly and efficiently and forcefully. But in order to make those changes, you have to feel that the International Trade Commission is going to impartially on the basis of the substance apply the law, and that is certainly my major concern and I think the concern of several members of the committee.

Mrs. Liebeler, as I understand what you said, and I just walked in at the end, you said you are not sure what a schedule C appointment is but you are not one?

Ms. LIEBELER. I was asked if any of the times I have served in Government I have been a schedule C appointment. The word "schedule C" does not mean anything to me. I do not know what a schedule C appointment is, but to my knowledge I have never had a political appointment.

Senator BRADLEY. Was your job posted and a competition held, as in the normal civil service?

Ms. LIEBELER. Are you inquiring about my service with the Securities and Exchange Commission?

Senator BRADLEY. That is correct?

Ms. LIEBELER. Sir, if that took place before I got there, I got that job on the basis of my securities expertise and my overall views of the appropriate role of Government in the securities regulation area. I have no idea whether the job was posted or not. I know that I had a civil service rank—or grade, excuse me. But I do not know if that is consistent or inconsistent with schedule C. I do not know what schedule C is.

Senator BRADLEY. Could you explain to the committee what your role was at the SEC, specifically what cases you advised on?

Ms. LIEBELER. I was the Chairman's special counsel on—

Senator BRADLEY. By the way, was there ever a position of special counsel to the Chairman prior to your appointment?

Ms. LIEBELER. It is my understanding that there was.

Senator BRADLEY. So what cases did you advise on?

Ms. LIEBELER. I advised the Chairman on a variety of matters, including pending legislation and proposed and existing regulation.

Senator BRADLEY. What specific cases were you involved in?

Ms. LIEBELER. I am not sure I understand. Enforcement cases?

Senator BRADLEY. Before the SEC.

Ms. LIEBELER. I teach law school.

Senator BRADLEY. During your tenure at the SEC?

Ms. LIEBELER. In my tenure at the SEC, my only involvement was as special counsel with the Chairman. I was not involved in any particular enforcement case at all.

Senator BRADLEY. So you gave no advice on any case before the SEC during your tenure as special counsel?

Ms. LIEBELER. I am not trying to be difficult. Maybe I do not understand your question. Do you mean enforcement cases? I am not sure what you mean, sir.

Senator BRADLEY. Cases that come before the SEC for determination.

Ms. LIEBELER. The SEC does not hear cases. Much of the SEC's function is not adjudicatory. Some of it is. I did have some small role on some of the matters. I was not directly involved in any enforcement case that came before the Commission. The Chairman might have asked me a question of law.

Senator BRADLEY. Which cases? Which cases?

Ms. LIEBELER. Senator, I have absolutely no recollection. I would be pleased, if you would like, to go through my files and see if I could



reconstruct something, but I have no recollection of any particular case in which my advice was sought. It was more in the area of tender offer regulation, where the law should be going, and Glass-Steagall matters, where I had my primary involvement.

Senator BRADLEY. I just looked at my résumé and I see that you worked there for about a year, from August 1981 to July 1982. And I am trying to find during that period what you actually did, and it is kind of vague to say that you advised the Chairman on a range of matters. And the question is, Were you involved at any point in specific cases before the SEC?

Ms. LIEBELER. No.

Senator BRADLEY. So you made no specific recommendation at all on the Citicorp matter dealing with foreign exchange dealings?

Ms. LIEBELER. That is correct.

Senator BRADLEY. And you made no other specific recommendation on any specific case such as the Citicorp matter before the SEC during your year's tenure?

Ms. LIEBELER. Senator, my recollection is not clear, as my major involvement was more in connection with my own area of expertise, which is the Securities Act of 1933. I was the Chairman's lawyer. I would have to consult my own counsel to know what communications with the Chairman are covered by the attorney-client privilege. I do not even know if they are privileged or not.

I do not have any recollection of being involved in any specific enforcement matter.

Senator BRADLEY. I guess another way to ask the question is, you were there a year and if you were to list your five most significant contributions during your year's tenure as special counsel to the head of the SEC that would give us some reason to believe that you might be able to handle the position of commissioner of the ITC, since that appears what the administration is headed toward appointing you to, what five matters would you point to?

Ms. LIEBELER. That is a very good question, sir, and I would like some time to think about it.

Senator BRADLEY. You mean you have not thought about it until the question was asked? I mean, at the end of every year do you kind of look back and say, what have I done this year? What did you do? I mean, it would not take a Senator long.

The CHAIRMAN. We have not done anything. [Laughter.]

Senator BRADLEY. I am sure all the newsletters the Senators send out list things they have done.

Senator HEINZ. Some of them are even significant.

Senator BRADLEY. Now, the question is, rather than diverting, what are the five?

Ms. LIEBELER. Much of my experience in the Chairman's office had to do with financial regulation and changing financial regulation, particularly in the area of Glass-Steagall, as banks, brokers, and mutual funds interact and move into each other's turf. Much of that was an advisory kind of role.

I worked with the Chairman on his speeches and testimony in that area very closely. I worked closely with the Chairman in establishing the Office of Chief Economist. I worked with the Chairman to find

someone who would do a good job in heading that office. We were successful in setting up that office.

Senator BRADLEY. Do you think banks should be able to invest in commodities futures?

Ms. LIEBELER. That is a tough question. I am a careful lawyer. I cannot answer that without consulting a statute and refreshing my recollection to see what they can do now.

Senator BRADLEY. Have you ever made any advice in that area to the chairman?

Ms. LIEBELER. Not on that particular question.

Senator BRADLEY. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Bentsen.

Senator BENTSEN. Thank you, Mr. Chairman.

The country has been in a deep recession for some time and hopefully we are coming out. But we have seen imports increasing and trade deficits increasing. Do you think in any of the laws interpreted by the ITC that it would be proper to say that such was the main cause or the most important cause of injury?

What I am getting to is the escape clause, section 201, and the dispute that is there. I do not care, either one of you.

Ms. SCHLITT. Senator, there were a number of cases following the 1974 recession and there have been a number of cases during the period 1980 to the present that have dealt with the issue, not quite of recession but of whether a decline in demand could be a more important cause of serious injury than imports. Those cases have gone both ways.

Senator BENTSEN. Well, you have got the automobile case, for example, where as I recall the ITC decided that the recession was the principal cause rather than imports.

Ms. SCHLITT. That was one of the cases that occurred to me in which the Commission had made such a finding. There have been cases where the Commission has found, as it has recently in *Specialty Steel*, that imports were a greater cause.

Assuming that there is serious injury, looking at the causation question, there have been cases where the Commission has decided that low demand was the more important cause, and cases where the Commission found imports the more important cause of harm to the domestic industry.

Senator BENTSEN. So you feel it is more proper in some cases—

Ms. SCHLITT. I think it is possible in some kinds of cases.

Senator BENTSEN [continuing]. To arrive at the decision that the recession could be the main cause?

Ms. SCHLITT. Well, it has been done.

Senator BENTSEN. I am asking you about your opinion.

Ms. SCHLITT. I was specifically talking about a decline in demand. I think that there could be cases where, given all the facts, that would be possible, yes. There are many other cases where I think that it would not be possible.

Senator BENTSEN. Any other comment on that either one of you?

[No response.]

Senator BENTSEN. Then let me ask another one—Mr. Chairman, we have got a vote coming.

The CHAIRMAN. Yes.

Senator BENTSEN. Let me ask a quick one, then. We have entered into some international trade agreements, like on the dumping provision, where there was a requirement of a change in the U.S. law. Now, would you look at the international agreement to try to interpret the U.S. law or how would you do that?

The CHAIRMAN. Ms. Liebeler?

Ms. LIEBELER. It seems to me that my responsibility as a Commissioner is to look at the law that Congress has written, interpret the law that Congress has written, and be guided by the statute, as well as the legislative history.

Senator BENTSEN. Is there any differing opinion on that?

Mr. LODWICK. No differing opinion.

Ms. SCHLITT. No.

Senator BRADLEY. Mr. Chairman, can we submit questions for the record?

The CHAIRMAN. Yes; as a matter of fact, I was going to indicate that I know Senator Heinz has questions. I do not know about other members who are not here. The answer to your question is yes. I also have a number of questions that I would like to submit. I have some on agriculture I would like Mr. Lodwick to address.

We are not trying to surprise anyone, but they are questions that we think deal directly with your responsibilities, so we welcome your answers.

Senator BRADLEY. And we would have to get the response prior to any further action by the committee?

The CHAIRMAN. Yes; we will not take action on the nominees until the questions have been answered and until you have had a chance to review the answers. There may be follow-up questions.

Are there any other statements that any of the nominees wish to make before we recess the hearing? Mr. Lodwick, Lyn, Ms. Liebeler? [No response.]

The CHAIRMAN. All right. Then I will submit some questions, some specifically to Mr. Lodwick, though I would not want to indicate by this that we are looking only to him. For those of us who live in agricultural areas, trade is a matter of some concern.

I think it also should be noted for the record, if in fact the three nominees are confirmed, the Commission will then have four women and two men, and that may be of some import. In fact, I think it will be the first Commission, is that correct, where the majority—where the women are taking over?

Ms. SCHLITT. That is correct, Senator.

The CHAIRMAN. They already have in my family. [Laughter.]

I think that is significant. I hope it happens. I am not certain, but with regard to this one question about the political makeup of the Commission, it seems to me that can be resolved. I would just ask Ms. Liebeler once again—I think the thing that concerns the Democrats and that concerns me, is if in fact you had been active in a lot of Republican activities and done a number of things politically, you could not be classified as independent.

Do you have any problem with that question?

Ms. LIEBELER. Not at all.

The CHAIRMAN. Or the answer?

Ms. LIEBELER. The only political activity I ever had was as a child. My father was a Democrat, a very active Democrat, and I stuffed envelopes as a 6-year-old and 10-year-old. That was my last political contact.

The CHAIRMAN. Well, there has been a marked improvement from that beginning to the independent category in which you now classify yourself.

We are going to try to move soon the nomination of Mr. Clapp. We have a meeting in the morning. We hope that we can report your nomination then. We will try to get the Senators' questions to the ITC nominees very quickly, and the quicker there is a response, the quicker we will be able to move. Does Senator Long have any questions?

As far as I know, there is no reason to recall the nominees. But if anyone should like a further open hearing, obviously we will be doing that.

Thank you very much. We appreciate it.

I do have on letter from Mr. Levine, Congressman Levine, supporting the nomination of Susan Liebeler, which we will make a part of the record.

[Whereupon, at 4:47 p.m., the committee was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
*Washington, D.C., June 14, 1983.*

HON. ROBERT DOLE,  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR DOLE: A constituent of mine, Susan Wittenberg Liebeler, has been nominated by the President to serve on the International Trade Commission. I had hoped to be here today to introduce her to you myself, but, unfortunately Congressional business requires me to be elsewhere.

Ms. Liebeler is currently a Professor of Law at Loyola University. She teaches classes in Corporations, Securities Regulation, Financial Institutions, and other business related fields.

In addition to her academic experience she has served as a consultant to a variety of public and private organizations including the Environmental Protection Agency, the U.S. Price Commission, and the U.S. Railway Association.

I hope that you and your colleagues will give her every consideration for this important position.

Sincerely,

MEL LEVINE,  
*Member of Congress.*

CHAMBER OF COMMERCE OF THE UNITED STATES,  
RESOURCES AND ENVIRONMENTAL QUALITY DIVISION,  
*Washington, D.C., June 17, 1983.*

HON. ROBERT DOLE,  
*Chairman, Committee on Finance,  
U.S. Senate,  
Washington, D.C.*

DEAR MR. CHAIRMAN: I recommend Mr. Seeley G. Lodwick be given favorable consideration for appointment as a member of the International Trade Commission.

Mr. Lodwick is uniquely qualified for this position. He owns a successful farming operation in Iowa, served as an official in the Agricultural Stabilization and Conservation Service in the U.S. Department of Agriculture under the Eisenhower Administration, Director of Government Affairs for the American Farm

Bureau Federation, an aide to Senator Jepsen and Under Secretary for International Affairs and Commodity Programs under the Reagan Administration.

I have known and worked with Mr. Lodwick on domestic and international trade issues throughout all of these positions. More personally, he served as a member of the Food and Agriculture Committee of the U.S. Chamber of Commerce from 1977 until he was appointed Under Secretary in the present Administration. As staff executive of the Chamber's Food and Agriculture Committee I maintained a close working relationship with Seeley. His policy recommendations were always in the best long-term interests of the United States and American agriculture. His primary interest has been to strengthen the competitive position of U.S. agriculture in world trade while protecting the U.S. from unfair trade practices by foreign competitors.

I am confident that Mr. Lodwick would be an excellent member of the International Trade Commission and serve the best interests of the United States. I urge the Finance Committee give full support to the appointment of Seeley Lodwick.

Sincerely,

E. CLINTON STOKES,  
*Director, Food and Agriculture.*

QUESTIONS SUBMITTED TO SEELEY G. LODWICK BY SENATOR DOLE AND RESPONSES  
THERE TO

*Question 1.* The Trade Agreements Act of 1979 provides that countervailing or antidumping duties shall be imposed on subsidized or dumped imports if the ITC determines that a U.S. industry is materially injured by reason of the imports. Before this injury determination is made, the Commerce Department determines whether there is dumping or subsidization, and by what margin the imported prices are unfairly affected.

A. Would you describe what is meant by "material injury?"

Answer. 1.A. Material injury is that which is not immaterial, not inconsequential and not unimportant.

B. Would you state what factors the Commission must consider in the determination of material injury?

Answer. 1.B. Factors the USITC must consider in the determination of material injury include the volume of imports, the effect on U.S. prices and the effect on U.S. producers.

C. Do you agree that the margin of dumping or subsidy found by the Commerce Department is not one of the factors the ITC should consider in making material injury determinations?

Answer. 1.C. It is my understanding that in general the size of the margin of dumping or subsidy found by the Department of Commerce is not one of the factors the USITC should consider in making material injury determinations. This condition needs to be reviewed on a case by case basis.

*Question 2.* Under section 201 of the 1974 Trade Act, the Commission determines whether increasing quantities of imports are a substantial cause of serious injury, or the threat thereof, to a domestic industry. If so, the ITC must recommend to the President what temporary duty increase or import restriction is necessary to prevent or to remedy such injury.

A. What do you believe is the purpose of this temporary relief?

Answer. 2.A. Purposes of section 201 temporary relief include remedying injury on a temporary basis and facilitating orderly adjustment to international competition.

B. Should the ability and intent of the industry to adjust to the import competition be considered by the ITC in recommending whether and to what extent relief should be granted?

Answer. 2.B. The ability and intent of the industry to adjust to the import competition should not be considered by the USITC in recommending whether and to what extent relief should be granted. However, the USITC gathers such information during Section 201 investigations for the President.

C. What is the effect of recessionary conditions on the standard of relief in section 201. I.e., is a recession likely, in your view, to be a more important cause of serious injury than increasing imports where those conditions exist?

Answer 2.C. It is my understanding the statute does not address the issue of recessionary conditions on the standard of relief in section 201. However, in my

opinion, an industry should not necessarily be denied relief simply because increasing imports coincide with recessionary conditions.

*Question 3.* Section 337 of the 1930 Tariff Act prohibits unfair methods of competition and unfair acts in the importation or sale of imported articles if the effect or tendency of those acts is to injure substantially a U.S. industry. The Commission may issue exclusion or cease and desist orders in such cases.

A. There has been some dispute in recent ITC cases over what constitutes a domestic industry eligible to petition for relief under section 337. Do you think only industries actually and solely producing the goods in question in the United States should have standing to petition for relief? Or might other domestic commercial activities qualify a firm for relief even if it sells imported goods?

Answer. 3.A. The definition of a domestic industry eligible to petition under Section 337 is fundamental, and often is a difficult and controversial aspect of an investigation. Even now it is the subject of litigation. Elements such as design, engineering, packaging, shipping and marketing should be considered on a case-by-case basis, as well as the production element in determining whether such economic activity is a domestic industry.

*Question 4.* Characteristic of advanced technology industries are enormous capital demands for research and development; the rapid pace of innovation; and substantial amounts of foreign government subsidization. The antidumping and countervailing duty statutes require the ITC to make an affirmative determination based on threat of material injury even if no material injury has yet occurred.

A. Do you believe the particular characteristics of advanced technology industries makes the "threat" test particularly appropriate as an injury standard?

Answer 4.A. At this time, any personal judgment of whether the particular characteristic of the advanced technology industries make the "threat" test particularly appropriate as an injury standard would be premature. If I am confirmed as a Commissioner, I will be alert to this situation and should such a situation arise in which this condition is relevant, I'll make special efforts to make a thorough investigation as to the relevant conditions of trade.

#### ADDITIONAL QUESTIONS FOR SEELEY LODWICK AND HIS RESPONSES THERETO

*Question 1.* The legislation to implement the Caribbean Basin Initiative provides a "fast-track" mechanism by which producers of certain perishable commodities may seek temporary import relief pending the outcome of a section 201 investigation by the ITC. Do you believe such a relief mechanism should be provided for perishable commodities without regard to whether the imports originate in the Caribbean Basin and are associated with that preference program?

Answer. (SGI-1) If the CBI legislation becomes law and if it contains a provision for temporary relief for perishable goods, it might be prudent to see how the "fast track" provision works in the CBI legislation before expanding it to other countries. This matter appears to be a policy matter directed at timely access to trade relief and as such, if I am confirmed by the Senate, it would not be appropriate for me to express an opinion on a policy matter. However, it might be appropriate for the USITC to make a study or investigation on the matter. And, if so, I would support making such a study or investigation.

*Question 2.* If in an antidumping or countervailing duty case involving an agricultural commodity the importer shows that the prevailing market price is above the minimum support price, should the commission determine there is no material injury or threat of material injury?

Answer. (SGI-2) The USITC should not determine whether there is material injury or threat of material injury based on the sole condition of the prevailing market price being above the minimum support price.

#### QUESTIONS SUBMITTED BY SENATOR HEINZ TO SEELEY G. LODWICK AND RESPONSES THERETO

*Question 1.* Is it the intent of Congress that the material injury standard in the Trade Agreements Act of 1979 be any higher than the earlier injury standard in prior law?

Answer. It is not the intent of Congress that the material injury standard in the Trade Agreement Act of 1979 be any higher than the earlier injury standard in the prior law.

**Question 2.** Do you think the standard for a preliminary determination of injury in a dumping or CVD case is a lower standard than the final determination in the same case?

**Answer.** The standard for a preliminary determination of injury in a dumping or CVD case is whether there is a reasonable indication of material injury based on the best information available at that time. The standard for a final determination differs in that there must be a showing of material injury based on the record as developed during the course of the final investigation.

**Question 3.** Do you think the ITC is or should be an agency involved in the making of trade policy?

**Answer.** The United States International Trade Commission (USITC) is an independent, fact-finding and quasi-judicial agency and does not have authorities or responsibilities for making of trade policy. If I am confirmed by the Senate to be a USITC Commissioner and if Congress changes the law so the USITC is given policy making responsibilities, I will carry out the provisions of the law.

**Question 4.** Would you construe section 337 of the Tariff Act of 1930 broadly to include as violations cases of predatory practices against American industries as well as the patent infringement cases that have traditionally been brought under that section?

**Answer.** As I interpret the section 337 provisions, violations can include the conventional patent infringement violations and predatory practices, among other violations.

**Question 5.** Do you think the ITC should exercise its authority to issue rules or regulations if that seems an appropriate way to deal with a trade problem (usually a patent infringement problem)?

**Answer.** The individual circumstances of the particular case should govern whether or not rules and regulations are issued.

**Question 6.** Why are you qualified for this position?

**Answer.** Because of long interest and several experiences, I feel qualified for this responsibility. The interest dates back to my father relating his experience in international trade to me and my direct experience with the USITC when I worked for the American Farm Bureau Federation ten years ago.

The experiences include serving as Under Secretary of Agriculture for International Affairs and Commodity Programs in which capacity I was in touch with many of our trading partners, both government and private sector; being closely associated with the production and marketing of agricultural commodities since being discharged from the military service after W.W. II; working a life time in or closely to the private sector in which profits were critical and serving as a member and as President pro Tempore of the Iowa Senate.

**Question 7.** Several recent section 337 cases have raised the question of whether a domestic industry in fact exists if actual production of the product occurs overseas, with such elements as design, engineering, packaging, shipping, marketing, and advertising done in the United States. Under what circumstances do you believe a U.S. industry would exist?

**Answer.** The definition of a domestic industry eligible to petition under section 337 is fundamental, and often is a difficult and controversial aspect of an investigation. Even now it is the subject of litigation. Elements such as design, engineering, packaging, shipping and marketing should be considered on a case by case basis, as well as the production element in determining whether such economic activity is a domestic industry.

**Question 8.** What is the difference, if any, in the standard of injury for fair and unfair trade practice cases?

**Answer.** The differences in the standard of injury for fair trade practices (section 201) and unfair trade practices (Title VII) include: an affirmative decision in section 201 requires showing of serious injury and that imports be a substantial cause of that injury; an affirmative decision in Title VII requires showing of material injury (which is less than serious injury) and that imports, dumped or subsidized, are a cause of that injury.

**Question 9.** What is the appropriate relationship for a Commissioner with the administration? With the Congress?

**Answer.** An USITC Commissioner is part of an independent agency and is expected to maintain his independence from the Executive and Legislative branches of government, even though he may be of the same political party as that controlling the Executive branch or as that in the majority of either or both houses of the Legislative branch. A Commissioner is expected to exercise his inde-

pendent judgment after reviewing the record of the case in carrying out the duties of the office.

**Question 10.** What criteria would demonstrate to you a "threat of serious injury"?

**Answer.** By statute among the criteria to be used in demonstrating a "threat of injury" are declining sales, higher and growing inventory, downward trend in production, profits, wages and employment.

**Question 11.** How would you define the relevant "domestic industry" in a factual situation in which a large part of the production of a particular finished product is subcontracted?

**Answer.** The definition of the relevant "domestic industry" must depend on the facts in each investigation. Another, important guide in making a decision is USITC history. Recently I understand the USITC considered a rail passenger car in which this question arose. If I am confirmed as a Commissioner I do not believe that a relevant "domestic industry" should necessarily exclude a fabricator or subcontractor.

**Question 12.** Do you believe that an industry already damaged by a recession is statutorily more vulnerable to injury from imports?

**Answer.** It is my understanding that an industry already damaged by a recession is not by statute more vulnerable to injury from imports. This, however, needs to be reviewed on a case by case basis.

**Question 13.** What economic criteria should the Commission examine in determining material or serious injury? Which are the most indicative in your mind?

**Answer.** The relevant statutes list several economic criteria the USITC should use in determining "material injury" or "serious injury". Among the more important are trends in production, employment, profitability, inventories, and shipments, depending on the individual investigation. It is important that the list of specific economic indicators in the statutes is not limiting and the USITC should consider all relevant economic factors in making its decision.

**Question 14.** What are the differences between "material injury", "serious injury," and "market disruption"?

**Answer.** There are at least two important bases for distinguishing among "material injury," "serious injury," and "market disruption," based on (1) the degree of injury and (2) the degree of causal relationship between any injury and imports required to be shown.

"Material injury" under title VII cases requires a showing of injury that by statute is defined as "harm which is not inconsequential, immaterial, or unimportant." Imports either dumped or subsidized, must be shown to be a cause of that injury.

"Serious injury" under section 201 requires a showing of greater injury than is required for "material injury." Fair imports must have been shown to be a "substantial cause" of such injury, which by statute is defined as "a cause which is important and not less than any other cause."

"Market disruption" under section 406 includes that concept of "material injury" which the legislative history states is "to represent a lesser degree of injury than the term 'serious injury' standard employed in section 201." Those imports must be a "significant cause" of the material injury. The legislative history states that "'significant cause' is intended to be an easier standard to satisfy than that of 'substantial cause.'"

**Question 15.** If foreign government subsidies are but one of several factors which could possibly be causing injury to a domestic industry do you believe the Commission should make an affirmative preliminary determination in a countervailing duty case?

**Answer.** If foreign government subsidies are but one of several factors which could be causing injury to a domestic industry, the USITC should make an affirmative preliminary determination in a countervailing duty case.

**Question 16.** Under what circumstances do you believe that the Commission should self-initiate a case under section 337 of the Tariff Act of 1930?

**Answer.** The USITC should self-initiate a case under section 337 of the Tariff Act of 1930 when the article involved is produced in the United States by producers, none of whom individually have the resources to file and process a complaint, provided the resources expended by the federal government are warranted.

**Question 17.** What weight would you ascribe the alleged margins of dumping or subsidization in making preliminary determinations?



**Answer.** The alleged margins of dumping or subsidization should not be used as a critical factor in making preliminary determinations.

**Question 18** What criteria would you use in determining what import relief is necessary to prevent or remedy an injury in an escape clause case?

**Answer.** Among the criteria to be used in determining what import relief is necessary to prevent or remedy an injury in escape clause case are: the type and extent of the injury involved, and, the employment, profits, production and sales of the subject industry. The specific choice of remedy—for example, a quota or tariff—will depend on the type of injury and should be structured to remedy that injury most effectively.

**Question 19.** Do you believe that a Commissioner who has made a negative determination in an escape clause case should participate in making a remedy recommendation if the Commission has found affirmatively?

**Answer.** The USITC custom, I understand, is that a Commissioner who has made a negative determination in an escape clause case does not participate in making a remedy recommendation if the USITC has found affirmatively. The custom appears well founded and unless a strong case was presented to the contrary, I would, if confirmed by the U.S. Senate, propose following the custom.

**QUESTIONS SUBMITTED TO SEELEY G. LODWICK BY SENATOR DANIEL PATRICK MOYNIHAN AND RESPONSES THERETO**

**Question 1.** As you know, the International Trade Commission (ITC) recently recommended that the President impose quotas on certain foreign specialty steel imports for a three-year period. Are you familiar with the decision and, if so, do you believe that the ITC acted properly and within the remedies provided for under the 1979 Trade Act?

**Answer.** Since I have not examined the official USITC record of the case, I do not feel I am sufficiently familiar with the case to pass judgment on the USITC decision.

**Question 2.** As you are aware, several members of Congress, including myself, have advanced proposals to consolidate our executive level trade functions into one department. If enacted, what effect do you believe these reorganization proposals will have on the role of the ITC? Do you favor these proposals?

**Answer.** Without further study and investigation, I would hesitate to express an opinion on any of the bills. Further, if I am confirmed by the Senate to be a USITC Commissioner, I would be hesitant to comment since such bills deal with policy matters and policy matters do not fall within the purview of the USITC.

**Question 3.** As you may know, U.S. imports of apple juice have grown rapidly over the past few years. Much of it originates in Argentina, which allegedly subsidizes its apple juice exports. The apple growers in my home state of New York feel that they are being injured by these unfair imports. Under present law, however, the apple growers cannot file a petition with the Commerce Department and ITC to rectify this problem because apple juice is not considered a "like product" to apples. Is it your opinion that U.S. apple producers have a sufficient avenue for relief under present law? If not, how would you recommend changing the law to provide proper protection from these subsidized foreign imports?

**Answer.** Whether apple producers because of their interest in apple juice imports have access to the USITC is a legal issue that could come before the Commission. Because as a Commissioner I might be obligated to vote on such a case, it would be improper for me to offer a detailed opinion. However, the orange juice investigation now pending at the USITC might furnish helpful background. I do firmly believe though that eligible persons, as described by statute and by legislative history, should not be denied access to the USITC.

**QUESTIONS SUBMITTED TO SEELEY G. LODWICK BY SENATOR BRADLEY, AND RESPONSES THERETO**

**Question 1.** What do you see as the main job of the ITC over the next few years in connection with the Harmonized System of Tariff Nomenclature?

**Answer.** The USITC is currently preparing a draft tariff system for appropriate consideration by the President. If the draft system is presented to Congress for consideration, the Commission should be prepared to continue to provide technical advice on the conversion, as it has during the negotiations and preparation of the draft system.

**Question 2.** Over the last several years, the United States has been in a recession, and at the same time imports have increased and the U.S. balance of trade has gone further into deficit than ever in our history. Do you think that in any given case it is a correct interpretation of any of the current laws the ITC administers to find that "the recession" is the main or most important cause of injury?

**Answer.** It is my understanding the statute does not address the issue of recessionary conditions on the standard of relief in section 201. However, in my opinion, an industry should not necessarily be denied relief simply because increasing imports coincide with recessionary conditions.

**Question 3.** In 1979, Congress approved a number of international trade agreements, such as the one on antidumping, which required that we change U.S. law, which the Congress also did at that time. Do you intend to look to the international agreements for guidance on how to interpret U.S. law?

**Answer.** Guidance on how the USITC should interpret U.S. law must come from United States law and the legislative materials written by Congress.

QUESTIONS SUBMITTED TO SEELEY G. LODWICK BY SENATOR MITCHELL AND  
RESPONSES THERETO

**Question 1.** In 1980, during the Presidential campaign, President Carter asked the ITC to speed up its deliberations in the automobile escape clause case. The ITC, which at that time was headed by a Democratic Chairman, turned down the President's request. Would you have any hesitation in turning down a similar attempt by President Reagan to influence the ITC's activities?

**Answer.** I would have no hesitation in declining a request by the President to speed up the deliberations of the Commission if to do so would adversely affect the ability of the Commission to carry-out its responsibilities.

**Question 2.** Do you feel that the size of dumping margins or the amount of subsidies should pay a part in an injury determination by the ITC?

**Answer.** It is my understanding that in general the size of the margin of dumping or subsidy is not one of the factors the USITC should consider in making material injury determinations.

**Question 3.** If the dumping margins were 50 percent or the subsidies in a countervailing duty case were 50 percent of the value of the merchandise, yet the underselling by the foreign import was only 5 percent of the domestic U.S. industry's price, should the ITC consider the entire subsidy or dumping margin or the amount of price undercutting in determining injury to the domestic industry?

**Answer.** Consistent with my answer to question number 2, it is my understanding that in general the size of the margin of dumping or subsidy is not one of the factors the USITC should consider in making material injury determinations. The amount of price undercutting should be considered along with all other relevant factors in determining material injury by reason of dumped or subsidized imports.

**Question 4.** If the dumping margin or countervailable subsidy is only 5 percent of the value of the imported merchandise and the foreign merchandise is underselling the domestic industry by 20 percent in the marketplace, what effect would these facts have on your decision in determining material injury to the domestic industry?

**Answer.** Consistent with my answer to question number 2, it is my understanding that in general the size of the margin of dumping or subsidy is not one of the factors the USITC should consider in making material injury determinations. The amount of price undercutting should be considered along with all other relevant factors in determining material injury by reason of dumped or subsidized imports.

ANSWERS OF SUSAN LIEBELER TO ADDITIONAL QUESTIONS  
BY SENATOR BRADLEY FOR NOMINEES TO THE  
U.S. INTERNATIONAL TRADE COMMISSION:  
QUESTIONS FOR EACH NOMINEE

1. What do you see as the main job of the ITC over the next few years in connection with the Harmonized System of Tariff Nomenclature?

A. The Commission has responsibility under Section 608(c) of the Trade Act of 1974 (19 U.S.C. 2486) to participate in the United States contribution to technical work of the Harmonized Systems Committee in order to assure recognition of the needs of the United States business community in the development of the Harmonized Code. The Commission has yet to issue its final report under Section 608(c)(2). In 1981 President Reagan requested that the Commission initiate an investigation to serve as the basis for the conversion of the Tariff Schedules of the United States into the nomenclature of the Harmonized System. The Commission's work on this twenty-two month investigation is substantially complete.

The Administration may decide to seek adoption of the Harmonized Code. Should the Administration seek adoption, it is likely that the Commission may be called upon by Congress, particularly the House Ways and Means Committee and the Senate Finance Committee, to render tech-

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nical advice and information to assist the Committees and Congress in their decision whether to adopt the Harmonized Code. If the Code is adopted, the Commission's expertise may be brought to bear in keeping the Harmonized System up to date.

2. Over the last several years, the United States has been in a recession, and at the same time imports have increased and the U.S. balance of trade has gone further into deficit than ever in our history. Do you think that in any given case it is a correct interpretation of any of the current laws the ITC administers to find that "the recession" is the main or most important cause of injury?

A. In unfair competition cases, Congress did not require that injury not be caused by other factors. The House Ways and Means Committee Report on the Trade Agreements Act of 1979 (H. Rep. No. 96-317, 96th Cong. 1st Sess., p. 47) states that a requirement that causes of injury be weighed "has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports."

Section 201 relating to "fair competition" requires a comparison and weighing of injury causes. The injury standard for escape clause relief under Section 201 is that increased imports must be a substantial cause of serious

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injury or threat of serious injury. A substantial cause is defined as an important cause no less important than any other cause. In Section 406 the Commission is required to determine if imports from a Communist country cause market disruption. Market disruption is present when rapidly increasing imports are a "significant" cause of material injury or threat of material injury to a domestic industry. A significant cause is an important one but it need not be the most important cause. In cases under Sections 201 and 406, if all the effects of recession are aggregated into a single cause, the result could be to prevent cyclical industries from ever obtaining relief. This may not have been the intent of Congress.

3. In 1979, Congress approved a number of international trade agreements, such as the one on antidumping, which required that we change U.S. law, which the Congress also did at that time. Do you intend to look to the international agreements for guidance on how to interpret U.S. law?
  - A. If confirmed, I would interpret and apply the laws as Congress has written them. When Congress suggests that the Commission consult an international agreement, I would do so. In addition, when there is a conflict between a U.S. statute and an international agreement, the International Trade Commis-  
sion must be bound by the U.S. statute. (S 3(a) of the Trade Agreements Act of 1979, 19 U.S.C. 2504).

ANSWERS OF SUSAN LIEBELER TO ADDITIONAL  
QUESTIONS BY SENATOR BRADLEY FOR SUSAN LIEBELER

1) You have testified that you have been given assurances by the White House that your Commission would be signed first, thereby making you eligible for the Chairmanship of the ITC. Your resume states that you were a consultant to the Reagan "transition team." What was the nature of these contacts with the Administration? Do you have any other connections, direct or indirect, with the current administration that might be regarded as affecting your independence as an ITC Commissioner?

A) I will answer the question regarding the nature of my contacts with the Administration in three parts. I discuss first the nature of my consultancy with the Reagan-Bush Transition Team, the the nature of my contacts regarding the Chair of the International Trade Commission, and finally, other connections with the Administration that might be regarded as affecting my independence as a Commissioner.

As far as the Transition team is concerned, I was asked in December 1981 by Mr. Michael Uhlmann if I would be willing to serve as a consultant to the Office of Policy Development, a part of the transition operation. Mr. Uhlmann was the director of this office. I had known Mr. Uhlmann since 1975 when he worked with my husband at the Federal Trade Commission. My husband was also working with Mr. Uhlmann on the Transition Team. Mr. Uhlmann knew of my interest in securities regulation and he knew that as a law school professor I would have the flexibility to come to Washington during my winter recess. Mr. Uhlmann asked me to evaluate the preliminary and final transition team reports on the Securities and Exchange Commission. I did so and then I returned to Los Angeles to resume teaching. I did not do any other work for Mr. Uhlmann or for the Transition Team.

As to my eligibility for the Chairmanship of the International Trade Commission, the first discussion I had with anyone about the International Trade Commission occurred in July 1982 when I was teaching summer school at the University of Texas Law School. I received a telephone call from a man who identified himself as Joseph Ryan, an Associate Director of the Presidential Personnel Office. Mr. Ryan asked me if I would be interested in an appointment to the International Trade Commission. Mr. Ryan told me that the Personnel Office planned to recommend that the appointments for the existing vacancies on the Commission be made in such a way as to make me eligible for appointment as Chairperson at the expiration of the term of the present holder of that office. I came to Washington during the first week in August of 1982 when I met with Mr. Ryan. At that time Mr. Ryan reaffirmed the intention of the White House to fill the existing vacancies in such a way so that I would be eligible for the chairmanship.

As to any other connections with the Administration, one of my former students, Vera Connolly, at one time worked for the White House Personnel Office. One of my husband's former students, Dennis Patrick, is currently employed in the Personnel Office. As far as personal relationships are concerned, my husband is a classmate of Kenneth W. Dam and he worked with R.T. McNamar at the Federal Trade Commission. I know each of these individuals through their relationship with my husband. My other connections with this Administration are disclosed in other parts of these answers. There is nothing in these relationships which would affect independence as a Commissioner of the International Trade Commission.

I know of no other connections I have with the present Administration. However, as is the case with most attorneys I have many professional contacts in the legal and business community and in the government. I have been teaching law school since 1973 and I would estimate that I have taught more than fifteen hundred students. As is the case with most law professors, many of my former students are employed throughout the United States in government, in the private sector and in the legal community. My husband is also an attorney and professor of law; he has a similar wide range of contacts. Moreover, since 1965 we have for the most part, spent our professional careers in California. In this context I would expect that some of our former students or other professional contacts are working for the Administration or have worked for previous Administrations.

I have no contacts or connections within the present Administration, or otherwise, that might affect my independence as a member of the International Trade Commission.

2) Your resume shows that from August 1981 to July 1982 you served as Special Counsel to John S.R. Shad, Chairman of the SEC. Who did you work with? List specifically the matters at the SEC on which you prepared formal written advice. What contacts did you have with White House staff during your tenure at the SEC, and what was the subject matter of those contacts? List any matters not pertaining to SEC business on which you were consulted while you worked at the SEC.

A. I was employed at the Securities and Exchange Commission as Special Counsel to the Chairman. This was not a political appointment. It was not a Schedule C appointment; it was a Schedule A, an attorney position within the Civil Service.

As Special Counsel to the Chairman I worked with the Chairman and his executive staff. This staff consisted of Daniel Goelzer, the Chairman's Executive Assistant and Diane Klinke, the Chairman's Legal Assistant. In the course of my duties I had contacts with the Commissioners and members of their staff, the division directors and some members of the Commission staff. Many of these contacts arose in connection with the Chairman's Congressional testimony and various speeches given by the Chairman.

My primary function was to advise the chairman on regulatory policy matters. I did not have a line position at the SEC; I did not work for any of the operating divisions. I did not attend Commission meetings on a regular basis. Ordinarily I did not advise the Chairman with respect to calendar matters. I had almost nothing to do with enforcement matters.



Frequently these policy matters arose in the context of proposed rulemaking. The major rulemaking issues which arose during my tenure included amendments to the tender offer rules extending the proration period for tender offers and promulgation of Rule 10b-18 restricting issuer repurchases. Occasionally some regulatory policy issues arose in the context of the advisability of filing amicus appellate briefs in private litigation. Regulatory policy issues also arose when the Chairman testified before Congressional committees, gave speeches or formal media interviews. I frequently worked with the Chairman on such matters.

I also worked with the Chairman on personnel matters. In particular, I helped the Chairman establish the Office of the Chief Economist and conducted a search for a qualified person to head that office.

Also, while I was at the Commission, I was involved in setting up an outside speakers program and the selection of prospective outside speakers.

As to my contacts with the Administration during the time I was at the SEC, they concerned personnel matters. On two or three occasions I spoke with Dennis Patrick and Chris Hicks in the White House Personnel Office. These conversations concerned possible candidates for the positions of Chief Economist and Director of Legislative Affairs at the Commission. Also, I was under consideration for an appointment to the SEC and I had two or three discussions with Dennis Patrick and Chris Hicks about that possibility.

In addition, I had a few other contacts with employees of the Administration while I was working at the SEC. I had lunch with Vera Connolly, a former student who was working for the White House Personnel Office. She was looking for a job and asked me, as her former professor, if I had any suggestions where she might find an interesting job. I did not have any suggestions for her. On another occasion my husband and I had lunch with R.T. McNamar. It was a personal luncheon. I did discuss with Mr. McNamar my interest in an appointment to the Securities and Exchange Commission.

I was not consulted by any employee of the Administration on any matter not pertaining to SEC business while I worked at the SEC.

ANSWERS OF SUSAN  
LIEBELER TO QUESTIONS FOR ITC NOMINEES

F2.M ANATOR DCC

1. The Trade Agreements Act of 1979 provides that countervailing or antidumping duties shall be imposed on subsidized or dumped imports if the ITC determines that a U.S. industry is materially injured by reason of the imports. Before this injury determination is made, the Commerce Department determines whether there is dumping or subsidization, and by what margin the imported prices are unfairly affected.
  - A. Would you describe what is meant by "material injury"?
    - A. A material injury is an injury which is not immaterial, inconsequential or insubstantial.
  - B. Would you state what factors the Commission must consider in the determination of material injury?
    - A. The criteria the Commission must consider in Title VII material injury determinations are set forth in Section 771(7) of the Trade Agreements Act. These include the significance of the volume of imports and the effect of imports on domestic producers and domestic prices. In evaluating the effect on prices, the Commission must consider whether there has been significant price cutting or actual or potential price suppression. In evaluating the impact of imports on domestic producers, the Commission must evaluate all relevant economic factors including actual or potential declines in output, sales, market share, profits, productivity, return on

investment and capacity utilization, and any actual or potential negative effects on cash flow, inventories, employment, wages, growth, capital raising ability and investment.

C. Do you agree that the margin of dumping or subsidy found by the Commerce Department is not one of the factors that ITC should consider in making material injury determinations?

A. There are several stages of the investigation at which this question could arise. When the Commission makes its preliminary determination, the margin of dumping or subsidy found by the Commerce Department is not available or relevant.

In final determinations, the Commission must find material injury, threat of material injury, or material retardation. Further, the Commission must find that the dumped or subsidized imports caused the material injury. The margin of dumping or subsidy found by the Commerce Department is not relevant to determining injury (or threat or material retardation.)

Whether, as a matter of law, the size of the dumping or subsidy margin is a relevant factor to be considered by the Commission in determining causation is a very complex

question. It is my understanding that this question is a matter of some controversy at the Commission right now and a question on which some commissioners would disagree. I have not made up my mind on this issue. I would not want to do so until I had the benefit of all sides of the argument in the context of the facts of a particular case.

Assuming, arguendo, that as a matter of law the margin of subsidy and dumping is relevant to determining causation, it should not be a dispositive factor. Its relevance as a matter of fact would depend on the facts of a particular case.

2. Under Section 201 of the 1974 Trade Act, the Commission determines whether increasing quantities of imports are a substantial cause of serious injury, or the threat thereof, to a domestic industry. If so, the ITC must recommend to the President what temporary duty increase or import restriction is necessary to prevent or to remedy such injury.

A. What do you believe is the purpose of this temporary relief?

A. The purpose of temporary relief is to facilitate industry adjustment to new competitive conditions. The Commission recommendation must provide for a level of relief sufficient to prevent or remedy the serious injury or threat of serious injury during the adjustment period.

- B. Should the ability and intent of the industry to adjust to the import competition be considered by the ITC in recommending whether and to what extent relief should be granted?
- A. In escape clause investigations the Commission must investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports (§ 201(b)(4)). Also, in advising the President on the effect of an extension, reduction or termination of import relief provided to an industry under Section 203, the Commission must determine the probable economic effect on the industry of such action. In so doing, the Commission must take into account all the economic factors it considers relevant including the specific efforts made by industry to adjust to import competition (§ 201(i)(4)).
- C. What is the effect of recessionary conditions on the standard of relief in Section 201. I.e., is a recession likely, in your view, to be a more important cause of serious injury than increasing imports where those conditions exist?
- A. Whether an industry adversely impacted by recession should be eligible for import relief under Section 201 is a very important question. The escape clause requires a weighing of causation factors: increasing

imports must be an important cause of serious injury, and not less important than other cause of injury. If all the effects of recession are aggregated into a single cause, the result could be to prevent cyclical industries from obtaining relief under Section 201. This may not have been the intent of Congress.

3. Section 337 of the 1930 Tariff Act prohibits unfair methods of competition and unfair acts in the importation or sale of imported articles if the effect or tendency of those acts is to injury substantially a U.S. industry. The Commission may issue exclusion or cease and desist orders in such cases. There has been some dispute in recent ITC cases over what constitutes a domestic industry eligible to petition for relief under Section 337. Do you think only industries actually and solely producing the goods in question in the U.S. should have standing to petition for relief? Or might other domestic commercial activities qualify a firm for relief even if it sells imported goods?

A. The definition of a domestic industry is a difficult and important question. In the Ultramicrotome Freezing Attachments case the Commission held that a patent must be exploited by manufacture in the United States in order to find a domestic industry. However, in the Wood Stoves case the Commission held that a domestic industry may be found on the basis of activities other than manufacturing. Although the production, design, engineering and packaging of the wood stoves took

place in Norway, the presence of sales, advertising and service activities within the United States was sufficient to constitute a domestic industry. The definition of a domestic industry was also an issue in the Cube Puzzles and Toy Vehicles cases. Toy Vehicles is currently on appeal to the United States Court of Appeal for the Federal Circuit. The court's decision may provide guidance in identifying a domestic industry in future Section 337 determinations.

4. Characteristic of advanced technology industries are enormous capital demands for research and development; the rapid pace of innovation; and substantial amounts of foreign government subsidization. The antidumping and countervailing duty statutes require the ITC to make an affirmative determination based on threat of material injury even if no material injury has yet occurred. Do you believe the particular characteristics of advanced technology industries makes the "threat" test particularly appropriate as an injury standard?
  - A. The factors the Commission must consider in determining whether there is a threat of material injury in subsidy cases are set forth in Section 771(7) of the Trade Agreements Act. These include the significance of the volume of imports and the effect of imports on domestic producers and domestic prices. In evaluating the effect of prices, the Commission must consider-whether there has been significant price cutting or actual or potential price suppression. In evaluating the

impact of imports on domestic producers, the Commission must evaluate all relevant economic factors including actual or potential declines in output, sales, market share, profits, productivity, return on investment and capacity utilization, and any actual or potential negative effects on cash flow, inventories, employment, wages, growth, capital raising ability and investment.

Whether a particular advanced technology industry would be threatened by material injury would depend on the application of these factors to the facts of the particular case. However, because of the rapid pace of developments and innovation in advanced technology industries, the threat of injury to them may well be more imminent than would otherwise be the case.



ANSWERS OF SUSAN LIEBELER TO  
QUESTIONS FROM SEN. HEINZ FOR ITC NOMINEES

1. Is it the intent of Congress that the material injury standard in the Trade Agreements Act of 1979 be any higher than the earlier injury standard in prior law?
  - A. No. The intent of Congress has been expressed in the colloquy between Senators Heinz and Ribicoff, in which it is made clear that the addition of the word "material" to the statutory injury test was not intended to result in a higher standard for injury determinations (Cong. Rec. S10311 (7/23/79)). The intent not to raise the injury standard is also expressed in the Senate Finance Committee Report on H.R. 4537 (S. Rep. No. 96-249, 96th Cong. 1st Sess., p. 87) where it is stated that the injury criteria used in ITC determinations from 1975 to July 2, 1979 were, on the whole, consistent with the material injury criteria now contained in the Trade Agreements Act of 1979. Further, the Report states that injury determinations under the "material injury" standard of the Trade Agreements Act of 1979 should be consistent with the injury standard used by the ITC between 1975 and July 2, 1979. The House Committee on Ways and Means Report on H.R. 4537 (H.R. Rep. No. 96-317, 96th Cong. 1st Sess., p. 46) contains similar language.

2. Do you think the standard for a preliminary determination of injury in a dumping or CVD case is a lower standard than the final determination in the same case?
- A. The standard for determination of injury in a dumping of countervailing duty case is the same at the preliminary and final determination stages. The amount of evidence required to satisfy the standard is less at the preliminary determination stage. For preliminary determinations, the ITC is required to determine, based on the best information available to it at the time, that there is a reasonable indication of: 1) material injury; 2) threat of material injury; or 3) material retardation of the establishment of a domestic injury. A preliminary affirmative injury determination should be made where the facts available at the time indicate that the result in a final investigation could be affirmative. This has been described in the House Ways and Means Committee Report on the Trade Agreements Act of 1979 (H.R. Rep. No. 96-317, p. 52, 96th Cong. 1st Sess.) as being a "case in which the facts reasonably indicate that an industry in the United States could possibly be suffering material injury or material retardation." In the Senate Finance Committee Report on H.R. 4537 (Sen. Rep. No. 96-249, 96th Cong, 1st Sess., p. 49) it states that the "reasonable indication" standard

should be applied in essentially the same way as the reasonable indication standard under § 201(c) (2) of the Antidumping Act of 1921 has been applied.

3. Do you think the ITC is or should be an agency involved in the making of trade policy?
  - A. The International Trade Commission is not involved in the making of trade policy. Congress has directed the Commission to provide certain expert technical data and reports to the Executive Branch and to Congress which may serve as the basis for the formulation of trade policy by Congress and the Executive Branch. Whether the International Trade Commission should be involved in the making of trade policy should be determined by Congress.
4. Would you construe section 337 of the Tariff Act of 1930 broadly to include as violations cases of predatory practices against American industries as well as the patent infringement cases that have traditionally been brought under that section?
  - A. Yes, subject to certain restrictions in 19 U.S.C. § 1337(b) (3) concerning certain matters which may come within the purview of the antidumping and countervailing duty laws. Section 337 declares unlawful certain methods of unfair competition and unfair acts in the importation of merchandise into the United States. Clearly unfair practices could

include more than patent infringement. The Commission has, in the past, investigated allegations of trademark and copyright infringement, theft of trade secrets, passing off, and other business torts, as well as certain claims sounding in antitrust. This appears to be a proper construction of § 337.

5. Do you think the ITC should exercise its authority to issue rules or regulations if that seems an appropriate way to deal with a trade problem (usually a patent infringement problem)?

A. Under Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335), the Commission is authorized to adopt reasonable rules it deems necessary to carry out its functions and duties. The Senate Finance Committee Report on S. 2697 (S. Rep. No. 96-701, 96th Cong., 2nd Sess., p. 3) states clearly that Congress intended the Commission to have substantive and procedural rulemaking power in carrying out section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Whether rulemaking is an appropriate way to deal with the problem would depend on the particular issue or case.

6. Why are you qualified for this position?

A. As an experienced corporate practitioner, I have gained a broad working knowledge of business and finance. As a law professor, I have developed

expertise in finance, financial regulations, and economics. This experience will assist me in evaluating the economic and financial data on which commission reports and determinations are based.

In addition, as a practitioner, consultant and agency employee, I have had broad exposure to various state and federal administrative agencies. This has given me the opportunity to observe and work with agencies from several different perspectives. I recently served as Special Counsel to Chairman John Shad of the Securities and Exchange Commission, where I had an opportunity to participate in the problems and administration of an independent agency. My SEC service sensitized me to the importance of maintaining that independence.

7. Several recent section 337 cases have raised the question of whether a domestic industry in fact exists if actual production of the product occurs overseas, with such elements as design, engineering, packaging, shipping, marketing, and advertising done in the U.S. Under what circumstances do you believe a U.S. industry would exist?
  - A. The definition of a domestic industry is a difficult and important question. In the Ultramicrotome Freezing Attachments case the Commission held that a patent must be exploited by

manufacture in the United States in order to find a domestic industry. However, in the Wood Stoves case the Commission held that a domestic industry may be found on the basis of activities other than manufacturing. Although the production, design, engineering and packaging of the wood stoves took place in Norway, the presence of sales, advertising and service activities within the United States was sufficient to constitute a domestic industry. The definition of a domestic industry was also an issue in the Cube Puzzles and Toy Vehicles cases. Toy Vehicles is currently on appeal to the United States Court of Appeal for the Federal Circuit. The court's decision may provide guidance in identifying a domestic industry in future Section 337 determinations.

8. What is the difference, if any, in the standard of injury for fair and unfair trade practice cases?
  - A. The standard of injury for unfair trade practice cases is lower than the injury standard in fair trade cases. For Title VII subsidy and dumping cases, the injury standard is material injury or threat of material injury to, or material retardation of the establishment of, a domestic industry. For unfair import practice cases under Section 337, the injury standard is destruction or

substantial injury to an industry, efficient and economically operated in the United States; the prevention of the establishment of such an industry; or the restraint or monopolization of trade or commerce in the United States. In Section 201 escape clause cases, serious injury or threat of serious injury to a domestic industry is required. In Section 406 cases, the injury standard is market disruption with respect to an article produced by a domestic industry.

Section 201 relating to "fair" competition requires a comparison and weighing of injury causes. The injury standard for escape clause relief provided in Section 201 of the Trade Act of 1974 is that increased imports must be a substantial cause of serious injury or threat of serious injury. A substantial cause is defined to be an important cause of injury not less important than any other cause. In Section 406 the Commission is required to determine if imports from a Communist country cause market disruption with respect to an article produced in the United States. Market disruption is present when rapidly increasing imports are a "significant" cause of material injury, or threat of material injury to a domestic industry. A significant cause is an

important one but it need not be the most important cause. There is no similar requirement that there be a weighing of different causes of injury in the statutes regulating unfair trade practices.

9. What is the appropriate relationship for a Commissioner with the Administration? With the Congress?

A. The International Trade Commission is an independent agency. It is clear that this means that the Commission is independent of the Executive Branch. Congress has taken great pains to insure this independence from the Executive Branch by establishing nine-year terms for commissioners; by providing that commissioners who have served more than five years are ineligible for reappointment; by giving the Commission the right to represent itself in court; and by removing the Commission's budget from executive control. If confirmed, I will strive to maintain this independence.

The primary function of the International Trade Commission is to be a dispassionate and independent fact-finder in applying the laws as Congress has written them.



10. What criteria would demonstrate to you a "threat of serious injury"?
- A. In determining whether a threat of serious injury exists, I would apply the criteria written by Congress into § 201(b)(2). I would consider all relevant economic factors including a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages or employment (or increasing underemployment) in the domestic industry concerned.
11. How would you define the relevant "domestic industry" in a factual situation in which a large part of the production of a particular finished product is subcontracted?
- A. The definition of the relevant domestic industry is a complex question dependent on specific facts. I am aware that the Commission has in the past included subcontractors within the relevant domestic industry in a countervailing duties case (Subway Cars) and in an escape clause case (Automobiles). Such determinations often depend on the facts of individual cases. I would expect to follow Commission precedent on this issue.
12. Do you believe that an industry already damaged by a recession is statutorily more vulnerable to injury from imports?
- A. In unfair competition cases, Congress did not require that the injury not be caused by other factors. Nor do unfair competition cases require

as a strong a causation link as required in fair trade cases under Sections 201 and 406. The House Ways and Means Committee Report on the Trade Agreements Act of 1979 (H. Rep. No. 96-317, 96th Cong. 1st Sess., p. 47) states that a requirement that causes of injury be weighed "has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports." This passage suggests that an industry damaged by recession could be more vulnerable to injury from imports.

13. What economic criteria should the Commission examine in determining material or serious injury? Which are the most indicative in your mind?
  - A. The criteria which should be considered by the Commission in Title VII material injury investigations and Section 201 escape clause proceedings are those set forth by Congress in Section 771(7) of the Trade Agreements Act and Section 201(b)(2) of the Trade Act. Under Section 771, the Commission should consider the significance of the volume of imports and the effect of imports on domestic producers and domestic prices. In evaluating the effect on prices, the Commission must consider whether there has been significant price

cutting or actual or potential price suppression. In evaluating the impact of imports on domestic producers, the Commission should consider all relevant economic factors including actual or potential declines in output, sales, market share, profits, productivity, return on investment and capacity utilization, and any actual or potential negative effects on cash flow, inventories, employment, wages, growth, capital raising ability and investment.

In Section 201 serious injury determinations, the Commission must take into account all relevant economic factors including the significant idling of productive facilities, the inability of a significant number of firms to operate at a reasonable profit level and significant industry unemployment or underemployment. With respect to threat of serious injury the relevant economic factors which the Commission must consider include a higher and growing inventory, and a downward trend in decline in sales, employment, production, profit and wages. In determining whether the imports have been a substantial cause of serious injury under Section 201, the Commission must consider any actual or relative changes in the market shares supplied by domestic and foreign producers.

The relative importance of any of these economic factors would be dependent on the facts of a particular case. No single factor should be dispositive.

15. If foreign government subsidies are but one of several factors which could possibly be causing injury to a domestic industry to you believe the Commission should make an affirmative preliminary determination in a countervailing duty case?
  - A. If on the basis of the facts available at that time, there is a reasonable indication that subsidized imports are materially injuring, threatening material injury, or materially retarding the establishment of a domestic industry, the Commission should make an affirmative preliminary determination, even if there are other potential or actual causes of injury. The subsidized imports need not be the only or most important cause. Congress has made it clear that the Commission should make an affirmative preliminary determination in a Title VII investigation if the facts available at that "reasonably indicate that an industry in the United States could possibly be suffering material injury or material retardation." (H.R. Rep. No. 96-317 p. 52, 96th Cong. 1st Sess.).
16. Under what circumstances do you believe that the Commission should self-initiate a case under section 337 of the Tariff Act of 1930?

- A. Under section 337 the Commission has the power to initiate an investigation of unfair methods of competition and acts in the importation of articles into the United States. The commitment of substantial resources to the prosecution of an investigation should be undertaken in cases where the benefits that could be achieved from relief exceed the costs of the investigation and it is unlikely that other interested parties will petition.

An example would be an unfair practice which caused harm to a large number of small firms or consumers. Since it might not be cost effective for any one industry, firm, or representative group to petition for relief, it would be efficient for the Commission to initiate an investigation.

Another example of when the Commission should initiate such cases is when the holder of the patent is a governmental agency and it may be in the public interest for the Commission to do so. The Commission recently initiated a proceeding under Section 337 in a case where the Department of Agriculture owned the patents and all licensees held non-exclusive licenses. (Certain Apparatus

for Flow Injection Analysis, Investigation No. 337-TA-151).

17. What weight would you ascribe the alleged margins of dumping or subsidization in making preliminary determinations?

A. Congress has clearly indicated that the Commission should make an affirmative preliminary determination if there is a reasonable indication that a domestic industry should possibly be suffering injury. (H.R. 96-317 p. 52, 9th Cong. 1st Sess.). The limited amount of information available in the preliminary investigation stage frequently makes it very difficult to trace injury back to an alleged margin.

It is my understanding that the Commission practice in preliminary investigations has been to attempt to determine whether there is a reasonable indication that the imported product is causing material injury. The practice appears reasonable.

18. What criteria would you use in determining what import relief is necessary to prevent or remedy an injury in an escape clause case?

A. Any Commission recommendation must provide for a level of relief sufficient to prevent or remedy the serious injury or threat of serious injury

found to exist. This will facilitate industry adjustment to new competitive conditions. The recommended relief should take into account the nature of the imported product and any special circumstances concerning world trade in that product. The relief recommended must be within the President's authority to proclaim under section 203. In fashioning a recommendation, one might want to know about the ability of importers and foreign producers to absorb a tariff increase, the level of foreign production capacity and whether additional capacity was about to come on stream, and what form of relief domestic producers thought would best facilitate their adjustment process. Because the most appropriate form and level of relief will vary from case to case in view of differences in levels of injury, kinds of products, world trading pattern, foreign sources, and the like, it is difficult for me to set forth any specific criteria. Perhaps Congress did not establish specific criteria for this reason.

19. Do you believe that a Commissioner who has made a negative determination in an escape clause case should participate in making a remedy recommendation if the Commission has found affirmatively?
  - A. It is my understanding that it is the custom of most Commissioners not to participate in relief

recommendations in those cases in which they have made a negative injury determination and their likely recommendation would be for no relief. This custom appears to be reasonable.



ANSWERS OF SUSAN LIEBELER TO QUESTIONS OF  
THE HONORABLE DANIEL PATRICK MOYNIHAN FOR THE NOMINEES  
TO THE INTERNATIONAL TRADE COMMISSION

1. As you know, the International Trade Commission (ITC) recently recommended that the President impose quotas on certain foreign specialities steel imports for a 3-year period. Are you familiar with the decision and, if so, do you believe that the ITC acted properly and within the limits under the 1979 Trade Act?
  - A. I have read the Report To The President on Investigation No. TA-201-48 Under Section 201 on Stainless Steel and Alloy Tool Steel. The Commission recommended the imposition of quantitative restrictions for a three year period beginning January 1, 1983. This recommendation is within the President's authority to proclaim relief under Section 203. I am unable to comment further on the propriety of the Commission's decision since I did not participate in that proceeding and I am not familiar with the record.
2. As you are aware, several members of Congress, including myself, have advanced proposals to consolidate our executive level trade functions into one department. If enacted, what effect do you believe these reorganization proposals will have on the role of the ITC? Do you favor these proposals?
  - A. I am generally familiar with the various proposals which have been made to consolidate trade functions into one department. Many of these proposals would not affect the International Trade Commission. S. 21 would consolidate the International

Trade Commission into the Department of Commerce. Whether the Commission should remain an independent agency or be consolidated into a central trade department is a matter for Congress. Since I have not had the opportunity to observe the Commission's operations from within, I would not presume to form an opinion as to how such reorganization proposals would affect the Commission. However, as a citizen and as a nominee to the Commission, my concern with any reorganization proposal would be how it would affect the Commission's independence and its ability to provide information and analysis on trade matters to Congress and to the Executive Branch.

3. As you may know, U.S. imports of apple juice have grown rapidly over the past few years. Much of it originates in Argentina, which allegedly subsidizes its apple juice exports. The apple growers in my home state of New York feel that they are being injured by these unfair imports. Under present law, however, the apple growers cannot file a petition with the Commerce Department and ITC to rectify this problem because apple juice is not considered a "like product" to apples. Is it your opinion that U.S. apple producers have a sufficient avenue for relief under present law? If not, how would you recommend changing the law to provide proper protection from these subsidized foreign imports?
  - A. Without the benefit of a complete record, I am unable to comment on whether apple juice would be

a "like product" to apples. Assuming it is not a like product, the apple growers might have standing to petition under Section 337. Although Section 337(b)(3) provides that the Commission shall not institute any investigation under that section if the matters complained of are solely within the purview of the antidumping and countervailing duty laws, it is arguable that subsidies to producers of unlike products are not within their purview. Thus, with respect to apple growers, the subsidy of apple juice exports would not be within the purview of the dumping or countervailing duty laws and apple growers might be able to petition for relief under Section 337.

The trade laws are currently under review by Congress and the Executive Branch. This review will include the adequacy of existing laws in providing import relief. The International Trade Commission is not involved in formulating trade policy. The adequacy of present laws in providing domestic industry with import relief is a matter for Congress to decide. Likewise, the determination of the appropriate level of protection from subsidized imports should be decided by Congress.

ANSWERS OF SUSAN LIEBELER TO  
QUESTIONS FROM SENATOR MITCHELL FOR ITC NOMINEES

1. In 1980, during the Presidential campaign, President Carter asked the ITC to speed up its deliberations in the automobile escape clause case. The ITC, which at that time was headed by a Democratic Chairman, turned down the President's request. Would you have any hesitation in turning down a similar attempt by President Reagan to influence the ITC's activities?
  - A. The Commission must report its determination and recommended relief at the earliest practicable time, but no later than six months. (S 201(d)(2), 19 U.S.C. 2251). A request for expedition of an escape clause proceeding could come from a party, or anyone entitled to request that the Commission institute an investigation under Section 201, including the President. I would treat a request from the President no differently than I would a request from a party, as a request for the Commission to fulfill its statutory mandate to complete the investigation "at the earliest practicable time." It is important the the Commission have the benefit of a full and complete record in making its determination and, also, that the Commission have adequate time to assess the record and to reach an informed judgment. If confirmed, I would deny any request, including one from the President, to expedite an escape clause investigation if to do so would in any way compromise the

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Commission's integrity or its ability to reach an informed judgment on the basis of a complete record.

2. Do you feel that the size of dumping margins or the amount of subsidies should play a part in an injury determination by the ITC? If the dumping margins were 50% or the subsidies in a countervailing duty case were 50% of the value of the merchandise, yet the underselling by the foreign import was only 5% of the domestic U.S. industry's price, should the ITC consider the entire subsidy or dumping margin or the amount of price undercutting in determining injury to the domestic industry? If the dumping margin or countervailable subsidy is only 5% of the value of the imported merchandise and the foreign merchandise is underselling the domestic industry by 20% in the marketplace, what effect would these facts have on your decision in determining material injury to the domestic industry?

- A. There are several stages of the investigation at which this question could arise. When the Commission makes its preliminary determination, the margin of dumping or subsidy found by the Commerce Department is not available or relevant.

In final determinations, the Commission must find material injury, threat of material injury, or material retardation. Further, the Commission must find that the dumped or subsidized imports caused the material injury. The margin of dumping or subsidy found by the Commerce Department is not relevant to determining injury (or threat or material retardation.)

Whether, as a matter of law, the size of the dumping or subsidy margin is a relevant factor to be considered by the Commission in determining causation is a very complex question. It is my understanding that this question is a matter of some controversy at the Commission right now and a question on which some commissioners would disagree. I have not made up my mind on this issue. I would not want to do so until I had the benefit of all sides of the argument in the context of the facts of a particular case.

Assuming, arguendo, that as a matter of law the margin of subsidy and dumping is relevant to determining causation, it should not be a dispositive factor. Its relevance as a matter of fact would depend on the facts of a particular case.

Your questions have two hypothetical fact situations. My responses assume, for the purposes of answering your questions, that as a matter of law, the margins are relative to causation.

The first hypothetical assumes 50% margins and 5% underselling. It is possible that the 50% margin may have contributed to the underselling. Also, the 50% dumping or subsidy may have suppressed domestic prices.

The second hypothetical assumes 5% margins and 20% underselling. It is certainly possible that the 5% subsidy or dumping is responsible for part of the underselling and therefore is a cause of the injury.

In either of the two hypothetical situations, I would want to look at the complete record in order to decide whether the injury was caused by the dumping or subsidized imports.

ANSWERS OF LYN M. SCHLITT  
TO  
QUESTIONS OF SENATOR MITCHELL

1. QUESTION: In 1980, during the Presidential campaign, President Carter asked the ITC to speed up its deliberations in the automobile escape clause case. The ITC, which at that time was headed by a Democratic Chairman, turned down the President's request. Would you have any hesitation in turning down a similar request by President Reagan to influence the ITC's activities?

ANSWER: No. Congress has often stated its intent that the International Trade Commission be free of "unwarranted interference or influence by the Executive Branch . . . ." S. Rep. No. 93-1298, 93d Cong., 2d Sess. (Nov. 26, 1974) at 118. The Commission is an independent non-partisan regulatory agency, and, under no circumstances, should a Commissioner be amenable to political influence from the Executive Branch. I expect no improper attempt by the Executive Branch to influence me. I would have an affirmative obligation to resist any such approach.

However, the law does permit many proper requests for action by the Executive. A request to expedite an investigation would be perfectly proper coming from the Executive, from Congress, or from a party to the investigation. The Commission has a responsibility to complete a Section 201 investigation "in the earliest practicable time." 19 U.S.C. § 2251(d)(2) (1975). But the Commission also has an obligation imposed by Congress to gather an adequate administrative record



in order to consider all relevant economic factors, including those set forth in 19 U.S.C. § 2251(b)(2) (1979). If this were not feasible on an expedited schedule, I would not hesitate to deny a request to expedite.

2. QUESTION: Do you feel that the size of dumping margins or the amount of subsidies should play a part in an injury determination by the ITC?

ANSWER: No; the margin of dumping or subsidy is not relevant to the material injury question. However, it is one of many factors which may be considered in determining whether the material injury is "by reason of" the unfair imports. Of course, it is certainly not dispositive of this causation issue.

The Trade Agreements Act states that the Commission must determine whether the U.S. industry has been materially injured by reason of less-than-fair-value or subsidized imports. 19 U.S.C. § 1673(2)(B) (1979). While this causation standard is far lower than the "substantial cause" standard utilized under Section 201 or the "significant cause" standard under Section 406, the law does require some causal connection between the unfair imports covered by the affirmative Department of Commerce determination and material injury.

When Congress instituted the material injury standard in countervailing duty cases and adopted the Commission practice of applying that injury standard in antidumping cases, it stated that the Commission decisions

"in antidumping investigations from January 3, 1975 to July 2, 1979, have been, on the whole, consistent with the material injury criterion of this bill . . . . The material injury criterion of this bill should be interpreted in this manner." S. Rep. 96-249, 96th Cong., 1st Sess. (July 17, 1979) at 87. (Emphasis supplied.)

Thus, the Commission was directed to apply the material injury standard as it had under the Anti-dumping Act from 1975 through 1979. During that period, the Commission treated the margin of dumping as one among many relevant factors to be considered in determining whether there was some causal relation between material injury and the dumped imports. Perchloroethylene from Belgium, France, and Italy, AA1921-194-195-196 at 4-5 (April 1979) (Affirmative Views of Chairman Parker, Commissioners Moore and Bedell); Carbon Steel Plate from Taiwan, AA1921-197 (May 1979) at 5 (Affirmative Views of Commissioners Bedell and Moore); Sugar from Belgium, France, and West Germany, AA1921-198-199-200 (May 1979) at 4 (Affirmative Views of Chairman Parker and Commissioners Moore, Bedell and Alberger).

A large subsidy or dumping margin may also have a bearing on the Commission's determination of whether "threat of material injury" is present. Large margins may indicate that there is an "imminent" threat of increasing volumes of unfair imports.

3. QUESTION: If the dumping margins were 50% or the subsidies in a countervailing duty case were 50% of the value of the merchandise, yet the underselling by the foreign import was only 5% of the domestic U.S. industry's price, should the ITC consider the entire subsidy or dumping margin or the amount of price undercutting in determining injury to the domestic industry?

ANSWER: In countervailing duty or antidumping cases, the Commission should consider the amount of price undercutting by the foreign importer in determining whether the U.S. industry is materially injured. If importers were underselling U.S. producers by five percent, this could result in lost sales, price suppression, or price depression and would be a factor in determining whether material injury existed.

As a wholly separate matter, the Commission may take into account, as described more fully in answer to Question 2, the size of the dumping or subsidy margins as one of many factors to be considered in deciding whether the material injury was caused by the unfair imports. Margins as high as fifty percent would likely have an impact on the causation determination.

Margins of this magnitude could also bear on the issue of "threat of material injury."

4. QUESTION: If the dumping margin or countervailable subsidy is only 5% of the value of the imported merchandise and the foreign merchandise is underselling the domestic industry by 20% in the marketplace, what effect would these facts have on your decision in determining material injury to the domestic industry?

ANSWER: The percentage of underselling of the domestic industry by importers would be one of the factors that I would take into account in evaluating whether the domestic industry is materially injured. Underselling by 20 percent would likely result in lost sales, price suppression, or price depression, and would probably be an important factor in determining whether the domestic industry is materially injured.

As I have set forth in greater detail in response to Question 2, I would consider the 5 percent dumping or subsidy margin as one of a number of factors which I may take into account in evaluating whether the material injury to the U.S. industry was "by reason of" the unfair imports, and whether there was a threat of material injury.

ANSWERS OF LYN M. SCHLITT  
TO  
QUESTIONS FROM SENATOR MOYNIHAN

1. QUESTION: As you know, the International Trade Commission (ITC) recently recommended that the President impose quotas on certain foreign specialty steel imports for a three-year period. Are you familiar with the decision and, if so, do you believe that the ITC acted properly and within the remedies provided for under the 1979 Trade Act?

ANSWER: I acted as Counsel on behalf of a party in the recently decided Stainless Steel and Alloy Tool Steel, TA-201-48 (May 1983).

While that case has been decided by the Commission, the relief recommendation is currently being reviewed by the Trade Policy Committee and the Office of the United States Trade Representative. The President's decision is pending.

Because of my position as an advocate on behalf of a party, and due to the attorney-client relationship, I should not comment upon the Commission's decision in this case.

2. QUESTION: As you are aware, several members of Congress, including myself, have advanced proposals to consolidate our executive level trade functions into one department. If enacted, what effect do you believe these reorganization proposals will have on the role of the ITC? Do you favor these proposals?

ANSWER: I understand that there have been a number of proposals to consolidate executive level trade functions

apples. Is it your opinion that U.S. apple producers have a sufficient avenue for relief under present law? If not, how would you recommend changing the law to provide proper protection from these subsidized foreign imports?

-ANSWER: One available avenue of relief is Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, as amended (1979). The apple growers could file a Petition with the United States Trade Representative (hereinafter "USTR"), urging the President to enforce United States rights under the Subsidies Code or

"to respond to [an] act, policy, or practice of a foreign country . . . that is inconsistent with provisions of, or otherwise denies benefits to the United States under any trade agreement, or is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce . . ." 19 U.S.C. § 2411(a)(2) (1979).

Section 301 of the Trade Act of 1974 contains no "like product" test, and cases involving subsidy allegations have been accepted by the Trade Representative. E.g., Certain Specialty Steel Imports, Docket No. 301-27-31 (1982).

If the USTR should determine that Argentina granted export subsidies on apple juice, the President could take "all appropriate and feasible action" including the suspension or withdrawal of the application of trade agreement concessions, or the imposition of duties or other import restrictions. 19 U.S.C. § 2411(b) (1979).

Another practical alternative would be for the apple growers to approach the United States apple juice producers, who may be materially injured by imports of subsidized apple juice from Argentina, and urge the producers to file a countervailing duty petition. The apple juice producers would have standing to file and prosecute a case because they produce a product "like" the imported product. The growers could offer to support the Petition by providing testimony before the International Trade Commission and financial support. Such industry coalitions of producers of finished products, their parts suppliers -- or in this case, raw material suppliers -- and employees of both U.S. industries, are quite common in international trade practice.

Moreover, in at least one preliminary countervailing duty investigation, Frozen Concentrated Orange Juice from Brazil, 701-TA-184 (September 1982), the Commission found a reasonable indication of material injury to a U.S. industry consisting of "both growers of 'round oranges' and processors involved in the production of [orange juice concentrate]" by reason of subsidized imports of concentrate alone, 701-TA-184 at 4-7, because of the "highly integrated and interdependent economic structure of the . . . industry." 701-TA-184 at 6.

ANSWERS OF LYN M. SCHLITT  
TO  
QUESTIONS FOR ITC NOMINEES

1. QUESTION: The Trade Agreements Act of 1979 provides that countervailing or antidumping duties shall be imposed on subsidized or dumped imports if the ITC determines that a U.S. industry is materially injured by reason of the imports. Before this injury determination is made, the Commerce Department determines whether there is dumping or subsidization, and by what margin the imported prices are unfairly affected.

A. Would you describe what is meant by "material injury?"

ANSWER: Material injury means "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A) (1979).

B. Would you state what factors the Commission must consider in the determination of material injury?

ANSWER: In determining whether material injury exists, the Commission must consider, among other factors, the volume of imports which are subject to the investigation, the effect of those imports on prices in the United States of like products; and the impact of those imports on domestic producers of those products. 19 U.S.C. § 1677(7)(B) (1979).

C. Do you agree that the margin of dumping or subsidy found by the Commerce Department is not one of the factors the ITC should consider in making material injury determinations?

ANSWER: Yes. The margin of dumping or subsidy is not relevant to the question of material injury. But it may be one of many factors which could be considered in determining whether material injury is "by reason of"



unfair imports. Of course, it is certainly not dispositive of the causation question.

The Trade Agreements Act states that the Commission must determine whether the U.S. industry has been materially injured by reason of less-than-fair-value or subsidized imports. 19 U.S.C. § 1673(2)(B) (1979). While this causation standard is much lower than the "substantial cause" or "significant cause" standards, the law does require some causal connection between unfair imports and material injury.

When Congress instituted the material injury standard in countervailing duty cases and adopted Commission practice of applying that injury standard in antidumping cases, it stated that the Commission decisions

"in antidumping investigations from January 3, 1975 to July 2, 1979, have been, on the whole, consistent with the material injury criterion of this bill . . . . The material injury criterion of this bill should be interpreted in this manner." S. Rep. No. 96-249, 96th Cong., 1st Sess. (July 17, 1979) at 87. (Emphasis supplied.)

Thus, the Commission was directed to apply the material injury standard as it had under the Antidumping Act from 1975 through 1979. During that period, the Commission treated the margin of dumping as one among many relevant factors to be considered in determining

whether there was some causal relation between material injury and dumped imports. Perchloroethylene from Belgium, France, and Italy, AA1921-194-195-196 at 4-5 (April 1979) (Affirmative Views of Chairman Parker, Commissioners Moore and Bedell); Carbon Steel Plate from Taiwan, AA1921-197 (May 1979) at 5 (Affirmative Views of Commissioners Bedell and Moore); Sugar from Belgium, France, and West Germany, AA1921-198-199-200 (May 1979) at 4 (Affirmative Views of Chairman Parker and Commissioners Moore, Bedell and Alberger).

The size of dumping or subsidy margins may also have a bearing on the determination of whether "threat of material injury" is present. Large margins may indicate that increased unfair imports are "imminent." S. Rep. No. 96-249, 96th Cong., 1st Sess. (July 7, 1979) at 89.

2. QUESTION: Under Section 201 of the Trade Act, the Commission determines whether increasing quantities of imports are a substantial cause of serious injury, or the threat thereof, to a domestic industry. If so, the ITC must recommend to the President what temporary duty increase or import restriction is necessary to prevent or to remedy such injury.

A. What do you believe is the purpose of this temporary relief?

ANSWER: Section 201 is intended to provide temporary relief to domestic industries in order to allow them an

opportunity to adjust to import competition. In enacting Section 201, the Senate Finance Committee stated:

"The 'escape clause' is aimed at providing temporary relief for an industry suffering from serious injury, or the threat thereof, so the industry will have sufficient time to adjust to the freer international competition." S. Rep. No. 93-1298, 93d Cong., 2d Sess. (Nov. 26, 1974) at 119.

- B. Should the ability and intent of the industry to adjust to the import competition be considered by the ITC in recommending whether and to what extent relief should be granted?

ANSWER: Section 201(b)(5) of the Trade Act of 1974 provides that:

"In the course of any proceeding under [Section 201], the Commission shall, for the purpose of assisting the President in making his determinations under Sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports." 19 U.S.C. § 2251(b)(5) (1975).

The ability and intent of the domestic industry to adjust to import competition has been taken into account by the Commission in recommending whether to grant relief under Section 201. Indeed, adjustment attempts have been a factor in some affirmative Commission determinations. For example, in Certain Stainless Steel Flatware, TA-201-30 (May 1978), the Commission majority stated:

"We are not persuaded by the argument that the domestic industry has somehow failed to adjust to import competition.

In fact, in our view, increased import penetration over a very short period of time, especially by Korean imports, has frustrated the domestic industry's response to import competition." TA-201-30 at 13 (Views of Commissioners Moore, Bedell and Ablondi). See also Stainless Steel Table Flatware, TA-201-8 (March 1976) at 15-16 (Views of Commissioners Moore, Bedell, and Parker).

Likewise, in his affirmative determination in Footwear, TA-201-7 (February 1976), Commissioner Leonard detailed the domestic footwear's "significant efforts to compete with imports," and found that, despite those efforts, the U.S. industry had been unable to meet competition from injurious imports. TA-201-7 at 40-41 and at 56 (Views of Commissioner Moore). See also Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments) TA-201-11 (April 1976) at 17 (Views of Chairman Leonard and Vice Chairman Minchew) (industry facilities cannot be converted to other uses). Relief has also been denied in cases in which the Commission found that the industry could adjust successfully without import relief. Asparagus, TA-201-4 (January 1976) at 12 (Views of Chairman Leonard and Commissioners Parker and Minchew).

The Commission has also considered the ability and intent of the industry to adjust in its relief recommendations. In Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments), TA-201-11 (April 1976) the Commissioners,

in recommending a tariff increase, made clear that they were fashioning a remedy which would encourage adjustment to import competition. "[T]his tariff would enable domestic producers to take various measures during the next few years which would enable them to be competitive in the marketplace . . . ." TA-201-11 at 24 (Views of Chairman Leonard and Vice Chairman Minchew). See also Clothespins, TA-201-36 (December 1978) at 11 (Views of Chairman Parker and Commissioners Alberger, Moore and Bedell); Certain Stainless Steel Flatware, TA-201-30 (May 1978) at 25 (Views of Chairman Minchew and Commissioners Moore and Bedell); Television Receivers, Color and Monochrome, Assembled or not Assembled, Finished or Not Finished, and Subassemblies Thereof, TA-201-19 (March 1977) at 45-46 (Views of Chairman Parker and Commissioner Bedell); Footwear, TA-201-18 (February 1977) at 15-16 (Views of Chairman Minchew and Commissioners Parker, Moore and Bedell); Stainless Steel Table Flatware, TA-201-8 (March 1976) at 31 (Views of Chairman Leonard).

- C. What is the effect of recessionary conditions on the standard of relief in Section 20R [sic]. i.e., is a recession likely, in your view, to be a more important cause of serious injury than increasing imports where those conditions exist?

ANSWER: Section 201 contains no specific statutory reference to a special standard for relief during recession, nor does the legislative history suggest that

Congress intended a special standard to be applied in determining the cause of serious injury during a recession.

Commissioners have recognized that recession may exacerbate serious import injury. For example, in Television Receivers, Color and Monochrome, Assembled or Not Assembled, Finished or Not Finished, and Sub-assemblies Thereof, TA-201-19 (March 1977), the majority rejected the argument that recession was a more important cause of injury and expressed the view that the recession had permitted injurious imports to exploit the U.S. market. TA-201-19 at 18-19 (Views of Chairman Minchew and Commissioners Leonard and Moore) and at 54-55 (Views of Commissioner Ablondi). See also Stainless Steel and Alloy Tool Steel, TA-201-48 (May 1983) at 23; Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments), TA-201-11 (April 1976) at 21 (Views of Chairman Leonard and Vice Chairman Minchew); Stainless Steel Flatware, TA-201-8 (March 1976) at 28 (Views of Chairman Leonard).

However, there have been cases in which Commissioners have found that a recession was a more important cause of injury than any other cause. Round Stainless Steel Wire, TA-201-13 (June 1976) at 7 (Views of Chairman Leonard and Vice Chairman Minchew) and at 15 (Views of Commissioner Bedell); Slide Fasteners and Parts Thereof, TA-201-6 (February 1976) at 19-20 (Views of Commissioners

Bedell and Leonard), at 24-25 (Views of Chairman Minchew); Birch Plywood Door Skins, TA-201-1 (October 1975) at 5-6 (Views of Commissioners Moore, Bedell, Parker and Ablondi).

Thus, in the absence of clear Congressional guidance, the Commission has not applied a different standard of relief when recessionary conditions exist. Rather, using the accepted Section 201 standard, it has evaluated the impact of recession as one possible alternative to increased imports as the substantial cause of serious injury. Commission decisions have varied with the facts of each case.

3. QUESTION: Section 337 of the 1930 Tariff Act prohibits unfair methods of competition and unfair acts in the importation or sale of imported articles if the effect or tendency of those acts is to injure substantially a U.S. industry. The Commission may issue exclusion or cease and desist orders in such case.

A. There has been some dispute in recent ITC cases over what constitutes a domestic industry eligible to petition for relief under Section 337. Do you think only industries actually and solely producing the goods question [sic] in the U.S. should have standing to petition for relief? Or might other domestic commercial activities qualify a firm for relief even if it sells imported goods?

ANSWER: Industries other than those actually and solely producing goods in the United States have standing to request relief under Section 337. Section 337 contains no specific provision on standing but it does

provide for protection for an "industry . . . in the United States" 19 U.S.C. § 1337(a), as amended (1979). Presumably, any industry eligible for protection has standing to file a complaint.

The statute contains no explicit direction on how "an industry in the United States" is to be interpreted. But the Finance Committee Report states that "[t]he public health and welfare and the assurance of competitive conditions in the United States economy must be the overriding considerations in the administration of this statute." S. Rep. No. 93-1298, 93d Cong., 2d Sess. (Nov. 26, 1974) at 197.

Recent activities of the Senate Finance Committee and the House Ways and Means Committee have indicated the Members' "public welfare" concerns currently focus on the encouraging U.S. technological innovation and U.S. industry competitiveness. In the context of Section 337, these two interests may not always be totally compatible. The protection of intellectual property rights encourages technological innovation in the United States. But the exploitation of those U.S.-owned or controlled property rights by offshore manufacturing results in the loss of U.S. jobs, capital investment, and the benefits which they contribute to the public welfare.



Thus, the Commission may be required to balance competing public welfare interests in an effort to follow the Finance Committee's guidelines for interpreting Section 337. In Certain Air Tight Cast-Iron Stoves, Investigation No. 337-TA-69 (January 1981), the Commission determined that there was an "industry in the United States" although manufacturing operations were conducted abroad because there was "enough domestic activity" by the importer/distributor/dealer network. The trademark holder owned and operated warehouses in the United States, employed a large domestic work force which conducted testing, repaired stoves, and instructed dealers with respect to installation. Significant value was added domestically.

In Certain Miniature, Battery-Operated, All Terrain, Wheeled Vehicles, Investigation No. 337-TA-122 (October 1982) (hereinafter "Toy Vehicles"), the Commission found no "industry in the United States." Although there were domestic design and promotional activities, the manufacturing, tooling, most quality control and packaging were conducted abroad. The Opinion contained no reference to significant domestic employment, and indicated that little value was added in the United States.

In Certain Cube Puzzles, Investigation No. 337-TA-112 (January 1983), the Commission majority noted significant U.S. employment by the trademark holder, which employees performed substantive testing and quality control, repair, and packaging of the imported puzzles. The molds used by the overseas manufacturers were made in the United States. In light of the significant domestic value added to the cube puzzles, the majority concluded that there was "an industry in the United States."

The Commission's interpretation of "an industry in the United States" is currently being reviewed in an appeal of the Toy Vehicles case. Schaper Manufacturing Co., et al. v. U.S. International Trade Commission and Soma Traders, et al., Ct. No. 83-713 (Fed. Cir.) That decision should provide further guidance to the Commission concerning the correct interpretation of "industry in the United States" and clarify the Section 337 "standing" issue.

4. QUESTION: Characteristic of advanced technology industries are enormous capital demands for research and development; the rapid pace of innovation; and substantial amounts of foreign government subsidization. The antidumping and countervailing duty statutes require the ITC to make an affirmative determination based on threat of material injury even if no material injury has yet occurred.

Do you believe the particular characteristics of advanced technology industries makes the "threat" test particularly appropriate as an injury standard?

ANSWER: Congress has stated that the Commission should find threat of material injury when "the threat is real and imminent, not a mere supposition or conjecture." S. Rep. 96-249, 96th Cong., 1st Sess. (July 17, 1979) at 89.

Congress has provided the Commission with specific guidance on how to treat advanced technological industries under the circumstances described. The Finance Committee stated:

"[I]n some cases, e.g., an industry producing a product which has a relatively short market life and significant research and development costs associated with it, a rapid increase in market penetration could quickly result in material injury to that industry. The existence of such increases in market penetration may be a particularly appropriate early warning signal of material injury in such cases." S. Rep. 96-249, 96th Cong., 1st Sess. (July 17, 1979) at 89.

Thus, Congress has made clear that the "threat standard" is particularly appropriate for dealing with an advanced technological industry.

In Certain Amplifier Assemblies and Parts Thereof from Japan, 731-TA-48 (Preliminary) (September 1981), the Commission found that this technologically advanced U.S. industry was currently healthy but that a dramatic rise in Japanese imports, coupled with the needs of the U.S. industry to fund future research and retain skilled

personnel were sufficient to demonstrate a reasonable indication of threat of material injury. This finding was borne out by the final affirmative determination of material injury. 731-TA-48 (Final) (July 1982).

ANSWERS OF LYN M. SCHLITT  
TO  
QUESTIONS FROM SENATOR BRADLEY

1. **QUESTION:** You have represented Honda Motor Company before the ITC. Would you disqualify yourself in future Honda Cases? Would you disqualify yourself in future auto cases? auto parts cases? In the eight years you were with the law firm of Covington & Burling, what industries or companies, foreign or domestic, did the firm represent before the ITC? Do you intend to disqualify yourself in the cases pertaining to these industries or companies and, if so, what will there be left for you to rule upon?

**ANSWER:** As stated by David R. Scott, Acting Director of the Office of Government Ethics, in his letter to Chairman Dole, I have agreed to recuse myself from any matter in which I have provided legal services to any party while in private practice. I have also agreed to consult with the Ethics Counsel of the Commission, on a case-by-case basis, concerning the advisability of my recusal from matters in which I have not been involved but which involve former clients.

In making that assessment, I intend to take into account how long ago I represented the client, whether I represented or gave advice to that client concerning the particular industry under investigation, whether my relationship with the client had been long-standing and substantial or sporadic, or whether the client was a Covington & Burling client which I had not personally advised. Finally, and most importantly, I will seek to avoid giving any party to a Commission investigation

an apprehension of impropriety or unfairness with respect to my participation.

I will disqualify myself from future cases in which Honda Motor Company, American Honda Motor Company, or Honda of America Manufacturing is a party, if those cases involve automobiles or motorcycles. With respect to other industries in which Honda participates, and concerning which I have never provided legal advice or had access to company information, I would consult with the Ethics Counsellor of the International Trade Commission as to whether it would be appropriate for me to participate in each case.

I will also disqualify myself from any investigation of automobiles because Honda would have an interest in such cases, either in its capacity as an importer, or as a U.S. producer of automobiles. With respect to cases involving automobile parts, I would determine whether Honda or any other former client had an interest in the investigation, and if it did not, I would participate.

During the years in which I have practiced law, Covington & Burling's principle domestic industry clients have been: electric motors, copper, anti-friction bearings, copper and brass fabrication, lead, zinc, sulfur, cadmium, cement, machine tools, certain

chemicals, radio pagers, roller chain, and tobacco. During that same period, the firm's principle import clients in the trade area have been: Canadian hardwood pulp, French steel, Japanese automobiles, Canadian iron powders, Canadian pig iron, EEC stainless steel wire, German industrial needles, Japanese motorcycles, Canadian asphalt shingles, Japanese carbon steel plate, and certain Canadian paper.

With respect to foreign industries which I have represented, I do not intend to recuse myself from Title VII cases involving imports from those countries which I have not represented, nor do I intend to recuse myself from cases in which my former clients have no interest. Of course, I will make all such evaluations with the advice of the Commission's Ethics Counsellor and according to the guidelines which I set out above.

The Commission's case load is very large and diverse. My observations and inquiries indicate to me that Covington & Burling clients represent a small percentage of the Commission docket, and it is unlikely that I will have to disqualify myself from a significant percentage of the cases which the Commission will be deciding during my tenure. It is my intention to participate in as many of the Commission's activities as is possible without compromising fairness or the appearance of fairness.

2. QUESTION: What do you see as the main job of the ITC over the next few years in connection with the Harmonized System of Tariff Nomenclature?

ANSWER: In the Trade Act of 1974, Congress instructed

"full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council . . . in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices . . . ." Trade Act of 1974 § 608(c)(2) (1975).

Pursuant to that statute, the Commission staff has been contributing to U.S. participation in the activities of the Harmonized Systems Committee and has drafted proposed Tariff Schedules of the United States, by section, which are consistent with the Harmonized System of Tariff Nomenclature. In late 1982, the drafts were released for public comment and hearings were conducted by the Commission.

It is my understanding that the Commission staff is currently evaluating those comments to determine whether the draft Schedules would cause changes in the rates of duty on individual products, simplify the U.S. tariff structure, and alleviate administrative burdens for the Customs Service. If necessary, the Commission may hold further hearings and may advise the U.S. representatives to the CCC concerning the technical work performed by the Commission staff.



Ultimately, the proposed amendments to the Tariff Schedules of the United States will be forwarded to Congress for action.

3. **QUESTION:** Over the last several years, the United States has been in a recession, and at the same time imports have increased and the U.S. balance of trade has gone further into deficit than ever in our history. Do you think that in any given case it is a correct interpretation of any of the current laws the ITC administers to find that "the recession" is the main or most important cause of injury?

**ANSWER:** The causation standards of the antidumping, countervailing duty, and market disruption laws do not require the Commission to weigh various causes of injury. H.R. No. 96-317, 96th Cong., 1st Sess. (July 3, 1979) at 47. Thus, in investigations under these statutes, even if a recession were "the main or most important cause of injury", it would not preclude the Commission from granting relief. See Precipitated Barium Carbonate from the Federal Republic of Germany, 731-TA-31 (Final) (June 1981) at 10; Unrefined Montan Wax from East Germany, 731-TA-30 (Final) (August 1981) at 10; Pig Iron from Brazil, 701-TA-2 (Final) (March 1980) at 7.

The Escape Clause, Section 201, contains no specific statutory reference to recession, nor does the legislative history suggest that Congress intended that recession could not be the substantial cause of serious injury.

Commissioners have recognized that recession may exacerbate serious import injury. For example, in Television Receivers, Color and Monochrome, Assembled or Not Assembled, Finished or Not Finished, and Sub-assemblies Thereof, TA-201-19 (March 1977), the majority rejected the argument that recession was a greater cause of injury and expressed the view that the recession had permitted injurious imports to exploit the U.S. market. TA-201-19 at 18-19 (Views of Chairman Minchew and Commissioners Leonard and Moore) and at 54-55 (Views of Commissioner Ablondi). See also Stainless Steel and Alloy Tool Steel, TA-201-48 (May 1983) at 23; Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments), TA-201-11 (April 1976) at 21 (Views of Chairman Leonard and Vice Chairman Minchew); Stainless Steel Flatware, TA-201-8 (March 1976) at 28 (Views of Chairman Leonard).

However, there have been cases in which Commissioners have found that a recession was a more important cause of injury than any other cause. Round Stainless Steel Wire, TA-201-13 (June 1976) at 7 (Views of Chairman Leonard and Vice Chairman Minchew) and at 15 (Views of Commissioner Bedell); Slide Fasteners and Parts Thereof, TA-201-6 (February 1976) at 19-20 (Views of Commissioners Bedell and Leonard) and at 24-25

(Views of Chairman Minchew); Birch Plywood Door Skins, TA-201-1 (October 1975) at 5-6 (Views of Commissioners Moore, Bedell, Parker and Ablondi).

Thus, in the absence of clear Congressional guidance, the Commission has not applied a different standard of relief when recessionary conditions exist. Rather, using the accepted Section 201 standard, it has evaluated the impact of recession as one possible alternative to increased imports as the substantial cause of serious injury. Commission decisions have varied with the facts of each case.

4. **QUESTION:** In 1979, Congress approved a number of international trade agreements, such as the one on antidumping, which required that we change U.S. law, which the Congress also did at that time. Do you intend to look to the international agreements for guidance on how to interpret U.S. law?

**ANSWER:** It is my understanding that it is the role of the International Trade Commission to interpret the trade relief laws according to the intent of Congress. Thus, I would look to legislative history for guidance in interpreting statutory language.

There are instances in which legislative histories refer to the International Agreements which were implemented in the trade laws. When Congress has directed the Commission to take into account those International Agreements, I would also consider them. Of course, whenever an international Agreement is inconsistent

with U.S. law or legislative history, the U.S. law would take precedence. See Pub. L. No. 90-634 which, under pre-1979 law, provided that:

"any conflict between the International Antidumping Code and the Antidumping Act, 1921 [be resolved] in favor of the Act . . . and . . . take into account the provisions of the International Antidumping Code only insofar as they are consistent with the Antidumping Act . . . ."

See also H.R. No. 96-317, 96th Cong., 1st Sess. (June 1979) at 41 (Trade agreements "do not have independent effect under U.S. law.").

ANSWER OF LYN M. SCHLITT  
-TO  
QUESTION FROM SENATOR J. HEINZ

QUESTION: A specific concern has been expressed to me that in the recent Steel cases you displayed an unprofessional attitude towards representatives of the domestic steel industry. It was alleged to me that you smiled and snickered at the industry's witnesses during their testimony. I do not know whether this allegation should be credited in any way, and I understand the adversarial nature of those proceedings. But I do feel you should be given an opportunity to respond to the suggestion that you may not have the maturity and temperament required of those assuming this important office. Do you wish to do so?

ANSWER: Upon receiving this question, I discussed my conduct at the Specialty Steel hearings with a number of persons present, including a major witness on behalf of the domestic industry, and they have confirmed my judgment. I did not engage in the activity described in your question.

I have represented many domestic industries, foreign producers, and U.S. consumers before the International Trade Commission and have counseled many others concerning the problems which are the subject of Commission investigations. I thoroughly understand the gravity of Commission investigations and the importance, to the parties, of their testimony. I have never, and would never, belittle the importance of testimony presented by any party before the Commission.

It is true that during a lengthy hearing -- the Specialty Steel hearings lasted two days -- that there

are moments of levity and certainly instances in which many of the participants, including Commissioners, may smile or laugh. However, I am confident that I did not demonstrate any disrespect for the domestic industry witnesses.

